



VIAVI Maintenance and Support Agreement ("Support Agreement")

VIAVI SOLUTIONS INC. OR ITS AFFILIATE SPECIFICALLY LISTED ON YOUR QUOTE ("VIAVI") SHALL PROVIDE MAINTENANCE AND SUPPORT SERVICES TO YOU AS THE PERSON OR ENTITY (REFERRED TO BELOW AS "YOU" OR "YOUR") THAT HAS PURCHASED VIAVI HARDWARE AND/OR LICENSED VIAVI SOFTWARE UNDER SEPARATE PURCHASE AND/OR LICENSE AGREEMENT(S) ("PROCUREMENT AGREEMENT(S)") THAT ARE SPECIFICALLY COVERED BY THIS SUPPORT AGREEMENT (THE "COVERED PRODUCTS") ONLY ON THE CONDITION THAT YOU (I) ACCEPT ALL OF THE TERMS OF THIS SUPPORT AGREEMENT AND ALL PROCUREMENT AGREEMENT(S) AND (II) PAY ALL APPLICABLE SUPPORT FEES AS PROVIDED IN THIS SUPPORT AGREEMENT. APPENDIX A HERETO CONTAINS SPECIFIC SERVICE LEVEL OBJECTIVES, SERVICE LEVEL AGREEMENTS, SUPPORT RESOURCES AND OTHER SUPPORT DETAILS FOR YOUR COVERED PRODUCT(S) DESCRIBED BY SUCH APPENDIX AND IS MADE A PART HEREOF. THE COVERED PRODUCTS WHICH ARE COVERED BY THIS SUPPORT AGREEMENT ARE LISTED AND DESCRIBED IN APPENDIX B WHICH IS MADE A PART HEREOF. VIAVI SHALL NOT BE BOUND BY ANY TERMS OR CONDITIONS WHICH ARE INCONSISTENT WITH THE TERMS AND CONDITIONS SET FORTH HEREIN. ALL PURCHASE ORDER ACCEPTANCES ARE EXPRESSLY CONDITIONED UPON YOUR UNQUALIFIED ACCEPTANCE OF THESE TERMS AND CONDITIONS.

1. Definitions

- (a) "**Covered Licensed Software**" means VIAVI licensed software that is a Covered Product.
- (b) "**Documentation**" means the user documentation VIAVI provides for the Covered Products.
- (c) "**Error**" means a reproducible defect in the Covered Product when operated in a Supported Environment, which causes the Covered Product not to operate substantially in accordance with the Documentation
- (d) "**Error Correction**" means a modification or patch that brings the Software into substantial conformance with the VIAVI published Documentation, or a procedure, routine or other information that enables You to avoid the practical adverse effect of an Error.
- (e) "**Maintenance Release**" means an update to an existing version of the Covered Product containing Error Corrections or minor functionality enhancements. A maintenance Release is designated as a numbered service pack for the current version.
- (f) "**Support Term New Version Release**" means a new version of the Covered Product containing new features or enhancements to functionality. A New Version Release is designated by an increase in the version number. e.g. from 2.5 to 2.6. A New Version Release only includes releases of the Covered Product in a language included in Your Covered Product's configuration.
- (g) "**Production Environment**" means the computer systems, databases and hardware used by You in support of Your actual internal business operations and into which You install and operate software for its intended uses by end users in the ordinary course of Your business.
- (h) "**Releases**" means collectively, Maintenance Releases and New Version Releases.
- (i) "**Severity 1 or Critical**" means (1) a product inoperative Error that makes the continued use of one or more functions impossible (or severely restricted) on a business- critical system and prevents You from continued production or severely risks critical business operations, or (2) an Error impacting Your production systems that may cause loss of data from the production systems and/or restrict data availability from those systems and/or cause significant financial impact to the Licensee.
- (j) "**Severity 2 or Urgent**" means an Error that severely affects or restricts major functionality and is of a time-sensitive nature and is important to long-term productivity but is not causing an immediate work stoppage, where no workaround is available, but operation can continue in a restricted fashion.
- (k) "**Severity 3 or Normal**" means (1) a minor Error that does not have a major effect on business operations, or (2) a major Error for which an acceptable workaround exists for the Covered Product.
- (l) "**VIAVI Support Representatives**" means the individuals designated by VIAVI who are authorized to provide support to you and who will coordinate all of Your Error submissions and support requests.



