



## Observer Software and Data End User License Agreement

The terms and conditions of this Software and Data End User Agreement ("EULA") apply to licensee's ("You" or "Your") use, access, copy and download, and the license and delivery of Software by Viavi Solutions Inc. or any of its subsidiaries or affiliates ("Viavi"). DO NOT INSTALL, COPY, ACCESS, OR USE THE SOFTWARE UNTIL YOU HAVE READ AND AGREED TO THIS EULA. IF YOUR ORGANIZATION HAS ENTERED INTO SEPARATE SOFTWARE LICENSE TERMS FOR THE COMMERCIAL USE OF THE SOFTWARE ("SOFTWARE LICENSE TERMS"), SUCH SOFTWARE LICENSE TERMS SUPERSEDE THE TERMS OF THIS EULA AND YOUR USE OF THE SOFTWARE SHALL BE SUBJECT TO SUCH SOFTWARE LICENSE TERMS AND THOSE REQUIRED BY YOUR ORGANIZATION. PLEASE REFER TO YOUR ORGANIZATION'S SOFTWARE LICENSE TERMS FOR ADDITIONAL INFORMATION.

**1. ACCEPTANCE.** BY SELECTING THE "ACCEPT" OPTION AND BY DOWNLOADING, INSTALLING, ACCESSING, USING OR COPYING THE SOFTWARE, YOU ACCEPT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS EULA. YOU MUST AGREE TO ALL OF THE TERMS AND CONDITIONS OF THE EULA BEFORE YOU ARE ALLOWED TO DOWNLOAD, INSTALL, ACCESS OR USE THE SOFTWARE. IF YOU DO NOT AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THE EULA, YOU MUST SELECT THE "DECLINE" OPTION AND YOU MUST NOT INSTALL, USE, ACCESS, OR COPY THE SOFTWARE.

### 2. DEFINITIONS.

**"Confidential Information"** means any technical or other information related to Viavi's Goods and Services (including, but not limited to, 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 Customer and/or You. Confidential Information does not include material or information that (i) is generally known by third parties as a result of no act or Your omission; (ii) subsequent to disclosure hereunder was lawfully received by You without restriction on disclosure from a third party having the right to disseminate the information; (iii) was already known by You 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 You without use of Confidential Information of Viavi.

**"Customer"** means the party that has licensed the Software under Software License Terms and for which You are entitled to become an End User.

**"Documentation"** means Viavi's information manuals that (i) contain operating instructions and performance specifications for the Products, Software, and/or Services; (ii) Viavi delivers to Customer and Customer makes available to You in connection with the Products, Software, and/or Services; and (iii) Viavi generally makes available to all users of its Products, Software, and/or Services.

**"Firmware"** means firmware and software that is (i) installed on tangible products, including back-up copies of such software that are delivered with such tangible products, and (ii) not referred to by Viavi with individual product numbers and line item prices.

**"Goods"** means Products, Software and Documentation.

**"Intellectual Property"** means any computer program or routine (in object code, source code, or embedded format, regardless of the medium on which it resides), algorithms, know-how, firmware, hardware and/or software configurations, inventions, documentation, translations, text and other works of authorship, data, databases, information, mask works, designs, utility models, symbols, logos, marks, names, procedures, processes, methods, improvements and any other intangibles as well as the prototypes, samples, copies, and other materialized forms of the foregoing intangibles.

**"Product"** means any tangible products or parts thereof that Viavi agrees to deliver or delivers to Customer and Customer delivers to you, including any Firmware.

**"Proprietary Rights"** means any and all rights, title, ownership and interests in and to copyrights, mask work rights, industrial designs, trademarks, service marks, trade names, trade secrets, patents, and any other rights to Intellectual Property, recognized in any jurisdiction or country of the world, whether or not registered or perfected.

**"Services"** means any services provided by Viavi, including without limitation, any Installation Services, Training Services, Software Maintenance Services, Time & Materials Services, and/or Fixed Fee Services, as applicable (such terms as defined in the applicable offering-specific terms).

