



OBSERVER™ PROFESSIONAL SERVICES TERMS

These Observer Professional Services Terms ("Terms") apply to the consulting and training services offered by Viavi Solutions Inc. ("Viavi") for the Observer™ products. These Terms are in addition to Viavi's General Terms, which are incorporated by reference herein and are either attached hereto, or available at www.viavisolutions.com/terms or on request.

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

"Observer" means the Viavi software and hardware products making up Viavi's Observer™ solution including, but not limited to: Observer, GigaStor, Probes, Apex, Observer Management Server, SightOps, Matrix and nTAPS.

"Observer Professional Services" means consulting or training services for the Observer products performed on-site or virtually by a Viavi professional services engineer, or certified Viavi partner. Observer Professional Services offerings are defined by a SKU each consisting of pre-defined time period of specially trained Viavi service professional to provide assistance with activities such as: training; system configuration and optimization; and recommendations on usage techniques.

"Participants" means the individuals that Customer registers for, and sends to, training classes.

"Service Event" means a scheduled on-site day or block of days, or scheduled virtual block of hours which Viavi performs Observer Professional Services.

"Services Period" means the period for which purchased Observer Professional Services apply and must be consumed.

"Training Materials" means class materials, instruction in written, electronic, visual, or oral form and any know-how provided by the Viavi professional services engineer in connection with the Observer Professional Services.

2. OBSERVER PROFESSIONAL SERVICES

2.1 Provision of Observer Professional Services.

- a) Observer Professional Services will be provided to Customer by Viavi as on-site or virtual Service Events as detailed in the Viavi SKU description for the ordered service.
- b) Viavi will work with Customer to schedule Service Events at a time that is mutually agreed during the Services Period. Customer must schedule Service Events within three (3) months of receipt of order.
- c) The Services Period for all Observer Professional Services is six (6) months from date of purchase.
- d) Viavi is not responsible for any Observer Professional Services time lost or consumed due to delays with Customer readiness for the scheduled Service Event; including any time spent waiting or otherwise supporting site/system preparation during a scheduled Service Event.
- e) Unless explicitly specified within the Observer Professional Services SKU description, travel expenses are not included. Viavi will invoice any actual travel costs associated with the delivery of an Observer Professional Services SKU as a separate invoice line item.
- f) The Observer Professional Services offered by Viavi is fixed in scope and price. No price changes, future discounts and / or refunds will apply where a Customer does not utilize any or all of the services offered.

2.2 Customer Responsibilities. Customers are responsible for having the products requiring the Observer Professional Services installed, cabled and powered prior to a scheduled Service Event. Customers must also provide Viavi a topology map of the network.

3. ACCEPTANCE. Observer Professional Services are deemed accepted upon completion of the work and do not require acceptance testing or a formal acceptance by Customer or Participants.

4. INVOICING. Viavi will invoice the Customer for Observer Professional Services in advance of the commencement of the scheduled Service Events, at the agreed upon rates and with payment being made within thirty (30) days of the invoice date and in accordance with the General Terms. At the end of the Service Period there will be no further obligation due from Viavi.

5. LICENSE.

5.1 License to Training Materials. Viavi grants to Customer a non-exclusive, non-transferable, and non-sublicensable license to use any Training Materials solely in conjunction with the Observer Professional Services being offered by Viavi if and to the extent that (i) Viavi intentionally makes such Training Materials available to Customer as part of the Observer Professional Services; (ii) the Training Materials are not covered by any other written terms or agreements between the parties (otherwise such other terms or agreements, e.g., Viavi Software License Terms shall exclusively govern); and (iii) Customer complies with all provisions of these Terms, including, but not limited to, its obligation to make timely payments of all fees and other amounts hereunder, and its confidentiality obligations under Viavi's General Terms. Customer agrees not to re-use, create derivative works of, reverse engineer, copy, or otherwise disseminate the Training Materials without the written consent of Viavi.

5.2 License to Customer Contributions. Customer grants to Viavi a non-exclusive, perpetual, irrevocable, royalty-free, transferable, sublicensable, and unlimited license to use and commercialize in any manner any contributions and/or information that Customer's representatives and/or Participants make in classes or related to Observer Professional Services.

5.3 All Other Rights Reserved. Viavi reserves ownership, title, and all rights and interest, including, but not limited to, all Work Product, Intellectual Property, and/or Proprietary Rights not expressly granted to Customer in these Terms.

6. LIMITED WARRANTY AND DISCLAIMER.

6.1 Limited Warranty. Viavi will perform the Observer Professional Services in a professional manner. Training Materials are provided "as is" without any warranty.

6.2 Exclusive Remedy. If the Observer Professional Services materially fail to conform to the limited warranty set forth in Section 6.1 (Limited Warranty), Customer may terminate Observer Professional Services in accordance with Section 7.2 (Termination for Cause) if Viavi fails to cure a non-conformance within two (2) days after receiving Customer's detailed written request to cure the non-conformance. Termination shall not affect (i) Customer's obligations to pay for Observer Professional Services already performed before Viavi receives Customer's request to cure; or (ii) any other obligations of Customer under these Terms. THE REMEDY EXPRESSLY PROVIDED OR REFERENCED IN THIS SECTION 4.2 WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST VIIVI WITH RESPECT TO ANY NON-CONFORMANCE OF OBSERVER PROFESSIONAL SERVICES.

6.3 Disclaimer. EXCEPT AS SPECIFIED IN SECTION 6.1 (LIMITED WARRANTY), VIIVI MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY OBSERVER PROFESSIONAL SERVICES OR TRAINING MATERIALS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VIIVI DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS, AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH IMPLIED WARRANTY MAY BE BASED, INCLUDING, WITHOUT LIMITATION, CONTRACT, COURSE OF DEALING, USAGE, OR TRADE PRACTICE. CUSTOMER SHALL HAVE NO WARRANTY CLAIM UNDER SECTION 4.1 (LIMITED WARRANTY), UNLESS VIIVI RECEIVES CUSTOMER'S WRITTEN REQUEST TO CURE A NON-CONFORMANCE WITHIN TWO (2) DAYS AFTER ITS OCCURRENCE.

7. TERM AND TERMINATION.

7.1 Term. The term of any Observer Professional Services will continue until (i) completion of the Observer Professional Services; (ii) end of the Service Period; or (iii) termination in accordance with this Section 7.

7.2 Termination for Cause. Either party may terminate any or all orders of Observer Professional Services by written notice, effective immediately, if the other party fails to cure any material breach of these Terms within two (2) days after receiving written notice from the non-breaching party detailing the alleged material breach.

7.3 Consequences. Customer shall pay to Viavi all fees agreed-upon with respect to the terminated Observer Professional Services, unless Customer terminates because of Viavi's material breach of these Terms in accordance with Section 7.2 (Termination for Cause), in which case Customer shall not be obligated to pay for the class directly affected by the breach. In case of any termination, Customer shall return to Viavi all Training Materials, Viavi's Confidential Information and other tangibles and intangibles received in connection with the Observer Professional Services, without retaining any copies thereof, and all licenses granted to Customer under these Terms shall be automatically revoked.

7.4 Cancellation or Rescheduling. In the event Customer desires to cancel or reschedule Observer Professional Services, Customer agrees to comply with Viavi's then current cancellation or rescheduling policies available on request.

7.5 Survival. Section 5.2 (License to Customer Contributions), 5.3 (All Other Rights Reserved), 6 (Limited Warranty and Disclaimer) and Section 7 (Term and Termination) of these Terms and Viavi's General Terms shall survive any termination of these Terms.