- (m) **"Support Services"** means VIAVI's commercially available professional maintenance and support offerings, which includes "Silver Support", "Gold Support", and "Platinum Support" (each as described in Appendix A attached at the end of this Support Agreement).
- (n) **"Support Term"** means any period during which You are entitled to receive Support Services hereunder, including any renewals or extensions thereof.
- (o) **"Supported Environment"** means a hardware, operating system and application platform meeting the minimum system configuration requirements for the proper use and operation of the Covered Product as set forth in the VIAVI published Documentation.
- (p) **"Test Environment"** means any operating environment other than a Production Environment and includes, without limitation, the computer systems, databases, and hardware used by You to simulate a Production Environment for the purposes of testing or evaluating the functionality, interoperability or stability of software without impacting the actual Production Environment or Your actual internal business operations.
- (q) **"Upgrade"** means any version of the Covered Product that has been released to the public and which replaces the prior version of the Covered Product on VIAVI's pricelist pursuant to VIAVI's then-current upgrade policies.
- (r) **"Your Contacts"** means the individuals designated in writing by You and agreed to by VIAVI who are authorized to contact VIAVI Support Representatives.

2 Maintenance and Support

VIAVI offers and you may initially select from our Global Tiered Support Model (GTSM) one of the following; Silver, Gold, or Platinum service options. All Covered Licensed Software for a particular product must be covered by the same service option.

(a) **"Overview of Service Options"**, as applicable per Appendix A

(i) **VIAVI Silver**

- (ii) VIAVI Silver provides the services defined in section (b) and provides a defined Response time as set forth in Appendix A, if applicable.

(iii) **VIAVI Gold**

VIAVI Gold is an enhanced services package that extends the services provided by VIAVI Silver. You may elect to receive a number of additional service hours/days for active support at extra cost. If so, You may receive certain additional support activities including installation support, report creation, upgrade support, etc. up to the limit of the service hours/days included in the elected package.

(iv) **VIAVI Platinum**

VIAVI Platinum is an enhanced services package that extends the services provided by VIAVI Gold.

(b) **"Overview of Core Support Services Provided."** During each Support Term, VIAVI will provide the following Support Services, subject to the procedures and limitations described herein:

- (ii) provide access to Self Help Support Resources.
- (iii) clarify the Documentation.
- (iv) assist in identifying and verifying the causes of suspected errors.
- (v) provide Error Corrections when required and available.

Such Support Services will be provided for the VIAVI Covered Products that are covered during each Support Term. Support will not be provided for licenses that are not covered under this Support Agreement.

(c) **"Overview of Services Not Included in Support Services."** The following services are NOT provided as Support Services. The services described herein are not meant to represent all excluded services but are representative of the type of services that are not included in standard Support Services. Services of this type are available at additional cost through VIAVI Professional Services:

- (i) Designing, planning, installing, integrating or Implementing Covered Product.
- (ii) Installing Updates or Patches.



