

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of Earliest Event Reported): May 10, 2022

MKS Instruments, Inc.

(Exact name of registrant as specified in its charter)

Massachusetts
(State or other jurisdiction
of incorporation)

000-23621
(Commission
File Number)

04-2277512
(I.R.S. Employer
Identification No.)

**2 Tech Drive, Suite 201, Andover,
Massachusetts**
(Address of principal executive offices)

01810
(Zip Code)

Registrant's telephone number, including area code: 978-645-5500

Not Applicable

Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, no par value	MKSI	Nasdaq Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(e) At the 2022 Annual Meeting of Shareholders of MKS Instruments, Inc. (the “Company”) held on May 10, 2022 (the “2022 Annual Meeting”), the shareholders of the Company approved the 2022 Stock Incentive Plan (the “Plan”). The Board of Directors of the Company (the “Board”) adopted the Plan on February 7, 2022, subject to shareholder approval.

Under the Plan, up to 6,200,274 shares of our Common Stock (subject to adjustment in the event of stock splits and other similar events) may be issued pursuant to awards granted thereunder in the form of incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock, restricted stock units, other stock-based awards and cash-based awards.

The foregoing summary of the Plan is qualified in its entirety by reference to the detailed summary of the Plan set forth in the section “Proposal Two — Approval of 2022 Stock Incentive Plan—Description of the 2022 Plan” in the Company’s Proxy Statement filed with the U.S. Securities and Exchange Commission (the “SEC”) on March 31, 2022 and to the full text of the Plan, a copy of which is included as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 5.07 Submission of Matters to a Vote of Security Holders.

The following sets forth the results of voting by shareholders at the 2022 Annual Meeting:

- a) Election of three Class II Directors to serve for a three-year term and until their successors are elected:

Director Nominee	Votes For	Votes Withheld
John T.C. Lee	49,987,745	444,661
Jacqueline F. Moloney	48,104,385	2,328,021
Michelle M. Warner	49,640,764	791,642

There were broker non-votes of 1,942,707 shares on this proposal.

- b) Approval of the Plan:

Votes For	Votes Against	Votes Abstained
48,128,243	2,265,430	38,733

There were broker non-votes of 1,942,707 shares on this proposal.

- c) Approval of compensation paid to the Company’s Named Executive Officers, as disclosed pursuant to the compensation disclosure rules of the SEC, including the Compensation Discussion and Analysis, the compensation tables and any related material disclosed in the Proxy Statement for this meeting:

Votes For	Votes Against	Votes Abstained
48,956,919	1,411,743	63,744

There were broker non-votes of 1,942,707 shares on this proposal.

- d) Ratification of the appointment of PricewaterhouseCoopers LLP as the Company’s independent registered public accounting firm for the year ending December 31, 2022:

Votes For	Votes Against	Votes Abstained
51,365,610	939,063	70,440

There were no broker non-votes for this proposal.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1(1)*	2022 Stock Incentive Plan
10.2*	Form of Restricted Stock Unit Agreement for Non-Employee Directors under the 2022 Stock Incentive Plan
10.3*	Form of Restricted Stock Unit Agreement for Employees under the 2022 Stock Incentive Plan
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Management contract or compensatory plan arrangement

(1) Incorporated by reference to the Registration Statement on Form S-8 (File No. 333-264817), filed with the Securities and Exchange Commission on May 10, 2022.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

MKS Instruments, Inc.

By: /s/ Kathleen F. Burke

Name: Kathleen F. Burke

Title: Senior Vice President, General Counsel & Secretary

Date: May 11, 2022

MKS INSTRUMENTS, INC.

Restricted Stock Unit Agreement

Annual Grant to Non-Employee Directors Under the 2022 Stock Incentive Plan

AGREEMENT «Grant Date» (the “Grant Date”), between MKS Instruments, Inc., a Massachusetts corporation (the “Company”), and «Participant Name» (the “Participant”).

For valuable consideration, receipt of which is acknowledged, the parties hereto agree as follows:

1. General. The Company has granted to the Participant restricted stock units (“RSUs”) with respect to the number of shares set forth in Exhibit A hereto (the “Shares”) of common stock, no par value, of the Company (“Common Stock”), subject to the terms and conditions set forth in this Agreement and in the Company’s 2022 Stock Incentive Plan (the “Plan”). The RSUs represent a promise by the Company to deliver Shares upon vesting and settlement.

(a) Definitions. Capitalized terms not explicitly defined in this Agreement shall have the same meanings given to them in the Plan.

(i) “Code” means the U.S. Internal Revenue Code of 1986, as amended.

(ii) “Disability” means either (A) the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months; or (B) the Participant is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the Company.

(iii) “Forfeiture” means any forfeiture of RSUs pursuant to Section 2(a).

(iv) “Service” with the Company includes service as an employee, officer or director of, or consultant or advisor to, the Company or any parent or subsidiary of the Company as defined in Sections 424(e) or (f) of the Code.

(v) “Vesting Date” is defined in Section 1(b).

(b) Vesting Period. Subject to the terms and conditions of this Agreement (including the Forfeiture provisions described in Section 2 below), the RSUs shall vest on the earlier of (a) the day prior to the first Annual Meeting of the Company’s shareholders which occurs after the date hereof or (b) thirteen months after the Grant Date, at which time they shall become vested in full (such date, the “Vesting Date”). As soon as practicable after the Vesting Date, but no later than 30 days following such Vesting Date, the Company shall instruct its transfer agent to deposit the Shares subject to the RSUs into the Participant’s existing equity account at Fidelity Stock Plan Services, LLC, or such other broker with which the Company has established a relationship (“Broker”), subject to payment in accordance with Section 6 of all applicable taxes. Notwithstanding the above, the Shares may be distributed following the date contemplated in this Section 1(b) solely to the extent permitted or required under Code Section 409A and the regulations thereunder (“Section 409A”).