**"Software"** means any computer software in object code, source code, or other format that (1) Viavi agrees to deliver or make available to You or (2) Viavi agrees to deliver or make available to Customer and Customer makes available to You, excluding Firmware. For greater clarity, no licenses under this EULA shall extend to any source code.

**"Work Product"** means any tangible or intangible results or deliverables that Viavi agrees

to create or deliver, or intentionally delivers to Customer and Customer delivers to You, as a result of Viavi performing Services for Customer, including, but not limited to, configurations, computer programs or other information, or customized hardware, and any Intellectual Property developed in connection therewith and Proprietary Rights related thereto.

**"Single User License Model"** means a license model under which Customer may install and permit End-Users to install and use one (1) copy of the Software on either (i) one (1) stand-alone computer or (ii) one (1) Product, neither of which may be connected to a network in a manner that allows more than one (1) end-user to access, manipulate or otherwise create or use a copy of the Software. Customer may not use the Software other than on one (1) computer or Product.

**3. NO SALE.** Software and Documentation (and any copies thereof), are licensed only, not sold. Viavi reserves all rights, except as expressly granted in this EULA. The Software is protected by all applicable intellectual property and copyright laws. Viavi or its subsidiaries, affiliates, and suppliers own the intellectual property rights in the Software.

### 4. LICENSE.

**4.1 License Grant.** Subject to the terms and conditions of this EULA, Viavi grants You a personal, non-sublicensable, non-exclusive, non-transferable, limited license to use a single copy of the applicable Software solely in object code form and in accordance with the applicable Documentation within the scope of the Single User License Model. Viavi's license grant is conditioned upon Your continuous compliance with all license limitations and restrictions described in this EULA and if You violate any of these limitations or restrictions or any other terms of this EULA, the license grant will automatically and immediately terminate without notice from Viavi. You acknowledge that any usage of the Software outside the scope of this EULA and the scope of any statutory rights constitutes an infringement of Viavi's and/or its licensors' Intellectual Property and/or Proprietary Rights as well as a material breach of this EULA.

**4.2 License Key Management.** Viavi may, at its sole discretion, use or combine license management programs with any Software, which automatically monitor and enforce license restrictions and limitations, provided that such precautions shall not relieve You of Your primary responsibility to comply with this EULA. You expressly agree to be fully responsible for compliance with this EULA, to take all actions reasonably requested by Viavi or the Customer to protect the rights of Viavi in the Software and Documentation, and to indemnify and hold Viavi harmless against any loss resulting from a breach of this EULA by You or any individual or entity that You caused, enabled or allowed to use the Software in any manner not authorized under this EULA.

**4.3 License Restrictions.** To the extent permitted by applicable law, You agree not to (i) translate or create any derivative works based on the Software or Documentation or modify or alter the Software or Documentation in any manner whatsoever; (ii) sell, sublicense, lease, rent, loan, assign, convey, distribute, or otherwise transfer the Software or Documentation to any third parties; (iii) copy or use the Software or Documentation for any purpose or in any manner not expressly permitted in this EULA; (iv) use the Software outside the permitted scope of the applicable License Models; (v) use the Software or Documentation, in any format, for or in the interest of any third party other than Yourself; (vi) disclose the results of any benchmark test of the Software to any third party, without Viavi's prior written approval; or (vii) permit or encourage any third party to do any of the foregoing. You acknowledge that the structure, organization and source code of the Software remain confidential trade secrets of Viavi and its licensors. You shall cooperate with Viavi, and shall render all reasonable assistance requested by Viavi, to assist Viavi in preventing and identifying any use of, or access to, the Software and Documentation, in violation of this EULA. Any computer(s) and/or server(s) contemplated herein shall only contain one (1) single core, single central processing unit (CPU) per such computer or server. For greater clarity, no source code shall be licensed under this EULA (excluding possibly under the Specific Licenses).