- (iii) Custom configuration of Covered Product.
 - (iv) Supporting Third Party applications unless included by VIAVI as an integral part of the Covered Product subject to Support Services.
 - (v) Creating custom reports, alerts, dashboards, etc.
 - (iv) Troubleshooting customer's hardware or software platforms and configurations.
 - (vi) Providing product training.
- (d) **"Self Help Support Resources."** VIAVI provides a robust set of Self-Help Resources to allow You to resolve issues quickly. You hereby agree that You and your authorized end users of the Covered Product will first attempt to answer any questions and resolve any issues with respect to the operation of the Covered Product by using VIAVI's self-help resources. You further acknowledge and agree that Your failure to use these resources may result in refusal of technical support service otherwise made available as part of Support Services. VIAVI provides the following self-help resources:
- (i) The Help Function of the Software.
 - (ii) Software Updates / Upgrades and Patch Releases.
 - (iii) The VIAVI Customer Portal.
 - (iv) The VIAVI Community Site.
 - (v) The VIAVI Online Knowledge Base.
 - (vi) The Documentation.
- (e) **"Contacting VIAVI Support Representatives."** If you are unable to resolve an issue or question with respect to the Covered Product after using the Self-Help Resources described above, You may contact a VIAVI Support Representative to receive technical support using one of the methods described below. VIAVI will provide technical support only in English. Any communication with a VIAVI Support Representative must be in English. VIAVI will not provide support to end users of the Covered Product. Critical Errors must only be submitted through the designated telephone number as set forth in Section 2(h) below.
- (i) **Customer Portal.** VIAVI provides a Customer Portal to be used for submitting support requests for all support issues. The Customer Portal provides self-service tools to search the knowledge base and allows you to submit and track support request cases when additional support is required. The support portal is available at <http://www.viavisolutions.com/support>.
 - (ii) **Email Case Submission.** VIAVI provides an email option for submitting issues if specified in Schedule A for your Covered Product. You may submit email support requests to support@VIAVI.com. Emails submitted to this address result in the creation of a new support case that can be tracked in the Customer Portal.
 - (iii) **Telephone Hot Line.** VIAVI shall provide technical support to You at the times and ,through the telephone numbers for your region as set forth in Appendix A (the "Support Hours"). VIAVI will provide You with a list of local holidays and any reduced Support Hours on those holidays upon your request.
 - (iv) **Email Acknowledgement.** VIAVI will use commercially reasonable efforts to provide an email acknowledgement for email or telephone submitted service requests within eight (8) business hours after VIAVI receives the email.
 - (f) **Error Correction.** When You report an Error to VIAVI, You must include a detailed description of the Error and Your good faith estimation of the severity level determined in accordance with Appendix A. You must also provide accurate information about the version and module of the License Software as well as version number of any companion product (for example: Oracle, SQL, etc.) and similar information regarding operating system. When VIAVI receives notice of an Error, VIAVI will make a final definitive determination of the severity level (in accordance with Appendix A), assign a problem tracking number to be included in all correspondence between You and VIAVI related to the Error and, after VIAVI's e-mail acknowledgement, VIAVI will provide a response in accordance with the severity levels and response times identified in Section 2(g) below. Thereafter, VIAVI will use commercially reasonable efforts to provide an Error Correction. The Error Correction may require that You install the latest Maintenance Release for the supported version of the Covered Product on which You reported



the Error. An Error Correction may require multiple contacts and off-line research. The Error Correction, when completed, may be provided in the form of a patch to the Covered Product consisting of sufficient programming and operating instructions to implement the Error Correction, which will be provided to You via email, download or other electronic means.