2. Forfeiture.

(a) Cessation of Service. In the event that the Participant ceases to provide Services for any reason or no reason, with or without cause, prior to the Vesting Date, all of the Participant’s unvested RSUs shall automatically be forfeited as of such cessation. Notwithstanding the foregoing, in the event that the Participant ceases to provide Services by reason of death or Disability prior to the Vesting Date, then all of the Participant’s RSUs shall become immediately and fully vested and shall no longer be subject to the Forfeiture provisions under this Agreement and the Shares subject to such RSUs shall be delivered to the Participant as soon as practicable, but no later than thirty (30) days following the Participant’s termination date.

(b) Change in Control. Notwithstanding the foregoing, upon the effectiveness of a Change in Control, (as defined below), all of the Participant's RSUs shall become immediately and fully vested and shall no longer be subject to the Forfeiture provisions under this Agreement and the Shares subject to such RSUs shall be delivered to the Participant as soon as practicable (but no later than thirty (30) days) following the date of the effectiveness of the Change in Control. For purposes of this section "Change in Control" means the first to occur of any of the following events: (I) any "person" (as that term is used in Section 13 and 14(d)(2) of the Securities Exchange Act of 1934 ("Exchange Act")) becomes the beneficial owner (as that term is used in Section 13(d) of the Exchange Act), directly or indirectly, of fifty percent (50%) or more of the Company's capital stock entitled to vote in the election of directors; (II) the shareholders of the Company approve any consolidation or merger of the Company, other than a consolidation or merger of the Company in which the holders of Common Stock immediately prior to the consolidation or merger hold more than fifty percent (50%) of the common stock of the surviving corporation immediately after the consolidation or merger; or (III) the shareholders of the Company approve the sale or transfer of all or substantially all of the assets of the Company to parties that are not within a "controlled group of corporations" (as defined in Code Section 1563) in which the Company is a member.

3. Restrictions on Transfer. The Participant shall not sell, assign, transfer, pledge, or otherwise encumber, either voluntarily or by operation of law (collectively "transfer") any RSUs, or any interest therein, except that the Participant may transfer such RSUs (i) by will or the laws of descent and distribution, or (ii) pursuant to a qualified domestic relations order or (iii) except as prohibited under Section 409A, for the gratuitous transfer to or for the benefit of any immediate family member, family trust or other entity established for the benefit of the Participant and/or an immediate family member if the Company would be eligible to use a Form S-8 under the Securities Act for the registration of the sale of the Common Stock subject to such RSUs to such proposed transferee; provided that such RSUs shall remain subject to this Agreement (including without limitation the terms of Forfeiture and the restrictions on transfer set forth in this Section 3) and such permitted transferee shall, as a condition to such transfer, deliver to the Company a written instrument confirming that such transferee shall be bound by all of the terms and conditions of this Agreement.

4. Provisions of the Plan. This Agreement is subject to the provisions of the Plan, a copy of which is furnished to the Participant with this Agreement.

5. Section 409A. To the extent the Participant is or becomes subject to U.S. Federal income taxation, the RSUs and payments made pursuant to this Agreement are intended to comply with or qualify for an exemption from the requirements of Section 409A and this Agreement shall be construed consistently therewith. Neither the Company nor the Participant shall have any right to accelerate or defer payment under this Agreement except to the extent specifically permitted or required by Section 409A. Terms defined in the Agreement shall have the meanings given such terms under Section 409A if and to the extent required to comply with Section 409A. Notwithstanding any other provision of this Agreement, the Company reserves the right, to the extent it deems necessary or advisable, in its sole discretion, to unilaterally amend the Plan and/or this Agreement to ensure that all awards hereunder qualify for exemption from or otherwise comply with Section 409A; provided, however, that the Company makes no undertaking to preclude Section 409A from applying to this Award or to guarantee compliance therewith. Any payments described in this Section 5 that are due within the "short term deferral period" as defined in Section 409A shall not be treated as deferred compensation unless applicable law requires otherwise. Notwithstanding the foregoing, the Company, its affiliates, directors, officers and agents shall have no liability to a Participant, or any other party, if the RSU that is intended to be exempt from, or compliant with, Section 409A is not so exempt or compliant, or for any action taken by the Board, a Committee or its delegates.

6. Taxes.

(a) The Company's obligation to deliver Shares to the Participant upon the vesting and settlement of the RSUs shall be subject to the satisfaction of all income tax (including federal, state and local taxes) and any other tax related requirements ("Taxes").

(b) The Participant has reviewed with the Participant's own tax advisors the federal, state, local and foreign tax consequences of this equity award and the transactions contemplated by this Agreement. The Participant is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Participant understands that the Participant (and not the Company) shall be responsible for the Participant's own tax liability that may arise as a result of this equity award or the transactions contemplated by this Agreement.

7. Nature of the Grant. In signing this Agreement, the Participant acknowledges that:

(a) The Plan is established voluntarily by the Company, it is discretionary in nature and may be modified, amended, suspended or terminated by the Company at any time, except to the extent otherwise provided in the Plan and this Agreement.

(b) The grant of RSUs is voluntary and occasional and does not create any contractual or other right to receive future awards of RSUs, or benefits in lieu of RSUs even if RSUs have been awarded repeatedly in the past;

(c) All decisions with respect to future grants of RSUs, if any, will be at the sole discretion of the Company;

(d) The Participant's participation in the Plan is voluntary.