**4.4 Specific Licenses.** To the extent that You are permitted by Viavi to use any Software that is accompanied by or made available subject to end-user license terms and/or other terms (in shrink-wrap, click-through or other format) originating from third party licensors ("**Specific Licenses**") (i) You shall agree to such Specific Licenses vis-à-vis the licensor specified in such Specific Licenses; (ii) to the extent such Specific Licenses conflict with Section 4.1 (License Grant) through 4.3 (License Restrictions), the Specific

Licenses shall take precedence with respect to the software (or portion thereof) subject to such Specific Licenses; and (iii) Your right to use the software (or portion thereof) subject to such Specific Licenses will be defined and restricted as set forth in such Specific Licenses. Original software developed by Viavi is not subject to Specific Licenses, including open source software licenses. Terms of this Software License that are different from Specific Licenses are offered by Viavi alone.

## 5. LIMITATION OF LIABILITY.

**5.1 Limitations.** IN NO EVENT SHALL Viavi HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, REVENUE, OR DATA, INSTALLATION OR REMOVAL COSTS, OR COST OF COVER. THE LIABILITY OF Viavi FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH ANY GOODS OR SERVICES SHALL NOT EXCEED A TOTAL AMOUNT EQUAL TO THE PURCHASE PRICE PAID OR PAYABLE BY CUSTOMER FOR THE GOODS OR SERVICES PRINCIPALLY RESPONSIBLE FOR SUCH DAMAGES WITHIN THE LAST 12 MONTHS PRECEDING THE CLAIM UNDER THIS EULA.

**5.2 Scope.** THE LIMITATIONS OF LIABILITY IN SECTION 5.1 (LIMITATIONS) SHALL APPLY TO ANY DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF VIAMI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE UNDER THESE SOFTWARE LICENSE TERMS OR ANY OFFERING-SPECIFIC TERMS FAIL OF THEIR ESSENTIAL PURPOSE.

**6. CONFIDENTIAL INFORMATION.** You will protect the secrecy of Confidential Information with due care. You will not (i) disclose Confidential Information to anyone, except to persons in its own organization who have a need to know in order to fulfill Your obligations or exercise Your express rights under the EULA and who are bound by non-disclosure obligations requiring them to keep the Confidential Information secret; and (ii) use Confidential Information except as necessary for the performance of Your obligations or the exercise of Your express rights under the EULA.

## 7. RIGHTS IN INTELLECTUAL PROPERTY AND TOOLING.

**7.1 All Rights Reserved.** Except as expressly agreed otherwise in writing, Viavi and its licensors reserve all rights, title and interests, including Proprietary Rights, to (i) any Software, Firmware and/or Documentation, and (ii) all Intellectual Property in and/or related to the Goods and Services. Software, Firmware and Documentation are licensed, not sold. The use of a copyright notice on any Good or Service shall not be taken to indicate that it has been published. All right, title and interest in and to any Work Product, Intellectual Property and/or Proprietary Rights, whether or not subject to statutory protection, which are made, created, developed, written, conceived or first reduced to practice by Viavi solely, jointly or on its behalf, in the course of, arising out of, or as a result of Services performed, and any related tooling, set-up, fitting-up and preparation charges whether or not invoiced, shall belong to and be the sole and exclusive property of Viavi.

**7.2 No Reverse Engineering.** Except to the extent You are expressly permitted to do so under applicable law, You agree not to reverse engineer, translate, create derivative works of, decompile, separate, and/or disassemble, any Goods or portions thereof nor allow or assist others to do so.

**7.3 Actions under Mandatory Law.** To the extent that You are expressly permitted by applicable mandatory law to take any actions that are prohibited under this EULA, included, but not limited to, reverse engineering, You agree to refrain from exercising such rights unless and until You have given Viavi three (3) weeks' prior written notice of Your intent to exercise any such rights and Viavi has not offered reasonable alternatives to Your exercise of the mandatory rights within such three (3) week period.

**7.4 Marks and Labels.** You acknowledge the goodwill associated with Viavi's trademarks. You shall not obscure, remove or alter any trademarks, patent numbers, labels, serial numbers, product identification, copyright or other notices affixed to any Goods and Services, related documentation or packaging, without the express prior written consent of Viavi. You shall display Viavi's and its licensors' names and logos as well as the name of any Goods and Services on each copy of Software or Documentation made by You (provided that You shall not make any copies except as permitted by Viavi in a duly signed writing).