- (g) **Response Times.** VIAVI's response to an Error depends on the severity of the Error and the level of Support Services purchased by You, as set forth in Appendix A. For each severity level, VIAVI Support Representatives will use commercially reasonable efforts to respond, within the times set forth in Appendix A. Response time is the time from VIAVI's receipt of notice of the Error until VIAVI contacts you reporting the Error to begin resolution efforts, not the time to deliver an Error Correction. Critical Errors and Urgent Errors will generally not include Errors in other than Production Environments.
- (h) **Escalation Procedure.** An escalation occurs when an open issue becomes a Critical Error and requires VIAVI's escalation procedure, which consists of the following:
- (i) when escalation of a Critical Error becomes necessary, You will contact a VIAVI Support Representative for more information using the telephone number detailed on the VIAVI Support Web Site.
 - (ii) once You are connected with a VIAVI Support Representative, You must provide your name, case ID, and state that a Critical Error escalation is required.
 - (iii) the VIAVI Support Representative will contact the support manager on duty and the support manager will set up an action plan that is required in order to progress the case and will monitor its execution on a regular basis involving the VIAVI Support Representative in charge.
- (i) **Exclusions from Maintenance Program.** VIAVI is not responsible or liable for causes external to the Covered Product ("Excluded Services"), including but not limited to:
- (i) Your failure to incorporate Releases.
 - (ii) installation of the Covered Product or any New Version Releases not in accordance with the Documentation provided with the Covered Product or New Version Releases.
 - (iii) Your use of the Covered Product with any software or hardware other than the Supported Environment.
 - (iv) problems resulting from use of the Covered Product in a manner not permitted pursuant to Your Procurement Agreement(s).
 - (v) modifications, alterations, or additions to the Covered Product by parties other than VIAVI (including without limitation, modifications, alterations, or additions to the Covered Product made by You).
 - (vi) damage from any source other than VIAVI including but not limited to water, humidity, fire, power surges, computer viruses, and accidents. Any services required to fix the Excluded Services will be billed to You as professional services on a time-and-materials basis in accordance with VIAVI then current rates and in accordance with the terms of VIAVI's standard professional services agreement. Support Services do not include services in connection with or correcting Errors arising out of or related to a database management server or a web server or any other third-party component that is used in conjunction with the Software Licensed. VIAVI may, but is not required to, provide Error Corrections for such Errors at VIAVI's then current time and materials rates. Support Services does not include installation or configuration of the Covered Product or any services provided on-site at Your location, facilities or datacentre. If VIAVI is required or requested to travel to your location, facilities or datacentre, any services will be provided at then current time and materials rates as professional services (subject to the terms of VIAVI's standard professional services agreement) and You shall reimburse VIAVI for all reasonable travel expenses, including meals and lodging.
- Support Services do not include problems or errors in modifications to the Covered Product that VIAVI provides as a work product pursuant to a separate professional services engagement. VIAVI is not responsible for restoring lost data or damage to Your database that result from Your acts or omissions. If You desire to purchase upgrade services or other professional services from VIAVI outside the scope of the Support Services in this Support Agreement, then VIAVI will provide such professional services to You for a charge as set forth in a mutually agreed upon professional services agreement.
- (j) **Hardware Support.** You must follow VIAVI's prescribed process for returning physical Covered Goods for repair, maintenance or calibration pursuant to this Support Agreement. If a Maintenance Service cannot be performed or



an Error cannot be resolved remotely with respect to such Covered Product, You will provide the information necessary to get a return materials authorization to use in returning the Covered Product to VIAVI. You must comply with all packing and shipping requirements with respect to the Covered Goods. Upon receipt, VIAVI will use commercially reasonable efforts to fix the Error and return the Covered Goods to You.

Should a Covered Product become obsolete during the course of this Agreement term, VIAVI will on a best effort basis repair the Covered Product. Should the Covered Product be unrepairable, VIAVI will either dispose of or return the item to You per Your request.

3. Your Responsibilities

- (a) **Supported Environment and Operations.** You are responsible for undertaking the proper supervision, control and management of Your use of the Covered Product and its use by Your authorized end users, including, but not limited to
- (i) providing, maintaining, and assuring proper configuration of the Supported Environment.
 - (ii) following industry standard procedures for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of hardware or software error or malfunction.
 - (iii) maintaining a procedure external to the Covered Product for reconstruction of lost or altered files, data and programs.
- b) **Assistance in Providing Maintenance.** You shall provide reasonable assistance to VIAVI in determining and resolving Errors You report. Error determination activities may include performing network traces, capturing error messages, collecting configuration information and other similar activities to allow VIAVI to reproduce the Error. Resolution activities may require access to your personnel and/or remote access to the Supported Environment. You hereby agree to VIAVI's use of remote access tools to access the Covered Product in the Supported Environment and modify its configuration as part of VIAVI Error determination and resolution activities. VIAVI may not be able to provide You with an Error Correction without such remote access. You are responsible for performing activities to implement any Error Corrections that VIAVI provides to You and for responding in a timely manner to requests for information by a VIAVI Support Representative. Error Corrections may include changing, installing or reinstalling new or existing versions of web browser software or new components, or modifying processes. Any information You provide to VIAVI in connection with Support Services that You designates as "confidential" will be used by VIAVI only to resolve reported Errors and will not be disclosed to anyone other than VIAVI personnel involved in resolving the Error. As part of VIAVI's Error resolution process, information You provide to VIAVI may be made available to VIAVI employees in foreign countries, unless You notify VIAVI otherwise in writing when providing VIAVI with such information.
- (c) **Designation of Support Contacts.** You shall designate at least one individual as a contact initially for receiving Support Services. You represent that all persons designated by you are authorized to engage VIAVI for Support Services under this Support Agreement.
- (d) **Training.** You are solely responsible for properly training your employees and all other appropriate personnel in the operation and use of the Covered Products and the Supported Environment and use of support services under this Support Agreement.
- (e) **Solution Validation.** You are responsible for informing VIAVI when any Reported Error has been corrected successfully. After providing a solution, VIAVI will attempt to confirm solution with you two times during one business week before closing the case.

