



## DEMONSTRATION EQUIPMENT TERMS AND CONDITIONS

These Demonstration Equipment Terms and Conditions ("Agreement") forms the contract by and between Viavi Solutions Inc. or any of its subsidiaries or affiliates ("Viavi") and Consignee. The terms and conditions of this Agreement shall apply to any quote, order, order acknowledgment, and invoice, and any provision of the Viavi Equipment (as defined below) for the purposes of demonstration by Consignee. Viavi does not accept, expressly or impliedly, and Viavi hereby rejects and deems deleted, any additional or different terms or conditions that any Consignee presents, including, but not limited to, any terms or conditions contained or referenced in any order, acceptance, acknowledgment, or other document, or established by trade usage or prior course of dealing, unless Viavi expressly and unambiguously agrees to such terms and conditions in a duly signed writing. By ordering, accepting delivery, keeping, or using the Viavi Demonstration Equipment, after receipt of the Agreement or after otherwise being notified that such transactions are subject to the Agreement, Consignee agrees to the terms of the Agreement. If tender of these terms and conditions is deemed an offer, acceptance is expressly limited to the terms of the Agreement.

**1. Equipment Provided.** Subject to the terms and conditions of this Agreement, Viavi will supply and loan the designated Viavi Demonstration Equipment (including any software) ("Equipment") to Consignee.

**2. Term.** This Agreement shall commence on the Effective Date, and shall remain in effect during the Demonstration Period (the "Term") unless terminated by Viavi in accordance with Section 15 of this Agreement. Upon termination of this Agreement the Equipment must be returned to Viavi.

**3. Grant of Rights.** Subject to the terms and conditions of this Agreement, Viavi grants Consignee a personal, non-sublicensable (unless otherwise agreed in writing), non-exclusive, non-transferable, limited and restricted right to use the Equipment solely (i) at the site agreed upon between Viavi and Consignee; (ii) for Consignee's internal activities related to the demonstration of generally available versions of the Equipment in contemplating future acquisitions by Consignee; (iii) in accordance with the applicable documentation; (iv) during the Demonstration Period; (v) within lab/test environment, outside any live/production environment; and (vi) subject to any other terms and conditions otherwise communicated by Viavi. In addition, Viavi grants Consignee a personal, non-sublicensable (unless agreed upon in writing), non-exclusive, non-transferable, limited right to use the printed versions of the documentation that Viavi provides for Consignee's internal business purposes solely in support of Consignee's use of the Equipment in accordance with the Agreement. Consignee's right granted herein are conditioned on Consignee's continuous compliance with all limitations and restrictions described in the Agreement and if Consignee violates any of these limitations or restrictions or any other term or condition of this Agreement, Consignee's rights will automatically and immediately expire. Consignee acknowledges that this Section 3 (Permitted Use and Grant of Rights) defines the scope of rights that Viavi grants to Consignee and that any usages of the Equipment or documentation thereto outside the scope of that grant and the scope of any statutory rights constitutes an infringement of Viavi's proprietary rights as well as a material breach of the Agreement.

**4. Permitted Use.** Consignee acknowledges and agrees that Consignee is only a bailee of the Equipment on the terms and conditions set out in this Agreement, and that Consignee accepts full responsibility for the Equipment, including its use in accordance with any operation instructions provided or government regulations. Consignee will not pledge or otherwise encumber the Equipment. In the event the premises in which the Equipment is installed are encumbered in any way (e.g. a financial institution has a security interest in the premises), Consignee shall provide notice to any party having such an interest that a) the Equipment is installed within such premises; b) the Equipment is the property of Viavi; c) any encumbrance over the premises itself does not extend to the Equipment; and d) Viavi retains its rights of recovery and repossession of the Equipment. Consignee shall immediately report to Viavi: (i) any seizure or attachment of the Equipment by Consignee's creditors; (ii) any petition in bankruptcy, insolvency, receivership or similar proceedings filed by, or against, Consignee; or (iii) any arrangement, composition or similar agreement for the benefit of Consignee's creditors. Consignee appoints Viavi as its attorney to do all things, execute all documents, and otherwise act in place of Consignee, for the purposes of giving effect to this Agreement, including to recover possession of the Equipment, recover amounts due under the Agreement, or for other purposes incidental to this Agreement.