**7.5 Firmware License.** Subject to the terms and conditions of this EULA, Viavi grants You a non-exclusive, limited and restricted license to use Firmware as part of the Product on, with, or for, which it is delivered or made available: Viavi does not permit You to make any copies or derivative works of Firmware and You may not transfer Firmware, except as part of the same Product on, with, or for, which it is delivered or made available. Firmware may include license terms provided by Viavi and/or its third party licensors which will apply to the use of the Firmware, and take precedence over these license terms.

**7.6 Documentation License.** Viavi grants You a non-sub-licensable, non-exclusive, non-transferable, limited license to use the Documentation that Viavi or Customer provides

to You, solely for Your internal business purposes solely in support of Your use of the Goods and Services. You are not authorized to copy or modify Documentation, except as expressly permitted by Viavi in a duly signed writing.

## 8. DATA COLLECTION POLICY.

VIAMI will not intentionally collect confidential or personally identifiable information from Your network. You acknowledge that in order to utilize VIAMI Observer's mapping services, certain information, such as an IP address of your browser and site street addresses (as specified by You) may be transmitted to a third party service for resolving the specified street addresses to GPS coordinates and providing enhanced Observer map services to You or Customer.

## 9. DISCLAIMERS.

**9.1 Disclaimer.** VIAMI MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES TO YOU WITH REGARD TO ANY SOFTWARE. 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, CONDITION OR REPRESENTATION MAY BE BASED, INCLUDING, WITHOUT LIMITATION, CONTRACT, COURSE OF DEALING, USAGE, OR TRADE PRACTICE AND, WITHOUT LIMITING THE FOREGOING, MAKES NO WARRANTY THAT THE SOFTWARE WILL BE ERROR-FREE, THAT ITS PERFORMANCE OR OPERATION WILL BE UNINTERRUPTED, OR THAT THE SOFTWARE WILL PERFORM ON ANY HARDWARE OR WITH ANY SOFTWARE, EXCEPT AS EXPRESSLY CERTIFIED AS INTEROPERABLE BY Viavi IN THE APPLICABLE DOCUMENTATION. THE SOFTWARE IS NOT FAULT-TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE AS SOFTWARE FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

**9.2 U.S. Government End Users.** The Software is made available to non-Department of Defense (DOD) agencies of the United States Government with RESTRICTED RIGHTS and its supporting documentation is provided with LIMITED RIGHTS. Use, duplication, or disclosure by the United States Government is subject to the restrictions as set forth in subparagraph "C" of the Commercial Computer Software - Restricted Rights clause at FAR 52.227-19 or any successor clause. In the event the sale is to a DOD agency, the Government's rights in software, supporting documentation, and technical data are governed by the restrictions in the Technical Data Commercial Items clause at DFARS 252.227-7015 and DFARS 227.7202 or any successor clauses. The Software is a trade secret of Viavi for all purposes of the Freedom of Information Act or its successor legislation or any other disclosure statute, regulation or provision and in all respects is and shall remain proprietary to Viavi or its licensors. The U.S. Government must refrain from changing or removing any insignia or lettering from the Software or from producing copies of the Software and manuals (except one copy of the Software for backup purposes). Use of the Software shall be limited to the facility for which it is acquired. All other U.S. Government personnel using the Software are hereby on notice that use of the Software is subject to restrictions that are the same as, or similar to, those specified above.

## 10. TERMINATION.

**10.1 Termination for Cause.** Without limiting Section 4.1 (License Grant) with respect to the automatic termination of license rights for specific Software, Viavi may terminate — at Viavi's sole discretion either all or specific — licenses to Software granted hereunder, by giving written notice to You or Customer, effective immediately, if within ten (10) days of Viavi's delivery of a reasonably detailed written request to cure, You have not cured all breaches of payment obligations, license limitations and restrictions, including, but not limited to, the License Models, or any other substantial obligations under this EULA. Upon such termination, You shall immediately pay all outstanding fees, cease use of all Software and related Documentation, return or delete, at Viavi's request and sole discretion, all copies of the Software and Documentation in Your possession, and certify compliance with all foregoing obligations to Viavi in writing. These termination rights are in addition to any other rights and remedies that Viavi may have at law or in equity.