4. New Releases of Software

- (a) **Maintenance Releases Provided with Maintenance and Support.** During the Support Term, if and as made available by VIAVI, VIAVI will provide You, at no additional charge, with any releases that it makes generally available to customers who have purchased and paid for Support Services. Each Release shall be deemed part of and incorporated into the Covered Product to which it relates for purposes of the Procurement Agreement and shall also be subject to the terms and conditions of this Support Agreement. The designation of a release as a Maintenance Release or a New Version Release will be made by VIAVI, in its sole and reasonable discretion.
- (b) **Maintenance and Support of Prior Releases.** VIAVI will provide Support Services, as provided herein, for the current New Version Release and the most recent prior Release. Support for all other prior Versions will be provided by VIAVI as professional services and an additional charge on a time and materials basis shall apply.



- (c) **Installation and Configuration of New Releases.** Support Services do not include the installation or configuration of any Releases. Any services to be provided in connection with the installation or configuration of Releases will be provided for a mutually agreed upon fee as professional services pursuant to a separate professional services agreement. VIAVI will not correct Errors arising out of or related to installation or configuration by anyone other than VIAVI of the Covered Licensed Software or any Releases.
- (d) **Migration of Customizations and/or Modifications.** If You have customized and/or modified the Covered Licensed Software, Support Services do not include migrating customizations and/or modifications to any Release, unless otherwise provided under a separate agreement pursuant to which VIAVI provided such customizations and/or modifications. Any services to be provided in connection with the migration of customizations and/or modifications to Releases will be provided for a mutually agreed upon fee as professional services pursuant to a separate professional services agreement.

5. Support Fees

The fee for all Support Services provided by VIAVI during a Support Term (the "Support Fee") shall be as set forth in Appendix A. Unless otherwise provided in Appendix A: You should have received a quote. for the Support Fees for the initial Support Term upon entering into or agreeing to this Support Agreement and, subject to Section 6 below, Payment is due pursuant to the quote received or otherwise agreed to by VIAVI in writing. Any amounts not paid by such due date shall bear interest in the amount of one and one half percent (1.5%) per month or the maximum rate allowed by law, whichever is less and VIAVI may immediately suspend performance of the Support Services. Customer's payment of such interest on late payments shall not prevent VIAVI from exercising any other rights under this Support Agreement or applicable law. Fees for any additional services not included as part of Support Services and all expenses incurred in connection therewith will be separately invoiced on a monthly basis at the end of the month in which such services are provided or expenses incurred.

You will receive a quote from VIAVI for any renewal Support Term upon expiration of the then- current Support Term.

6. Term, Renewal and Termination

- a) **"Initial Support Term and Renewal."** The initial Support Term shall begin and end on the dates specified in the applicable order provided, however, that if such dates are omitted from the applicable order then the initial Support Term shall be deemed to commence on the date of Your purchase of Maintenance Services and end one year thereafter. Upon expiration of the initial Support Term and each subsequent Support Term, if any, Support Services shall renew for consecutive additional one-year Support Terms (each, a "Renewal Term") unless
- (i) VIAVI notifies You in writing prior to expiration of the then-current Support Term of its election to terminate Support Services.
 - (ii) VIAVI notifies its general customer base in writing prior to expiration of the then-current Support Term of its election to discontinue Support Services in respect of one or more versions of the Covered Product.
 - (iii) You notify VIAVI in writing at least thirty (30) days prior to the expiration of the then-current Support Term of Your election to terminate or not renew Support Services. VIAVI will provide You with written notice of the upcoming expiration date, which shall include notice of any price increase for the upcoming Renewal Term, if applicable. The failure to renew Support Services shall not affect Your licenses to use Covered Licensed Software but will result in the termination of Support Services. Notwithstanding the above, VIAVI may terminate or suspend Support Services, without any liability to You, if You fail to timely pay any Support Fee or otherwise breach any term or condition of this Support Agreement or the Procurement Agreement.
- (b) **"Termination of Maintenance and Support."** If a party breaches any material term or condition of this Support Agreement, then the non-breaching party shall give the breaching party written notice of such breach specifying with a reasonable degree of detail the breach and the circumstances giving rise to the breach. If the breaching party fails to cure such breach within thirty (30) days of its receipt of such written notice of breach, the non-breaching party may terminate this Support Agreement. If You properly terminate this Support Agreement as a result of VIAVI's uncured breach, then VIAVI shall refund to you the pro rata portion of any pre-paid Support Fee in respect of the remaining portion of the then-current Support Term and shall have no other liability to You under this Support Agreement, including any liability for any claims, losses or damages suffered by You as a result of such breach by VIAVI. Upon termination or expiration of this Support Agreement for any other reason (or for no reason) VIAVI shall have no obligation to refund or credit any Maintenance Fees You have paid.



(c) **"Reinstatement of Support Services."** If Support Services have terminated or expired (other than due to your breach of this Support Agreement or the License Agreement),

You may reinstate Support Services if

- (i) VIAVI still offers Support Services for the Covered Product, and
- (ii) You pay for the time period during the lapsed support which would be the period of time from when the Support Services terminated or expired until the date you wish to reinstate the Support Services ("Lapse Period"), and you pay for the Renewal Term (defined below).
- (iii) You are also required to upgrade the Covered Product to the latest version that VIAVI has made available within sixty (60) days of any such reinstatement of Support Services.
- (iv) you must re-certify any hardware if the Lapse Period is six (6) months or more which requires payment for any cost of calibration and/or repair.
- (v) you must reinstate the Support Services at the same or higher tier of Support Services as the prior terminated or expired Support Agreement.

7. Confidential Information

(a) **"Confidential Information"** means the following information which is made available or disclosed by one party (the "Discloser") to the other party (the "Recipient") whether in tangible or intangible form:

- (i) a party's proprietary technology or computer software in all versions and forms of expression, whether or not the same has been patented or the copyright thereto registered, is the subject of a pending patent or registration application, or forms the basis for a patentable invention (collectively the "Proprietary Technology").
- (ii) manuals, notes, documentation, technical information, drawings, diagrams, specifications, formulas or know-how related to any of the Proprietary Technology.
- (iii) information regarding current or proposed products, customers, contracts, business methods, financial data or marketing data, financial results and projections, company and market strategy, product roadmaps, product and competitive sales analysis and plans, product or marketing plans, fees, pricing plans or structures, personnel and recruiting matters, and future releases;
- (iv) offers or proposals, and (v) any other information disclosed that by its nature should be consider confidential and proprietary.

(b) **"A Recipient shall"**

- (i) not disclose the Confidential Information to any third party at any time and Recipient shall limit disclosure of Confidential Information within its own organization to its employees or its legal, financial and accounting advisors having a need to know and who have agreed to be bound by the terms of this Support Agreement;
- (ii) protect the confidentiality of the Discloser's Confidential Information with at least the same degree of care as Recipient uses to protect its own Confidential Information of a like nature, but no less than a reasonable degree of care, and
- (iii) use the Confidential Information solely in connection with provision and receipt of Support Services. Recipient shall be entitled to disclose Confidential Information solely to the extent necessary to comply with a court order or as otherwise required by law or by a regulatory agency or government body, provided that Recipient shall first give notice to Discloser and make a reasonable effort to obtain a protective order to protect the confidentiality of the information. If such protective order is not obtained, Recipient agrees to disclose only that portion of the Confidential Information which it is legally required to disclose. Recipient shall immediately notify Discloser of any actual or suspected unauthorized disclosure of Confidential Information. Recipient shall not modify, reverse-engineer, decompile, create other works from, or disassemble any software programs contained in the Confidential Information without Discloser's prior written consent.

(c) **"Obligations."** The obligations described in Section 7 impose no obligation upon Recipient with respect to any Confidential Information which

- (i) is or becomes a matter of public knowledge through no fault of Recipient;



- (ii) is rightfully received by Recipient from a third party without a duty of confidentiality to a third party by, or with the authorization of, Discloser;
- (iii) is disclosed without a duty of confidentiality; or
- (iv) is independently developed by Recipient.

The burden of proving any of the above exemptions is on Recipient.

- (d) Upon the written request of Discloser, Recipient shall immediately destroy or return to Discloser, as requested by Discloser, all Confidential Information of Discloser in its possession, together with all records in any manner pertaining to any of Discloser's Confidential Information. Recipient shall also, upon the written request of Discloser, furnish Discloser with a certificate of an officer verifying that all of the foregoing have been destroyed or returned to Discloser.

8. LIMITATION OF LIABILITY

EXCEPT AS EXPLICITLY PROVIDED HEREIN, IN NO EVENT SHALL EITHER PARTY OR ITS SUPPLIERS BE LIABLE FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, AND/OR LOSS OF BUSINESS, ARISING OUT OF OR RESULTING FROM THIS SUPPORT AGREEMENT EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) EXCEPT FOR ANY BREACH OF SECTIONS ENTITLED "CONFIDENTIAL INFORMATION", "PROPRIETARY RIGHTS", OR A CLAIM FOR INDEMNIFICATION PROVIDED FOR UNDER THIS AGREEMENT, DAMAGES IN EXCESS OF THE AMOUNTS PAYABLE HEREUNDER BY CUSTOMER FOR 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY. THE FOREGOING SHALL APPLY REGARDLESS OF THE NEGLIGENCE OR OTHER FAULT OF EACH PARTY AND REGARDLESS OF WHETHER SUCH LIABILITY SOUNDS IN CONTRACT, NEGLIGENCE, TORT, OR ANY OTHER THEORY OF LEGAL LIABILITY.

9. Miscellaneous

- (a) **"ENTIRE AGREEMENT."** This Support Agreement is the complete and exclusive agreement between You and VIAVI relating to the technical support and maintenance services to be provided by VIAVI in respect of the Covered Product and supersedes any previous or contemporaneous oral or written communications, proposals, and representations with respect to its subject matter. This Support Agreement prevails over any conflicting or additional terms of any purchase order, ordering document, acknowledgement or confirmation or other document issued by You, even if signed and returned by VIAVI. VIAVI reserves the right to change or modify this Support Agreement without notice at any time in VIAVI's sole discretion by publishing the revised Support Agreement on the following website:
<https://www.viavisolutions.com/en-us/corporate/legal/terms-and-conditions>. Your express acceptance or your continued use of the Covered Product shall constitute Your acceptance to be bound by the terms and conditions of the revised Support Agreement.
- (b) **"APPLICABLE LAW AND JURISDICTION."** This Support Agreement and its validity, interpretation and performance, and any related dispute between the parties ("Disputes") shall be governed by the laws of the State of New York and the United States of America, as if performed wholly within the State of New York, and without giving effect to any principles of conflict of laws. The parties specifically disclaim the application of (i) the United Nations Convention on Contracts for the International Sale of Goods and/or its implementing and/or successor legislation and/or regulations; and/or (ii) principles of conflicts of law and that body of law applicable to choice of law. VIAVI and Customer hereby irrevocably and unconditionally submit to the jurisdiction of the courts in the State of New York and all courts competent to hear appeal therefrom and such courts shall have exclusive jurisdiction over any Disputes. Customer waives its right to a jury trial. Notwithstanding the foregoing, either party may, at its sole discretion, seek injunctive relief in any court of competent jurisdiction (including, but not limited to, preliminary injunctive relief). The prevailing party in any legal proceeding brought by one party against the other party in a Dispute shall be entitled to recover its legal expenses, including, but not limited to, the costs of any court or arbitration proceeding and reasonable attorneys' fees.
- (c) **"Waiver."** The failure or delay of either party to exercise or enforce any right or claim does not constitute a waiver of such right or claim and shall in no way affect that party's right to later enforce or exercise it, unless such party issues an express written waiver, signed by a duly authorized representative.
- (d) **"Severability."** If and to the extent that any of the terms of this Agreement, except payment obligations, become or are declared to be illegal by any court of competent jurisdiction, such terms shall be null and void and shall be deemed deleted from this Agreement, but only to the extent that such term is illegal, it being the intent and