(e) RSUs are not part of normal or expected compensation or salary for any purpose, including, but not limited to, calculation of any wage payment, severance, redundancy, or other end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past Services.

(f) No voting or dividend or distribution rights apply with respect to the RSUs.

(g) The future value of the underlying Shares is unknown and cannot be predicted with certainty.

(h) If the Participant receives Shares upon vesting and settlement, the value of such Shares acquired on vesting and settlement of RSUs may increase or decrease in value.

(i) In consideration of the grant of RSUs, no claim or entitlement to compensation or damages arises from termination of the RSUs or diminution in value of the RSUs or Shares received upon vesting and settlement of RSUs resulting from termination of the Participant's Service relationship by the Company (for any reason whatsoever and whether or not in breach of local labor laws) and the Participant irrevocably releases the Company from any such claim that may arise; if, notwithstanding the foregoing, any such claim is found by a court of competent jurisdiction to have arisen, then, by signing this Agreement, the Participant shall be deemed irrevocably to have waived his or her entitlement to pursue such claim.

(j) Other than as otherwise provided in Section 2 of this Agreement, if the Participant ceases to provide Services, the Participant's right to receive RSUs and vest under the Plan, if any, will terminate effective as of the date that the Participant is no longer actively providing Services and will not be extended by any notice period mandated under local law; the Company shall have the exclusive discretion to determine when the Participant is no longer actively providing Services for purposes of the Plan, subject to Section 409A.

8. Data Privacy Notice and Consent.

By accepting the RSUs, the Participant is consenting to the processing of his or her personal data as follows:

*(a) **Data Collection and Usage.** The Company is located at 2 Tech Drive, Suite 201, Andover, Massachusetts 01810, U.S.A. and grants the RSUs to the Participant at his or her sole discretion. The Company and its subsidiaries collect, process and use the Participant's personal data, including his or her name, home address, date of birth, social security number, email address and details of all RSUs canceled, vested, or outstanding in the Participant's favor, which the Company receives from the Participant ("Data"). The Company collects the Data for purposes of implementing, administering and managing the Plan. The Company's legal basis for the processing of the Data is the Participant's consent.*

(b) Stock Plan Administration Service Providers. The Company and/or its subsidiaries may transfer Data to Fidelity Stock Plan Services, LLC and its affiliates, which are assisting the Company with the implementation, administration and management of the Plan. In the future, the Company may select a different service provider and share the Data with another company that serves in a similar manner. The Company's service provider will open an account for the Participant to receive Shares. The Participant will be asked to agree on separate terms and data processing practices with the service provider, which is a condition to the Participant's ability to participate in the Plan.

(c) International Data Transfers. The Company is based in the U.S. and its service providers are based in the U.S. If the Participant is outside the U.S., the Participant should note that the Participant's country has enacted data privacy laws that are different from those of the U.S. The Company's legal basis for the transfer of the Data is the Participant's consent.

(d) Data Retention. The Company will use the Data only as long as is necessary to implement, administer and manage the Participant's participation in the Plan or as required to comply with legal or regulatory obligations, including under tax, securities, exchange control and labor laws. This period may extend beyond the termination of the Participant's Service. When the Company no longer needs the Data, the Company will remove it from its systems to the fullest extent reasonably practicable. If the Company keeps Data longer, it would be to satisfy legal or regulatory obligations and the Company's legal basis would be relevant laws or regulations.

(e) Voluntariness and Consequences of Consent Denial or Withdrawal. Participation in the Plan and the Participant's grant of consent are purely voluntary. The Participant may deny or withdraw his or her consent at any time. If the Participant does not consent, or if the Participant withdraws his or her consent, the Participant cannot participate in the Plan. This would not affect the Participant's annual retainer or other fees from or the Participant's Service with the Company; the Participant would merely forfeit the opportunities associated with the Plan.

(f) Data Subject Rights. The Participant has a number of rights under data privacy laws in his or her country. Depending on where the Participant is based, the Participant's rights may include the right to (a) request access to or copies of Data, (b) rectification of incorrect Data, (c) deletion of Data, (d) restrictions on processing, (e) portability of Data, (f) lodge complaints with competent authorities in the Participant's country, and/or (g) a list with the names and addresses of any potential recipients of Data. To receive clarification regarding the Participant's rights or to exercise the Participant's rights, the Participant should contact the Company at 2 Tech Drive, Suite 201, Andover, Massachusetts 01810, U.S.A.

9. Miscellaneous.

(a) No Rights to Service Relationship. The Participant acknowledges and agrees that the vesting of the RSUs pursuant to Sections 1(b) or 2 hereof is earned only in accordance with the terms of such sections. The Participant further acknowledges and agrees that the transactions contemplated hereunder and the vesting schedule set forth herein do not constitute an express or implied promise of a continued Service relationship as an employee, officer, director, consultant or advisor to the Company or any subsidiary of the Company for the vesting period, for any period, or at all.

(b) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and each other provision of this Agreement shall be severable and enforceable to the extent permitted by law.

(c) Waiver. Any provision for the benefit of the Company contained in this Agreement may be waived, either generally or in any particular instance, by the Board, a Committee or its delegate.

(d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Company and the Participant and their respective heirs, executors, administrators, legal representatives, successors and assigns, subject to the restrictions on transfer set forth in Section 3 of this Agreement.

(e) Notice. All notices required or permitted hereunder shall be in writing and deemed effectively given upon personal delivery or five days after deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed to the other party hereto at the address shown beneath his or its respective signature to this Agreement, or at such other address or addresses as either party shall designate to the other in accordance with this Section 9(e).

(f) Pronouns. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa.