**10.2 Survival.** Viavi's General Terms and this EULA, except Sections 4.1 (License Grant), 7.5 (Firmware License), and 7.6 (Documentation License) shall survive termination of any or all licenses granted hereunder.

## 11. MISCELLANEOUS

**11.1 Compliance.** You shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies and procedures of the applicable government and other competent authorities. You will indemnify and hold Viavi harmless for any violation or alleged violation by You of such laws, rules, policies or procedures. You shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the Goods 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. You also certify that (i) none of the products or technical data supplied by Viavi will be sold or otherwise transferred to, or made available for use by or for, any entity that is: (a) located in an "embargoed" country in accordance with any applicable government list(s) including without limitation, those of the United States, (b) a 'denied' or 'restricted' party on any applicable government list(s) including without limitation, those of the United States, and/or (c) engaged in the design, development, production or use of nuclear, biological or chemical weapons or missile technology; (ii) no relevant agency or authority has suspended, revoked or denied Your export and/or import privileges; and/or (iii) You are not located in or under the control of a national or resident of, a jurisdiction where this transaction is prohibited.

**11.2. Choice of Law and Jurisdiction.** The EULA 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; (ii) the Uniform Computer Information Transactions Act; and/or (iii) principles of conflicts of law and that body of law applicable to choice of law. Viavi and You 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. You waive 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.

**11.3 Entire Agreement.** This EULA, any applicable Specific Licenses, and the Viavi Software License Terms contain the entire agreement between Viavi and You concerning the subject matter of this EULA, and apart from any existing non-disclosure agreements. Any notices and any modifications of, or amendments to, the EULA 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 and/or Customer 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 at the address specified in the preamble of this EULA with a copy to JDS Uniphase Corporation, Attn. Legal Department, 430 N. McCarthy Blvd., Milpitas, CA 95035 or at such other address(es) as may be specified by Viavi to You in writing as the appropriate address for notices.

**11.4 Dates and Timelines.** All references to days shall be to calendar days, except as expressly noted otherwise. All scheduled shipment dates, delivery dates, and other dates are non-binding estimates, unless a senior executive of Viavi (vice president and above) expressly agrees in a duly signed writing that a certain date shall be legally binding.

**11.5 No 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.

**11.6 Assignment and Delegation.** You may not assign, by operation of law or otherwise, any of Your rights or obligations under this EULA, and any (purported) assignment, either voluntarily or by operation of law, is invalid. Any warranties extended by Viavi are nontransferable and for Your benefit only. Viavi may assign its rights and delegate its obligations.

**11.7 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 supplies of Goods and Services are limited, Viavi shall have the right to prorate the available supply in such a manner as it, in its sole discretion, determines appropriate.

**11.8 Severability.** If and to the extent that any of the terms of this EULA 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 EULA, but only to the extent that such term is illegal, it being the intent and agreement of the parties that the EULA 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 EULA shall remain in full force and effect.

**11.9 No Authority.** The parties to this EULA are independent contractors. No relationship of principal to agent, master or servant, employer to employee or franchiser to franchisee

is established hereby between the parties. 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. Viavi neither assumes nor authorizes any third party, person or entity to assume or accept any liability or obligation, or to make any commitment for Viavi with regard to the Goods and/or Services.

**11.10 Interpretation.** In this EULA, unless a contrary intention appears: (i) the terms, "hereof", "hereunder" and similar expressions refer to this EULA and not to any particular portion hereof and include any agreement supplemental hereto; (ii) words importing a singular number only shall include the plural and vice versa; (iii) the term "including" means "including without limitation"; (iv) other grammatical forms of defined words or expressions have corresponding meanings; (v) a reference to a section, document or agreement, including this EULA, includes a reference to that section, document or agreement as amended from time to time, as permitted hereunder; and (vi) the division of this EULA into sections and the insertion of headings are for convenient reference only, and shall affect neither the construction nor the interpretation of this EULA.