agreement of the parties that the Agreement shall be deemed amended by modifying such term to the extent necessary to make it legal while preserving its intent or, if that is not possible, by substituting therefore another term that is legal and achieves the same objective. All remaining terms of this Agreement shall remain in full force and effect.

- (e) **“Notices.”** Any notices and any modifications of, or amendments to, the Support Agreement shall be invalid, unless (i) notices are in writing and sent by fax or by registered or certified mail, postage prepaid, or via email; and (ii) modifications and amendments are in writing and signed by duly authorized officers of both parties. Representations made by sales or technical personnel of VIAVI shall have no legal effect, unless confirmed by a senior executive of VIAVI (senior vice president or above) in writing. Furthermore, notices to VIAVI are invalid, unless and until received by email to Viavi.Legal@viavisolutions.com or by registered or certified mail, postage prepaid to the following address Attn. Legal Department, 1445 South Spectrum Blvd, Suite 102, Chandler, AZ 85286, USA or at such other address(es) as may be specified by VIAVI to Customer in writing as the appropriate address for notices.
- (f) **“Force Majeure.”** Any non-performance or late performance – except of payment obligations – of either party shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing or late-performing party whether or not similar to the foregoing. If by reason of any such force majeure event, VIAVI’s performance of Support Services is limited, VIAVI shall have the right to prorate the available supply in such a manner as it, in its sole discretion, determines appropriate.
- (g) **“Assignment.”** You may not assign any of your rights against VIAVI, and any (purported) assignment, either voluntarily or by operation of law, is invalid. Any warranties extended by VIAVI are nontransferable and for Customer’s benefit only. VIAVI may assign its rights and delegate its obligations.

SEE APPENDIX A FOR SPECIFIC SERVICE LEVEL OBJECTIVES, SERVICE LEVEL AGREEMENTS, SUPPORT RESOURCES AND OTHER SUPPORT DETAILS FOR YOUR APPLICABLE COVERED PRODUCT(S) DESCRIBED THEREIN.



Appendix A

Support Entitlement

The specified covered hardware and software products listed in Appendix B shall be entitled to the following support for the term of the agreement:

- Listed items
- Listed items
- Listed items
- Listed items
- Listed items

Terms of service response time with Support are as follows: Additional *response times to issue submissions are targeted to be within the following guidelines based on regional Support centre hours of operation in which each product is supported.

Issue Severity	Description	Response Time*
Critical	System is inoperable or not usable as a result of hardware or software malfunction. No known workaround available. Follow up communications are once per day until a resolution plan is established	___ Hours
Urgent	System is providing limited functionality. The software or product is malfunctioning and/or has restricted functionality. No known workaround is available. Follow up communications are a minimum once every two days until a resolution plan is established	___ Hours
Normal	System is providing all functionalities but consistently or randomly generates wrong results. Problem is being worked to resolution via the application or configuration details, or a workaround is available. Follow up communications are a minimum once every 3 business days until a resolution plan is established	___ Hours

* Response time is defined as the time when a customer has been informed or attempts have been made to inform the customer that the issue has a specific owner assigned to be responsible to drive the SR to resolution. All times are normal business hours unless otherwise stated.

Appendix B

Covered Products