(g) Language. If the Participant has received this Agreement or any other document related to the Plan translated into a language other than English and if the translated version is different than the English version, the English version will control.

(h) Electronic Delivery. The Company may, in its sole discretion, decide to deliver any documents related to participation in the Plan, RSUs granted under the Plan or future RSUs that may be granted under the Plan by electronic means or to request the Participant's consent to participate in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and, if requested, to agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

(i) Entire Agreement. This Agreement and the Plan constitute the entire agreement between the parties, and supersedes all prior agreements and understandings, relating to the subject matter of this Agreement.

(j) Amendment. Except as provided in Section 5, this Agreement may be amended or modified only by a written instrument executed by both the Company and the Participant.

(k) Governing Law; Venue. This Agreement shall be construed, interpreted and enforced in accordance with the internal laws of the Commonwealth of Massachusetts without regard to any applicable conflicts of laws. For purposes of any action, lawsuit or other proceedings brought to enforce this Agreement, relating to it, or arising from it, the parties hereby submit to and consent to the sole and exclusive jurisdiction of the courts within the Commonwealth of Massachusetts, and no other courts, where this grant is made and/or to be performed.

(l) Imposition of Other Requirements. The Company reserves the right to impose other requirements on the Participant's participation in the Plan, and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable for legal or administrative reasons, and to require the Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

(m) The Participant's Acknowledgments. The Participant acknowledges that he or she: (i) has read this Agreement; (ii) has been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of the Participant's own choice or has voluntarily declined to seek such counsel; (iii) understands the terms and consequences of this Agreement; and (iv) is fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

MKS INSTRUMENTS, INC.

By: _____

Name:

Title:

2 Tech Drive

Andover, MA 01810

«**Electronic Signature**»

Participant's Signature

MKS INSTRUMENTS, INC.
 Restricted Stock Unit Agreement
Granted Under the 2022 Stock Incentive Plan

AGREEMENT made «Grant Date» (the “Grant Date”), between MKS Instruments, Inc., a Massachusetts corporation (the “Company”), and «Participant Name» (the “Participant”).

For valuable consideration, receipt of which is acknowledged, the parties hereto agree as follows:

1. General. The Company hereby grants to the Participant restricted stock units (“RSUs”) with respect to the number of shares set forth in Exhibit A hereto (the “Shares”) of common stock, no par value, of the Company (“Common Stock”), subject to the terms and conditions set forth in this Agreement and in the Company’s 2022 Stock Incentive Plan (the “Plan”). The RSUs represent a promise by the Company to deliver Shares upon vesting and settlement.

(a) Definitions. Capitalized terms not explicitly defined in this Agreement shall have the same meanings given to them in the Plan.

(i) “Code” means the U.S. Internal Revenue Code of 1986, as amended.

(ii) “Determination Date” (if applicable) is defined in Exhibit A hereto.

(iii) “Disability” means either (A) the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months; or (B) the Participant is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the Company.

(iv) “Employ” or “employment” with the Company includes employment with a parent or subsidiary of the Company as defined in Code Section 424(e) or (f), during the time in which such entity is a parent or subsidiary of the Company.

(v) “Forfeiture” means any forfeiture of RSUs pursuant to Section 2.

(vi) [“Retirement”¹ means a voluntary termination of employment by the Participant after he or she is at least age sixty-five (65) and has at least ten (10) Years of Service with the Company (“Normal Retirement”) or after he or she is at least age sixty (60) and has at least fifteen (15) Years of Service with the Company (“Early Retirement”). A Participant’s termination shall not be deemed to be on account of Retirement unless he or she provides the Company with notice of the Retirement at least sixty (60) days in advance of his or her proposed termination date and assists in the orderly transition of duties as requested by the Company. The Company may waive such advance notice requirement in its sole discretion.]

(vii) “Vesting Date” is defined on Exhibit A hereto.

(viii) [“Years of Service”² means the total number of years of employment since Participant’s original date of employment with the Company; provided, however, that if the Participant left or was terminated from employment with the Company and was then rehired, any previous employment period shall be included in the Years of Service only if (A) the Participant’s absence from employment with the Company did not exceed five (5) years and (B) the total number of days employed by the Company exceeds the total number of days that the Participant was absent from employment.]

¹ Only officers and certain other employees designated by the Compensation Committee are entitled to acceleration of vesting upon Retirement. Also, for certain of these officers and employees, Retirement means a voluntary termination of employment by the Participant after he or she is at least age sixty (60) and has at least ten (10) Years of Service with the Company.

² See Footnote 1 above.

(b) Vesting Period. Subject to the terms and conditions of this Agreement (including the Forfeiture provisions described in Section 2 below), the RSUs shall vest according to the terms set forth in Exhibit A. As soon as practicable after each applicable Vesting Date, but no later than thirty (30) days following the applicable Vesting Date, the Company shall instruct its transfer agent to deposit the Shares subject to the RSUs into the Participant's existing equity account at Fidelity Stock Plan Services, LLC, or such other broker with which the Company has established a relationship ("Broker"), subject to payment in accordance with Section 6 of all applicable [withholding]³ taxes. Notwithstanding the above, the Shares may be distributed following the date contemplated in this Section 1(b) solely to the extent permitted or required under Code Section 409A and regulations thereunder ("Section 409A").

