



OBSERVER SENTRY SUBSCRIPTION SERVICES TERMS AND CONDITIONS

The Subscription Services shall be governed by these Terms and Conditions, the quotation sent to Customer by Viavi ("Quotation"), Viavi's General Terms, its Software License Terms and any valid Statement of Work (SOW), if applicable, between the parties. These documents comprise the entire agreement between the Customer and Viavi or any of its affiliates shall provide with respect to Subscription Services. In case of conflict, the order of precedence is as follows: these Terms and Conditions, the General Terms, any SOW between the parties, and the Quotation. These Terms and Conditions describe the Subscription Service that Viavi will provide to and perform for the Customer. The Subscription Services and any related Documentation shall be provided in English.

If Viavi performs any services that are outside the scope of the Subscription Services (as defined herein) - including, but not limited to, hosting startup services which are sold separately - such services will be rendered at Customer's additional expense under a separate Statement of Work signed between the parties; provided, however, that Viavi shall not be obligated to perform any services outside the scope of the applicable Subscription Services. Viavi's obligation under these Terms and Conditions shall solely be to undertake the agreed Subscription Services activities and not to achieve certain technical, economic, or other results.

Viavi does not accept, expressly or impliedly, and Viavi hereby rejects and deems deleted, any additional or different terms or conditions that any potential or actual customer ("Customer") 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 Subscription Service or otherwise proceeding with any transaction after receipt of the Agreement (as defined below) or after otherwise being notified that such transactions are subject to the Agreement, Customer agrees to the terms of the Agreement. If tender of these terms is deemed an offer, acceptance is expressly limited to the terms of the Agreement.

1. Definitions.

Agreement means a contract between Viavi and the Customer that is formed by reference to these Terms and Conditions.

Authorized Users shall mean the users designated by customer according to Section 7.

Affiliate means an entity which directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with, another entity, whereby "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ownership of voting securities, by contract, or otherwise, and whereby "owns" means the beneficial ownership of more than 50% of the voting securities or other equivalent voting interests of the entity.

Customer Data means all data provided to VI.VI by the Customer during the Service Subscription Period, including but not limited to data uploaded from Viavi hardware or software, including Personal Data.

Customer Personal Data means the Personal Data on which Viavi carries out Processing for the purpose of fulfilling this Agreement.

Confidential Information means Customer Data and/or any technical or other information related to Viavi's Subscription 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 either party discloses to the other party under this Agreement. 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 the recipient party; (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 the recipient party prior to receiving it from the disclosing party and was not received from a third party in breach of that third party's obligations of confidentiality; or (iv) was independently developed by the recipient party without use of Confidential Information of the disclosing party.

Data Protection Law means any law, rule, regulation, declaration, decree, directive, statute or other enactment, order, mandate or resolution issued or enacted by any domestic or foreign, national, supra-national, state, county, municipal, local, territorial

or other government or bureau, court, commission, board, authority, or agency, anywhere in the world, relating to data security, data protection and/or privacy, including the EU General Data Protection Regulation 2016/679.

Documentation means all concepts, ideas, studies, artwork, proofs, text, software, designs, processes, techniques, know-how, documents, inventions, information, drawings, programs, campaigns, trademarks, service marks, slogans, written materials, photographs, graphic materials, audio-visual works, music, transcriptions, and other documents of Viavi that were created prior to, or independent of, the purposes of this Agreement.

Personal Data means any information relating to an identified or identifiable natural person or persons "Data Subject(s)". In the context of this Agreement, Personal Data includes, but is not limited to, the name, email address, work address, telephone number, other contact details of individuals within VI.VI and Customer, and any Customer Personal Data.

Processing means any operation or set of operations that is performed upon Customer Personal Data, whether or not by automatic means, including, but not limited to, obtaining, developing, producing, collecting, recording, organizing, structuring, accessing, using, adapting, altering, modifying, retrieving, consulting, copying, reproducing, analyzing, disclosing, disseminating, making available, aligning, combining, blocking, restricting, transmitting, transferring, selling, renting, storing, retaining, destroying, deleting, or erasing such Customer Data.

Processor is Viavi.

Subscription Service(s) means the Observer Sentry hosted service that Customer has ordered (as defined in the Quote from Viavi).

Subscription Service(s) Activation is the point where Viavi has completed commissioning of the Subscription Services enabled it for Customer access and use or shared details of connection with Customer.

Subscription Period has the meaning defined in section 4 below.

Update means minor technical and functional improvements and adjustments for the Subscription Services. Updates also include patches and hotfixes for the Subscription Services.

Upgrade means major updates of the existing version of the Subscription Services, in particular significant improvements, and quality enhancements of the existing version to a higher version.

2. Customer Right of Access. Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, Viavi hereby grants to Customer a non-exclusive, non-transferable right during the Subscription Period to permit Authorized Users to access and use the Subscription Services, (a) in accordance with these Terms and Conditions, (b) in accordance with the applicable Documentation supplied by Viavi. The right of access and use may not be sub-licensed by Customer to third parties other than Customer's Affiliates. Customer may allow its Affiliates to use the Subscription Services provided that Customer remains liable for its Affiliates' compliance with these Terms and Conditions. The Subscription Services may be accessed or used only by Viavi Authorized Users and only with valid user IDs granted to Customer by Viavi and Customer may only access the Service using Viavi-supported web browsers and other Viavi-supported interfaces. Except as set forth in this Section, no other right or license of any kind is granted by Viavi to Customer hereunder with respect to the Subscription Services.

3. Viavi Use of Customer Data. All Customer Data is owned exclusively by Customer. Customer Data shall be considered Confidential Information by Viavi and used by Viavi and / or certain third parties to fulfil its obligations in providing the Subscription Services described herein. Any Customer Data provided to Viavi shall be held in accordance with section 21 below.

4. Term and Renewal.

4.1 The Subscription Period shall commence upon Subscription Services Subscription Activation (or as defined in a Statement of Work associated with the order) and shall continue for an initial Subscription Period of one (1) year unless otherwise specified in writing.

4.2 Renewal and Termination. Customer shall advise Viavi of their intent to renew the Subscription Services thirty (30) days prior to expiration of the Subscription Period. In the event the Subscription Service is not renewed for any reason, Customer's access will immediately stop and data from the servers will be permanently deleted. These Terms and Conditions continue to apply until Customer's access to the Subscription Service is fully terminated.



5. Termination for Cause. Either party may terminate this Agreement by written notice, effective immediately, if the other party fails to cure any material breach of these Terms and Conditions within thirty (30) days after receiving a written notice from the non-breaching party detailing the alleged material breach.

6. Payment. Unless otherwise mutually agreed by the parties, the Customer shall pay Viavi-submitted invoices in full within thirty (30) days of the invoice date, without any deductions, withholdings, or off-set. If Viavi does not receive all amounts when due (i) any due and unpaid portion of the fees shall bear interest in the amount of one and one half percent (1.5%) per month (annual rate 19.56%) or the maximum rate allowed by law, whichever is less, (ii) Viavi may immediately suspend subscription, and (iii) Viavi may require payment in advance for any subsequent renewals. Viavi's right to terminate this Agreement for due cause remains unaffected.

7. Identification Number and Passwords. Viavi shall provide Customer with a process for designating Customer's employees to become Authorized Users and for permitting such employees to register, obtain a user ID, and establish a password in order to access and use the Subscription Services. