



## FIXED FEE SERVICES TERMS

These Fixed Fee Services Terms apply to any quote, order, order acknowledgment and invoice, and any sale, performance or delivery of Fixed Fee Services (as defined herein), in addition to Viavi's General Terms, which are incorporated by reference herein and are either attached hereto, or available at [www.viavisolutions.com/terms](http://www.viavisolutions.com/terms) or on request.

1. **DEFINITIONS.** The definitions in Viavi's General Terms shall apply in addition to the following definitions:

"**Fixed Fee Services**" means services performed by Personnel that Viavi identifies as such or expressly agrees to provide for a fixed price or on a milestone basis (as opposed to, e.g., services performed at hourly, daily, weekly, or monthly rates; such services are subject to Viavi's Time & Materials Services Terms). Fixed Fee Services may include, for example, customization of Products at Customer's location. Fixed Fee Services, however, do not include the installation of Products.

"**Milestone**" means a project phase or sub-task as contemplated in a Statement of Work.

"**Personnel**" means employees, independent contractors, and subcontractors that Viavi makes available for the performance of Fixed Fee Services.

"**Statement of Work**" means a statement of work or other document expressly agreed upon by the parties in writing that sets forth the specifications for Work Product. If the parties agree on Milestones, the Statement of Work shall also set forth specifications and payments for each Milestone.

2. **FIXED FEE SERVICES.**

2.1 **Statement of Work.** Viavi will provide to Customer Fixed Fee Services based on a Statement of Work. If Customer requests services that are not covered by the Statement of Work then Viavi may, at its sole discretion, either (i) agree to a duly signed amendment of the Statement of Work; or (ii) provide such services on a time & materials services basis subject to Viavi's then-current Time & Materials Services Terms).

2.2 **Changes.** While the parties may enter into discussions regarding proposed changes to the Milestones, deliverables, Statement of Work and/or Fixed Fee Services, unless and until a proposed change has been approved by Viavi in writing, each party shall continue to perform its obligations under this Agreement as if the change had never been proposed.

3. **COOPERATION.** Customer shall, in a timely manner and free of charge, provide Viavi with all information, materials and cooperation necessary for Viavi to provide services or as otherwise reasonably requested by Viavi. If Customer fails to meet any of its obligations, Viavi may, without limiting any other remedy (i) delay or suspend its performance and charge Customer for any resulting costs; and/or (ii) charge Customer its then-current time & materials services rates (available on request) for every day on which Viavi personnel is unable to perform services. Viavi shall not be liable for, and Customer hereby excuses, any and all delays related to Customer's failure to perform, or comply with, its obligations. If Customer delays any performance, delivery, or acceptance for more than 60 days, (a) Viavi may invoice and Customer shall pay the full amount owing immediately; (b) Customer shall be deemed to waive its right to any refund; and (c) Viavi may, in its discretion, indicate when any applicable warranty period shall start running, if at all.

4. **ACCEPTANCE.**

4.1 **No Acceptance Requirement.** Fixed Fee Services shall be deemed accepted upon completion and will not require acceptance testing or a formal acceptance, unless the parties have expressly agreed on an acceptance requirement in the applicable Statement of Work or another duly signed writing, in which case Section 4.2 (Completion and Acceptance Testing) through Section 4.4 (Deemed Acceptance) shall apply.

4.2 **Completion and Acceptance Testing.** If Work Product is subject to acceptance testing as set forth in Section 4.1 (No Acceptance Requirement), Viavi shall notify Customer when such Work Product is ready for acceptance testing. At Customer's request, a Customer representative may attend Viavi's acceptance testing. Via acceptance testing, Viavi shall determine whether the Work Product conforms to the mutually agreed specifications in the applicable Statement of Work ("**Acceptance Criteria**"). If the acceptance testing demonstrates that the Acceptance Criteria are met, Viavi shall notify Customer that the Work Product has passed the acceptance testing and Viavi may provide Customer

with a written summary of the results of the acceptance testing ("**Test Results**") following the completion of the acceptance testing procedure.

4.3 **Express Acceptance or Rejection.** If the Work Product materially conforms to the Acceptance Criteria, Customer shall sign a written acceptance statement (i) at the end of the acceptance testing procedure; or (ii) if no Customer representative attends the acceptance testing procedure, within ten (10) days after the earlier of Viavi notifying Customer of the completion of the acceptance testing or delivery of the Test Results. If any Work Product materially fails to conform to the applicable Acceptance Criteria, then Customer shall promptly provide Viavi with a reasonably detailed written description of the perceived non-conformance ("**Rejection Notice**"). If Viavi receives a justified Rejection Notice within ten (10) days after Viavi has completed the acceptance testing, Viavi shall use commercially reasonable efforts to remedy the non-conformance and repeat the acceptance testing process per Section 4.2 (Completion and Acceptance Testing) and this Section 4.3.

4.4 **Deemed Acceptance.** In the absence of an express acceptance, Customer shall be deemed to have accepted Work Product upon the earlier of (i) approval of the Work Product; (ii) payment, without reservation, of any amounts with respect to the Work Product; (iii) ten (10) days after Viavi notifies Customer of the completion of the acceptance testing, unless Viavi receives a Rejection Notice within such period; or (iv) use of the Work Product for any purpose other than testing as necessary in order to determine conformance to the applicable Acceptance Criteria. If the parties do not expressly agree on an acceptance requirement (per Section 4.1 – No Acceptance Requirement), the Fixed Fee Services shall be deemed accepted upon completion.

5. **PAYMENT.** Customer shall make payment within thirty (30) days of the invoice date and in accordance with the General Terms.

6. **LIMITED WARRANTY AND DISCLAIMER.**

6.1 **Limited Warranty.** Viavi warrants that the Work Product substantially conforms to the Statement of Work, if any, as of (i) the date of Customer's express acceptance or deemed acceptance in accordance with Section 4.4 (Deemed Acceptance), whichever occurs earlier, with respect to Work Product that is subject to acceptance testing (as set forth in Section 4.1 (No Acceptance Requirement)); or (ii) the date of completion with respect to all other Work Product.

6.2 **Exclusive Remedies.** If Work Product materially fails to conform to the limited warranty set forth in Section 6.1 (Limited Warranty), Viavi shall, at its sole discretion (i) repair or replace the non-conforming Work Product to remedy the non-conformity identified by Customer in accordance with Section 6.3 (Warranty Period); or (ii) provide a credit to Customer equal to the fees paid for such Work Product in exchange for return of the non-conforming Work Product, in which case all licenses granted to Customer under these Fixed Fee Services Terms for such Work Product shall be automatically revoked. THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION 6.2 WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST VIIVI WITH RESPECT TO ANY NON-CONFORMANCE OF FIXED FEE SERVICES OR WORK PRODUCT.

6.3 **Warranty Period.** Unless Viavi expressly specifies or agrees on a different warranty period in a duly signed writing, the warranty period shall be thirty (30) days. The warranty period shall begin upon Customer's express acceptance or deemed acceptance in accordance with Section 4.4 (Deemed Acceptance), whichever occurs earlier. Customer shall have no warranty claims, unless (i) Viavi receives from Customer, during the warranty period a written notice describing the warranty breach in reasonable detail ("**Warranty Claim**"); and (ii) with respect to any Work Product that is subject to acceptance testing, the applicable non-conformity could not, with reasonable diligence, have been identified during the course of such testing and/or examination of the applicable Test Results.

6.4 **Costs and Procedure.** If Viavi receives a Warranty Claim in accordance with Section 6.1 (Limited Warranty) and Section 6.3 (Warranty Period), Viavi will not charge for any repair or re-performance, except for any costs that are caused by Customer's relocation of the Work Product from the destination to which it was originally delivered by Viavi. If Customer's Warranty Claim fails to meet any of the requirements of Section 6.1 (Limited Warranty) or Section 6.3 (Warranty Period), Viavi

vi's then-current Time & Materials Services Terms shall apply to any error identification or correction efforts, repair, replacement, and shipment costs by Viavi.

**6.5 Disclaimer.** EXCEPT AS SPECIFIED IN SECTION 6.1 (LIMITED WARRANTY), VIAMI MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY FIXED FEE SERVICES OR WORK PRODUCT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VIAMI DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS, AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH IMPLIED WARRANTY MAY BE BASED, INCLUDING, WITHOUT LIMITATION, CONTRACT, COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

**7. ALLOCATION OF PROPRIETARY RIGHTS.** The Proprietary Rights to Intellectual Property contained in Work Product or created by either party under these Fixed Fee Services shall be allocated as follows:

#### 7.1 Preexisting Intellectual Property.

**7.1.1 Pre-existing Customer Intellectual Property.** Customer retains all Proprietary Rights that Customer holds or acquires outside the scope of these Fixed Fee Services Terms, including, but not limited to Proprietary Rights to any pre-existing or independently developed Intellectual Property that Customer provides to Viavi in connection with the performance of the Fixed Fee Services ("Pre-existing Customer Intellectual Property").

**7.1.2 Pre-existing Viavi Intellectual Property.** Viavi retains all Proprietary Rights that Viavi holds or acquires outside the scope of these Fixed Fee Services Terms, including, but not limited to Proprietary Rights to any pre-existing or independently developed Intellectual Property that Viavi incorporates into Work Product ("Pre-existing Viavi Intellectual Property").

**7.2 Newly Developed Intellectual Property.** Subject to Section 7.1 (Pre-existing Intellectual Property), upon creation of any Intellectual Property under these Fixed Fee Services Terms, the Proprietary Rights to such new Intellectual Property shall be allocated as follows:

**7.2.1 Improvements of Either Party's IP.** Regardless of whether the Intellectual Property is created by Viavi, Customer, or jointly by both parties (i) Customer shall acquire all Proprietary Rights to any improvement and modification of any Pre-existing Customer Intellectual Property that does not constitute an improvement or modification of Pre-existing Viavi Intellectual Property; and (ii) Viavi shall acquire all Proprietary Rights to any improvement and modification of Pre-existing Viavi Intellectual Property that does not constitute an improvement or modification of Pre-existing Customer Intellectual Property.

**7.2.2 Improvements of Both Parties' or Neither Party's IP.** If newly created Intellectual Property constitutes an improvement or modification of both or neither party's Pre-existing Intellectual Property, then all Proprietary Rights to such Intellectual Property shall be acquired by the party that solely creates such Intellectual Property, unless such newly created Intellectual Property is jointly developed by both parties, in which case the Proprietary Rights shall be owned by Viavi subject to the license in Section 7.6 License to Work Product.

**7.3 Assignments.** If under mandatory law, a party is unable to acquire Proprietary Rights upon creation as provided in these Fixed Fee Services Terms, the other party hereby assigns its rights to any Intellectual Property, tangible material or software copy to the party that is entitled to acquire all Proprietary Rights according to Section 7.1 (Pre-existing Intellectual Property) and Section 7.2 (Newly Developed Intellectual Property) (the "Entitled Party"). To the extent that under mandatory law, rights can only be assigned after creation, the parties hereby irrevocably agree to assign, immediately following the creation, their rights to the Entitled Party. To the extent that under mandatory law, Proprietary Rights may not be assigned, the parties hereby agree to grant an exclusive, perpetual, irrevocable, royalty-free and unconditional license to the Entitled Party. To the extent such license grant is invalid or not fully enforceable under mandatory law, the parties irrevocably agree to grant and hereby grant such right to the Entitled Party as the Entitled Party reasonably requests in order to acquire a legal position as close as possible to the legal position described in Section 7.1 (Pre-existing Intellectual Property) and Section 7.2 (Newly Developed Intellectual Property).

**7.4 Realization of Proprietary Rights.** In order to ensure that each party will be able to retain, acquire, and use its respective Intellectual Property and Propri-

etary Rights as outlined in Section 7.1 (Pre-existing Intellectual Property) and Section 7.2 (Newly Developed Intellectual Property), each party shall (i) transfer possession, ownership, and title to media, models, and other tangible objects containing Intellectual Property to the other party if the other party is the Entitled Party with respect to the Proprietary Rights to such Intellectual Property; (ii) share copies of media, models, and other tangible objects containing Intellectual Property of both parties if it is not feasible or commercially reasonable to physically separate the Intellectual Property of each party; and (iii) provide the other party with reasonable support, signatures, and information for recording and perfecting the foregoing assignment and for registering or otherwise securing, defending, and enforcing such other party's Proprietary Rights against third parties.

**7.5 Employees and Contractors.** In order to ensure that both parties acquire all Proprietary Rights as outlined in Section 7.1 (Pre-existing Intellectual Property) and Section 7.2 (Newly Developed Intellectual Property), both parties shall have all their respective employees, consultants, and agents assign or otherwise transfer (as provided in Section 7.3 — Assignments) to the party which acts as their employer or principal, all Proprietary Rights arising out of any work such employees, consultants, or agents perform in connection with these Fixed Fee Services Terms.

**7.6 License to Work Product.** Viavi grants to Customer a personal, non-exclusive, non-transferable, and non-sublicensable license to use such Work Product solely for Customer's internal business purposes if and to the extent that (i) the Work Product is identified in the applicable Statement of Work and Viavi intentionally makes such Work Product available to Customer as part of Fixed Fee Services (e.g., a deliverable specified under a Statement of Work); (ii) the Work Product is not covered by any other written terms or agreements between the parties (otherwise such other terms or agreements, e.g., Time & Materials Services Terms or Software License Terms, shall exclusively govern); and (iii) Customer complies with all provisions of these Fixed Fee Services Terms, including but not limited to its obligation to make timely payments of all fees and other amounts hereunder, and its confidentiality obligations under Viavi's General Terms.

**7.7 All Other Rights Reserved.** Viavi reserves ownership, title, and all rights and interest, including, but not limited to, all Proprietary Rights not expressly granted to Customer in these Fixed Fee Services Terms in and to (i) all Work Product; and (ii) all Pre-existing Viavi Intellectual Property and all other information, materials and technology developed or acquired by Viavi prior to, or independently of, the provision of Fixed Fee Services hereunder, including, without limitation, all Intellectual Property embodied therein and all Proprietary Rights therein and thereto.

## 8. TERM AND TERMINATION.

**8.1 Term.** The term of any Fixed Fee Services project will continue until (i) completion of the Fixed Fee Services under the applicable Statement of Work; or (ii) termination of the applicable Statement of Work in accordance with Section 8 (Term and Termination).

**8.2 Termination for Cause.** Either party may terminate a Statement of Work by written notice, effective immediately, if the other party fails to cure any material breach of the Fixed Fee Services Terms related such Statement of Work within ten (10) days after receiving written notice from the non-breaching party detailing the alleged material breach.

**8.3 Consequences.** Unless Customer terminates a Statement of Work because of Viavi's material breach of these Fixed Fee Services Terms, Customer shall (i) pay to Viavi all fees specified in the applicable Statement of Work less out-of-pocket expenses saved by Viavi as a result of the early termination, or one hundred twenty percent (120%) of Viavi's fully loaded costs of all Fixed Fee Services performed before termination, whichever is greater; and (ii) return to Viavi all Work Product, Viavi's Confidential Information and other tangibles and intangibles received in connection with the Fixed Fee Services, without retaining any copies thereof and all licenses granted to Customer under these Fixed Fee Services Terms for Work Product shall be automatically revoked.

**8.4 Survival.** Sections 4.3 (Express Acceptance or Rejection), 4.4 (Deemed Acceptance), 5 (Payment), 6 (Limited Warranty and Disclaimer), 7 (Allocation of Proprietary Rights), and Section 8 (Term and Termination) of these Fixed Fee Services Terms and Viavi's General Terms shall survive any termination of these Fixed Fee Services Terms, provided that if Customer does not comply with all provisions of these Fixed Fee Services Terms and Viavi's General Terms, including, but not limited to, its payment obligations under Section 5 (Payment) and its confidentiality obligations under Viavi's General Terms, the license to Work Product granted to Customer by Viavi in Section 7.6 (License to Work Product) shall not survive termination.