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## 10. MISCELLANEOUS

**10.1 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.

**10.2. 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.

**10.3 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 Viavi Solutions Inc., Attn. Legal Department, 7047 e. Greenway Parkway, Suite 250, Scottsdale, Arizona 85254 or at such other address(es) as may be specified by Viavi to You in writing as the appropriate address for notices.

**10.4 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.

**10.5 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.

**10.6 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.

**10.7 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.

**10.8 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.

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