2. Forfeiture.

(a) Cessation of Employment. In the event that the Participant ceases to be employed by the Company for any reason or no reason (except for death, Disability or Retirement⁴), with or without cause, prior to a Vesting Date, all of the Participant's unvested RSUs shall automatically be forfeited as of such cessation. For purposes hereof, employment shall not be considered as having ceased during any bona fide leave of absence if such leave of absence has been approved in writing by the Company. However, in the event of any leave of absence, the Company may, in its sole discretion, suspend vesting of the RSUs, subject to applicable law and the provisions of Section 409A. The vesting of the RSUs shall not be affected by any change in the type of employment the Participant has with the Company so long as the Participant continuously maintains employment. In the event that the Participant ceases to be employed by the Company by reason of death, Disability or Retirement⁵ prior to a Vesting Date, then all of the Participant's unforfeited RSUs shall become immediately and fully vested (subject to any performance criteria in Exhibit A) and shall no longer be subject to the Forfeiture provisions under this Agreement and the Shares subject to such RSUs shall be delivered to the Participant as soon as practicable (but no later than thirty (30) days) following the Participant's termination date, provided, however, that, if such death, Disability or Retirement⁶ occurs prior to the Determination Date, if any, then the number of RSUs to be so vested shall be determined, and become vested, on the Determination Date, if any, and the Shares subject to such vested portion of the RSUs shall be delivered to the Participant as soon as practicable (but no later than thirty (30) days) following such Determination Date, if any, provided further that if such Retirement⁷ is deemed an Early Retirement and occurs prior to the Determination Date, if any, then the number of RSUs to be so vested shall be determined by prorating the total amount earned by the portion of the performance period during which the Participant was employed.

(b) Change in Control⁸. Notwithstanding the foregoing, if, prior to any Vesting Date, and within two years after the effectiveness of a Change in Control (as defined below), the Participant is (i) terminated by the Company without Cause (as defined below) or (ii) terminates his employment for Good Reason (as defined below), then, all (or, in the case of a performance-based RSU that is still subject to performance criteria per Exhibit A, the Target Number of RSUs (as defined on Exhibit A, if applicable) of the Participant's unforfeited RSUs shall become immediately and fully vested and shall no longer be subject to the Forfeiture provisions under this Agreement and the Shares subject to such RSUs shall be delivered to the Participant as soon as practicable (but no later than thirty (30) days) following the date of the date of termination. For purposes of this section "Change in Control" means the first to occur of any of the following events: (I) any "person" (as that term is used in Section 13 and 14(d)(2) of the Securities Exchange Act of 1934 ("Exchange Act")) becomes the beneficial owner (as that term is used in Section 13(d) of the Exchange Act), directly or indirectly, of fifty percent (50%) or more of the Company's capital stock entitled to vote in the election of directors; (II) the shareholders of the Company approve any consolidation or merger of the Company, other than a consolidation or merger of the Company in which the holders of Common Stock immediately prior to the consolidation or merger hold more than fifty percent (50%) of the common stock of the surviving corporation immediately after the consolidation or merger; or (III)

³ Delete for employees located outside of the United States.

⁴ See Footnote 1 above.

⁵ See Footnote 1 above.

⁶ See Footnote 1 above.

⁷ See Footnote 1 above.

⁸ Only certain of the Company's officers and other employees designated by the Compensation Committee of the Board of Directors will be entitled to acceleration of vesting in connection with a Change in Control.

the shareholders of the Company approve the sale or transfer of all or substantially all of the assets of the Company to parties that are not within a “controlled group of corporations” (as defined in Code Section 1563) in which the Company is a member; provided, that, in the event that the RSUs constitute nonqualified deferred compensation subject to Section 409A, such Change in Control is also a “change in control event” within the meaning of Treasury Regulation Section 1.409A-3(i)(5). For purposes of this Agreement, “Cause” shall mean conviction for the commission of a felony, willful failure by the Participant to perform his responsibilities to the Company, or willful misconduct by the Participant. For purposes of this section, “Good Reason” shall mean termination of the Participant’s employment by the Participant within 90 days following (I) a material diminution in the Participant’s positions, duties and responsibilities from those described in the Participant’s employment agreement with the Company or any of its subsidiaries (the “Employment Agreement”), (II) a material reduction in the Participant’s base salary (other than a reduction which is part of a general salary reduction program affecting senior executives of the Company), (III) a material reduction in the aggregate value of the pension and welfare benefits provided to the Participant from those in effect prior to the Change in Control (other than a reduction which is proportionate to the reductions applicable to other senior executives pursuant to a cost-saving plan that includes all senior executives), (IV) a material breach of any provision of the Participant’s Employment Agreement by the Company or (V) the Company’s requiring the Participant to be based at a location that creates for the Participant a one way commute in excess of 60 miles from his primary residence, except for required travel on the Company’s business to an extent substantially consistent with the business travel obligations of the Participant under the Participant’s Employment Agreement. Notwithstanding the foregoing, a termination shall not be treated as a termination for Good Reason (I) if the Participant shall have consented in writing to the occurrence of the event giving rise to the claim of termination for Good Reason or (II) unless the Participant shall have delivered a written notice to the Company within thirty (30) days of his having actual knowledge of the occurrence of one of such events stating that he intends to terminate his employment for Good Reason and specifying the factual basis for such termination, and such event, if capable of being cured, shall not have been cured within thirty (30) days of the receipt of such notice.]

(c) Clawback. In accepting the RSUs, the Participant agrees to be bound by any clawback policy that the Company has in effect or may adopt in the future. The Participant hereby acknowledges and consents to the Company’s application, implementation and enforcement of (i) any applicable clawback policy as may be in effect from time to time and (ii) any provision of applicable law relating to cancellation, recoupment, rescission or payment of compensation, and agrees that the Company may take such actions as may be necessary to effectuate the clawback policy without further consideration or action.

3. Restrictions on Transfer. The Participant shall not sell, assign, transfer, pledge, hypothecate or otherwise dispose of, by operation of law or otherwise (collectively “transfer”) any RSUs, or any interest therein; provided that the Participant may transfer the RSUs to the extent necessary to fulfill a domestic relations order (as defined in Section 414(p)(1)(B) of the Code); provided, further, that any such transferred RSUs shall remain subject to this Agreement (including without limitation the terms of Forfeiture and the restrictions on transfer set forth in this Section 3) and such permitted transferee shall, as a condition to such transfer, deliver to the Company a written instrument confirming that such transferee shall be bound by all of the terms and conditions of this Agreement.

4. Provisions of the Plan. This Agreement is subject to the provisions of the Plan, a copy of which is furnished to the Participant with this Agreement.

5. Section 409A. To the extent the Participant is or becomes subject to U.S. Federal income taxation, the RSUs and payments made pursuant to this Agreement are intended to comply with or qualify for an exemption from the requirements of Section 409A and this Agreement shall be construed consistently therewith. Neither the Company nor the Participant shall have any right to accelerate or defer payment under this Agreement except to the extent specifically permitted or required by Section 409A. Terms defined in the Agreement shall have the meanings given such terms under Section 409A if and to the extent required to comply with Section 409A, including that references to “termination of employment” or similar terms shall be considered to be references to a “separation from service” as defined under Section 409A. Notwithstanding any other provision of this Agreement, the Company reserves the right, to the extent it deems necessary or advisable, in its sole discretion, to unilaterally amend the Plan and/or this Agreement to ensure that all awards hereunder qualify for exemption from or otherwise comply with Section 409A; provided, however, that the Company makes no undertaking to preclude Section 409A from applying to this Award or to guarantee compliance therewith. Any payments described in this Section 5 that are due within the “short term deferral period” as defined in Section 409A shall not be treated as deferred compensation unless applicable law requires otherwise. If and to the extent any portion of any payment, compensation or other benefit provided to the Participant in connection with his or her employment termination is determined to constitute “nonqualified deferred compensation” within the meaning of Section 409A and the Participant is a specified employee as defined in Section 409A(2)(B)(i) of the Code, as determined by the Company in accordance with its procedures, by which determination the Participant hereby agrees that he or she is bound, such portion of the payment, compensation or other benefit shall not be paid before the day that is six months plus one day after the date of separation from service (as determined under Section 409A (the “New Payment Date”)), except as Section 409A may then permit. The aggregate of any payments that otherwise would have been paid to the Participant during the period between the date of separation from service and the New Payment Date shall be paid to the Participant in a lump sum on the New Payment Date, and any remaining payments will be paid on their original schedule. Notwithstanding the foregoing, the Company, its affiliates, directors, officers and agents shall have no liability to a Participant, or any other party, if the RSU that is intended to be exempt from, or compliant with, Section 409A is not so exempt or compliant, or for any action taken by the Board, a Committee or its delegates.

6. Withholding Taxes⁹ ¹⁰.

⁹ This section is applicable to employees who are located in the United States. For employees located outside of the United States, Section 6 shall read as follows:

6. Tax Obligations.

(a) Regardless of any action the Company or the affiliate that employs the Participant (the “Employer”) takes with respect to any or all income tax, social insurance, payroll tax, fringe benefits tax, payment on account, or other tax-related items related to the Participant’s participation in the Plan and legally applicable to the Participant (“Tax-Related Items”), the Participant acknowledges that the ultimate liability for all Tax-Related Items owed Participant by the Participant is and remains the Participant’s responsibility and that such amount may exceed the amount actually withheld by the Company and/or the Employer. The Participant further acknowledges that the Company and/or the Employer (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the RSUs, including the grant or vesting of the RSUs, the issuance of Shares in settlement of the RSUs, the subsequent sale of Shares, and the receipt of any dividends; and (ii) do not commit and are under no obligation to structure the terms of the grant or any aspect of the RSUs to reduce or eliminate the Participant’s liability for Tax-Related Items or achieve any particular tax result. Further, if the Participant becomes subject to tax in more than one jurisdiction, the Participant acknowledges that the Company and/or the Employer (or former Employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

(b) To satisfy any withholding obligations of the Company and/or the Employer with respect to Tax-Related Items (the “Withholding Taxes”), the Company will withhold through the retention by the Company of Shares. Accordingly, the Participant hereby instructs the Company, with no further action by the Participant, to deduct and retain from the number of Shares to which the Participant is entitled from the RSUs then vested or scheduled to vest such number of Shares as is equal to the value of the Withholding Taxes. The fair market value of such surrendered Shares will be based on the closing price of the Common Stock on the respective Vesting Date, provided, however, that if such date is not a trading day, the Company shall use the closing price on the first trading day following such date. Alternatively, or in addition, the Participant authorizes the Company and/or the Employer, or their respective agents, at their discretion, to satisfy their obligations, if any, with regard to all Withholding Taxes by one or a combination of the following: (i) withholding from Participant’s wages or other cash compensation payable to the Participant by the Company, the Employer, or any affiliate, (ii) requiring the Participant to tender a cash payment to the Company or an affiliate in the amount of the Withholding Taxes and/or (iii) any other method of withholding determined by the Company to be permitted under the Plan and, to the extent required by applicable law or under the Plan, approved by the Board or a Committee. Notwithstanding the foregoing, if the Participant is a Section 16 officer of the Company under the Exchange Act, the Company will withhold Shares from the Shares to be issued upon payment of the RSUs, as described herein, and will not use the other means set forth in this Section 6.