**5. No Transfer of Ownership.** Nothing in this Agreement shall be deemed to convey any title or ownership interest in the Equipment, and Consignee will not remove any sticker from the Equipment giving notice of Viavi's ownership of the Equipment. Ownership and all right, title and interest in and to any patents, copyrights, trade secrets, trademarks, trade names, service marks, any technical or other information related to the Equipment (including, but not limited to, the demonstration information, and any documentation, services offerings, training materials, and written, visual, and oral instructions) and any information that is marked or otherwise expressly identified as confidential in writing or that should have been reasonably understood as such due to its nature, regardless of whether in tangible, electronic, verbal, graphic, visual or other form, that Viavi discloses to Consignee (collectively, "Confidential Information"). Confidential Information does not include material or information that (i) is generally known by third parties as a result of no act or omission of Consignee; (ii) subsequent to disclosure hereunder was lawfully received without restriction on disclosure from a third party having the right to disseminate the information; (iii) was

already known by Consignee prior to receiving it from Viavi and was not received from a third party in breach of that third party's obligations of confidentiality; or (iv) was independently developed by Consignee without use of the Confidential Information of Viavi. Confidential Information as defined hereunder or any other proprietary rights relating to any Equipment ("Proprietary Information") are and shall remain vested solely in Viavi.

**6. Prohibited Uses.** Consignee shall use the Equipment only for the permitted use as described in Section 4. Any use or activity by or on behalf of Consignee associated with Equipment that is not expressly permitted by this Agreement is prohibited. Without limiting the generality of the immediately preceding sentence, Consignee agrees not, and not to allow others, to: (i) modify, alter, disassemble, cut, destroy, cleave, crush or reverse-engineer Equipment; (ii) sell, rent, loan, donate, give any guarantee or security interest in, transfer possession or purport to transfer title in any way of, Equipment to any third party; (iii) allow any employee, agent or contractor not adequately trained to work with Equipment or not involved in the testing or demonstration of the Equipment to have access to the Equipment; or (iv) use or transport the Equipment outside of Consignee's own facilities without written permission from Viavi.

**7. Costs.** Consignee shall bear (i) all costs and expenses associated with the use of the Equipment (while in Consignee's possession), including maintenance and repair; and (ii) all risk of loss and be liable for any damage to the Equipment (reasonable wear and tear excepted). Applicable shipping and insurance costs shall be borne by Consignee. Consignee will insure the Equipment against loss or damage during the term of this Agreement, and will deliver to Viavi, upon request, proof of such insurance. Viavi shall invoice and Consignee herein agrees to pay to Viavi (i) the fair market value of Equipment if such Equipment is not returned within seven (7) days after the end of the Demonstration Period (unless the parties have agreed in writing to an extension); or (ii) the new replacement cost as assessed by Viavi of the Equipment that is lost, stolen, destroyed or damaged beyond repair. Consignee shall pay to Viavi a reasonable calibration and refurbishing fee in the event that ownership labels, calibration seals or anti-tamper notices affixed to the Equipment are removed or defaced. Any item, article, accessory, document or thing supplied in conjunction with the Equipment (including operation manuals) not returned to Viavi upon termination or expiry of this Agreement shall be paid for by Consignee with a fee determined by Viavi being charged to Consignee. FCA point shall be FCA Viavi facility and risk of loss shall transfer at the FCA point (for delivery and return).

**8. No Warranty.** ALL EQUIPMENT IS PROVIDED TO CONSIGNEE "AS IS," AND VIAVI DISCLAIMS ANY REPRESENTATION, CONDITION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY WITH REGARD TO PERFORMANCE, MERCHANTABILITY, RIGHT, TITLE OR INTEREST, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS. CONSIGNEE BEARS THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF EQUIPMENT. WITHOUT LIMITATION, CONSIGNEE ASSUMES ALL RISKS AND LIABILITIES FOR THE EQUIPMENT, AND FOR THE USE, OPERATION OR STORAGE THEREOF, AND FOR INJURIES OR DEATHS OF PERSONS AND DAMAGE TO PROPERTY, HOWSOEVER ARISING, FROM OR INCIDENT TO SUCH USE, OPERATION OR STORAGE, WHETHER SUCH INJURY OR DEATH BE OF AGENTS OR EMPLOYEES OF CONSIGNEE OR OF THIRD PARTIES, AND SUCH DAMAGE BE TO PROPERTY OF CONSIGNEE OR OF OTHERS.

**9. Limitation of Liability.** TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL VIAVI, ITS OFFICERS AND DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS AND THEIR REPRESENTATIVES BE LIABLE TO CONSIGNEE OR ANY THIRD PARTY FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY COSTS OR DAMAGES, INCLUDING WITHOUT LIMITATION, LITIGATION COSTS, INSTALLATION AND REMOVAL COSTS, LOSS OF DATA, DAMAGE TO PROPERTY, LOSS OF PRODUCTION OR PROFIT, ARISING FROM ANY CAUSE WHATSOEVER INCLUDING, WITHOUT LIMITATION, FROM ANY PERSONAL INJURY OR DEATH, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES. THIS SECTION AND THE LIMITATIONS SET FORTH HEREIN, SHALL SURVIVE A FUNDAMENTAL BREACH OR

BREACHES AND/OR FAILURE OF THE ESSENTIAL PURPOSE OF THE AGREEMENT OR OF ANY REMEDY CONTAINED HEREIN.

**10. Indemnity.** Consignee shall indemnify and hold Viavi and its officers, directors, employees, contractors, agents and representatives, harmless from and against any and all claims, suits, actions, proceedings, losses, damages, penalties, liability, costs (including reasonable attorneys' fees), or any other expenses of whatever nature, including, without limitation, related to damage to property, personal injury and/or death arising out of any act, default, misrepresentation or any omission on the part of Consignee (including negligence), its agents, employees or Consignee representatives, or any third party. Consignee agrees to provide proper training, disclose hazards, and issue safety notices, to all employees, agent or subcontractor having access to Equipment. Without limiting the foregoing, Consignee shall indemnify, save and hold Viavi and its officers, directors, employees, contractors, agents and representatives harmless from and against all claims, suits, actions, proceedings, losses, damages, penalties, liability, costs (including reasonable attorneys' fees), or any other expenses of whatever nature, howsoever arising or incurred because of or incidental to the Equipment or the use, operation or storage or alleged use, operation or storage thereof.

**11. Confidentiality.** The provisions of the non-disclosure agreement or confidentiality agreement between Viavi and Consigned shall apply to the terms and conditions of this Agreement as well as the business relationship between the Parties including but not limited to business and technical discussions and other exchanges of Confidential Information or other information relating to the testing and evaluation of Equipment by Consignee. Upon expiration or termination of the Agreement, or at any time upon Consignee's request, Viavi shall return or securely destroy Consignee Confidential Information in Viavi's possession or control.

**12. Export Compliance.** Consignee represents and warrants that Consignee shall, at all times, comply with all applicable laws, governmental orders and regulations and obtain all licenses, permits and approvals required by any government regarding the use or export/import of the Equipment. Consignee shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the Equipment or any technical data (including processes and services) received from Viavi, without first obtaining any license required by the applicable government, including without limitation, the United States Government and/or any other applicable competent authority. Consignee also certifies that none of the Equipment or technical data delivered to Consignee by Viavi under this Agreement will be delivered to or made available for use by or for, any entity that is engaged in the design, development, production or use of nuclear, biological or chemical weapons or missile technology.

**13. Notices.** Any notice or consent required to be sent pursuant to this Agreement shall be in writing and shall be deemed to be validly given by the delivery to its recipient, or where a facsimile number is provided, by facsimile transmission, with an original to follow by overnight courier. Any written notice is deemed to have been received, if sent by personal delivery or registered mail, at the time of its delivery, or if transmitted by facsimile

transmission followed by overnight courier on the first (1st) business day following its sending.

**14. Termination.** Viavi may terminate this Agreement at any time on notice to Consignee, which notice shall specify a date on which such termination is to be effective. On the date specified for termination of this Agreement, Consignee agrees to: (a) immediately cease using the Equipment if it had not already done so; (b) immediately return to Viavi all Equipment in original condition, minus normal wear and tear, and all written materials and technical data describing, relating to, showing or derived from the Equipment or its use, failing such return Viavi may repossess the Equipment and charge Consignee for all of its costs and expenses incurred in doing so. Consignee consents to Viavi, its servants and agents entering Consignee premises where the Equipment is located, using such force as is necessary to repossess the Equipment. Viavi will not be liable for any damage to property caused by any person in collecting the Equipment. In the event that Consignee does not return the Equipment within the time periods described herein, in addition to any repossession rights Viavi may or may not exercise, Viavi may, at its option, charge Consignee a late fee equal to ten percent (10%) of the list price for the Equipment for each thirty (30) day period Consignee is late in returning Equipment. All other obligations which by their nature would survive termination of this Agreement shall survive termination.

**15. General.** This Agreement shall enure to and bind the Parties and their respective legal representatives, successors, assigns, subsidiaries and any party claiming by, through or under either Party. This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter of this Agreement, apart from existing non-disclosure agreements, and there are no understandings, agreements, representations, conditions, warranties, or other terms, express or implied, which are not specified herein. No amendment of any provision of this Agreement shall be valid and binding unless the same shall be in writing and signed by the Parties. Consignee shall not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Viavi, acting in its sole discretion. Waiver by Viavi of any provision herein must be in writing and shall not be deemed to be a waiver of such provision in the future or of any other provision. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever. In the event that any of the terms of this Agreement 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. The Parties hereby agree that any matters related to this Agreement shall be governed by the laws of the State of New York without reference to its conflict of law principles. Viavi and Consignee hereby irrevocably and unconditionally submit to the courts of the State of New York and all courts competent to hear appeal therefrom. This Agreement may be signed by manual or facsimile signature in several counterparts of like form, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.