(c) The Company may withhold for Withholding Taxes by considering statutory or other withholding rates, including maximum applicable rates in the Participant’s jurisdiction(s). In the event of over-withholding, the Participant may receive a refund of any over-withheld amount in cash (with no entitlement to the equivalent amount in Shares) from the Company or the Employer, otherwise, the Participant may be able to seek a refund from the local tax authorities. In the event of under-withholding, the Participant may be required to pay any additional Tax-Related Items directly to the applicable tax authority or to the Company and/or the Employer. The Company may refuse to issue or deliver the Shares or the proceeds of the sale of Shares, if the Participant fails to comply with his or her obligations in connection with the Tax-Related Items.

¹⁰ For employees located in certain countries outside of the United States, specific local tax law and securities law provisions will also be inserted or added as an addendum to the RSU Agreement.

(a) The Company's obligation to deliver Shares to the Participant upon the vesting and settlement of RSUs shall be subject to the satisfaction of all income tax (including federal, state and local taxes), social insurance, payroll tax, payment on account or other tax related withholding requirements ("Withholding Taxes"). In order to satisfy all Withholding Taxes of the Participant's RSUs, the Participant agrees to the following:

(b) The Participant hereby elects to satisfy all Withholding Taxes obligation that may arise through the retention by the Company of Shares. Accordingly, the Participant hereby instructs the Company, with no further action by the Participant, to deduct and retain from the number of Shares to which the Participant is entitled from the RSUs then vested or scheduled to vest such number of Shares as is equal to the value of the Withholding Taxes. The fair market value of such surrendered Shares will be based on the closing price of the Common Stock on the respective Vesting Date, provided, however, that if such date is not a trading day, the Company shall use the closing price on the first trading day following such date. The Participant agrees that in the event the Company withholds RSUs with a value in excess of the maximum amount of social insurance that can be imposed in any particular year, the Company will refund the excess amount in cash to the Participant.

(c) Participant has reviewed with the Participant's own tax advisors the federal, state, local and foreign tax consequences of this equity award and the transactions contemplated by this Agreement. The Participant is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Participant understands that the Participant (and not the Company) shall be responsible for the Participant's own tax liability that may arise as a result of this equity award or the transactions contemplated by this Agreement.

(d) The Participant represents to the Company that, as of the date hereof, he/she is not aware of any material nonpublic information about the Company or the Common Stock. The Participant and the Company have structured this Agreement to constitute a "binding contract" relating to the retention by the Company of Common Stock pursuant to this Section 6, consistent with the affirmative defense to liability under Section 10(b) of the Securities Exchange Act of 1934 under Rule 10b5-1(c) promulgated under such Act.

7. Nature of the Grant. In signing this Agreement, the Participant acknowledges that:

(a) The Plan is established voluntarily by the Company, it is discretionary in nature and may be modified, amended, suspended or terminated by the Company at any time, except to the extent otherwise provided in the Plan and this Agreement.

(b) The grant of RSUs is voluntary and occasional and does not create any contractual or other right to receive future awards of RSUs, or benefits in lieu of RSUs even if RSUs have been awarded repeatedly in the past.

(c) All decisions with respect to future grants of RSUs, if any, will be at the sole discretion of the Company.

(d) The Participant's participation in the Plan is voluntary.

(e) RSUs are not part of normal or expected compensation or salary for any purpose, including, but not limited to, calculation of any wage payment, severance, redundancy, or other end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company or the Participant's employer or arising under any employment agreement.

(f) No voting or dividend or distribution rights apply with respect to the RSUs.

(g) The future value of the underlying Shares is unknown and cannot be predicted with certainty.

(h) If the Participant receives Shares upon vesting and settlement, the value of such Shares acquired on vesting and settlement of RSUs may increase or decrease in value.

(i) In consideration of the grant of RSUs, no claim or entitlement to compensation or damages arises from termination of the RSUs or diminution in value of the RSUs or Shares received upon vesting and settlement of RSUs resulting from termination of the Participant's employment by the Company or the Participant's employer (for any reason whatsoever and whether or not in breach of local labor laws) and the Participant irrevocably releases the Company and his or her employer from any such claim that may arise; if, notwithstanding the foregoing, any such claim is found by a court of competent jurisdiction to have arisen, then, by signing this Agreement, the Participant shall be deemed irrevocably to have waived his or her entitlement to pursue such claim.

(j) Other than as otherwise provided in Section 2 of this Agreement, if the Participant ceases to be an employee (whether or not in breach of local labor laws), the Participant's right to receive RSUs and vest under the Plan, if any, will terminate effective as of the date that the Participant is no longer actively employed by the Company and will not be extended by any notice period mandated under local law (e.g., active employment would not include a period of "garden leave" or similar period pursuant to local law); the Company shall have the exclusive discretion to determine when the Participant is no longer actively employed for purposes of the Plan, subject to Section 409A.

8. **Data Privacy Notice and Consent.** *By accepting the RSUs, the Participant is consenting to the processing of his or her personal data as follows:*

(a) **Data Collection and Usage.** *The Company is located at 2 Tech Drive, Suite 201, Andover, Massachusetts 01810, U.S.A. and grants the RSUs to the Participant at his or her sole discretion. The Company and its subsidiaries collect, process and use the Participant's personal data, including his or her name, home address, date of birth, social security number, salary, employee identification number, corporate email address and details of all RSUs canceled, vested, or outstanding in the Participant's favor, which the Company receives from the Participant or the Participant's employer ("Data"). The Company collects the Data for purposes of implementing, administering and managing the Plan. The Company's legal basis for the processing of the Data is the Participant's consent.*

(b) **Stock Plan Administration Service Providers.** *The Company and/or its subsidiaries may transfer Data to Fidelity Stock Plan Services, LLC and its affiliates, which are assisting the Company with the implementation, administration and management of the Plan. In the future, the Company may select a different service provider and share the Data with another company that serves in a similar manner. The Company's service provider will open an account for the Participant to receive Shares. The Participant will be asked to agree on separate terms and data processing practices with the service provider, which is a condition to the Participant's ability to participate in the Plan.*

(c) **International Data Transfers.** *The Company is based in the U.S. and its service providers are based in the U.S. If the Participant is outside the U.S., the Participant should note that the Participant's country has enacted data privacy laws that are different from those of the U.S. The Company's legal basis for the transfer of the Data is the Participant's consent.*

(d) **Data Retention.** *The Company will use the Data only as long as is necessary to implement, administer and manage the Participant's participation in the Plan or as required to comply with legal or regulatory obligations, including under tax, securities, exchange control and labor laws. This period may extend beyond the termination of the Participant's employment. When the Company no longer needs the Data, the Company will remove it from its systems to the fullest extent reasonably practicable. If the Company keeps Data longer, it would be to satisfy legal or regulatory obligations and the Company's legal basis would be relevant laws or regulations.*

(e) **Voluntariness and Consequences of Consent Denial or Withdrawal.** *Participation in the Plan and the Participant's grant of consent are purely voluntary. The Participant may deny or withdraw his or her consent at any time. If the Participant does not consent, or if the Participant withdraws his or her consent, the Participant cannot participate in the Plan. This would not affect the Participant's salary from or the Participant's employment with the Participant's employer; the Participant would merely forfeit the opportunities associated with the Plan.*

*(f) **Data Subject Rights.** The Participant has a number of rights under data privacy laws in his or her country. Depending on where the Participant is based, the Participant's rights may include the right to (a) request access to or copies of Data, (b) rectification of incorrect Data, (c) deletion of Data, (d) restrictions on processing, (e) portability of Data, (f) lodge complaints with competent authorities in the Participant's country, and/or (g) a list with the names and addresses of any potential recipients of Data. To receive clarification regarding the Participant's rights or to exercise the Participant's rights, the Participant should contact the Company at 2 Tech Drive, Suite 201, Andover, Massachusetts 01810, U.S.A.*

9. Miscellaneous¹¹.

(a) No Rights to Employment or Service. The Participant acknowledges and agrees that the vesting of the RSUs pursuant to Sections 1 or 2 and Exhibit A hereof is earned only in accordance with the terms of such sections. The Participant further acknowledges and agrees that the transactions contemplated hereunder and the vesting schedule set forth herein do not constitute an express or implied promise of continued engagement as an employee or other service provider for the vesting period, for any other period, or at all.

(b) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and each other provision of this Agreement shall be severable and enforceable to the extent permitted by law.

(c) Waiver. Any provision for the benefit of the Company contained in this Agreement may be waived, either generally or in any particular instance, by the Board, a Committee or its delegate.

(d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Company and the Participant and their respective heirs, executors, administrators, legal representatives, successors and assigns, subject to the restrictions on transfer set forth in Section 3 of this Agreement.

(e) Notice. All notices required or permitted hereunder shall be in writing and deemed effectively given upon personal delivery or five (5) days after deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed to the other party hereto at the address shown beneath his or its respective signature to this Agreement, or at such other address or addresses as either party shall designate to the other in accordance with this Section 9(e).

(f) Pronouns. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa.

(g) Language. If the Participant has received this Agreement or any other document related to the Plan translated into a language other than English and if the translated version is different than the English version, the English version will control.

(h) Electronic Delivery. The Company may, in its sole discretion, decide to deliver any documents related to participation in the Plan, RSUs granted under the Plan or future RSUs that may be granted under the Plan by electronic means or to request the Participant's consent to participate in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and, if requested, to agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

¹¹ For employees located outside of the United States (excluding France and Israel), the following new subsection will be inserted as 9(i) and the remaining subsections will be relabeled (j)-(n).

(i) Appendix. Notwithstanding any provisions in this Agreement, the RSU grant shall be subject to any additional terms and conditions set forth in any Appendix to this Agreement for the Participant's country. Moreover, if the Participant relocates to one of the countries included in the Appendix, the additional terms and conditions for such country will apply to the Participant, to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. The Appendix constitutes part of this Agreement.

(i) Entire Agreement. This Agreement and the Plan constitute the entire agreement between the parties, and supersedes all prior agreements and understandings, relating to the subject matter of this Agreement.

(j) Amendment. Except as provided in Section 5, this Agreement may be amended or modified only by a written instrument executed by both the Company and the Participant.

(k) Governing Law; Venue. This Agreement shall be construed, interpreted and enforced in accordance with the internal laws of the Commonwealth of Massachusetts without regard to any applicable conflicts of laws. For purposes of any action, lawsuit or other proceedings brought to enforce this Agreement, relating to it, or arising from it, the parties hereby submit to and consent to the sole and exclusive jurisdiction of the courts within the Commonwealth of Massachusetts, and no other courts, where this grant is made and/or to be performed.

(l) Imposition of Other Requirements. The Company reserves the right to impose other requirements on the Participant's participation in the Plan, and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable for legal or administrative reasons, and to require the Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

(m) The Participant's Acknowledgments. The Participant acknowledges that he or she: (i) has read this Agreement; (ii) has been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of the Participant's own choice or has voluntarily declined to seek such counsel; (iii) understands the terms and consequences of this Agreement; and (iv) is fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

MKS INSTRUMENTS, INC.

By: _____

Name:

Title:

2 Tech Drive, Suite 201

Andover, MA 01810

«**Electronic Signature**»

Participant's Signature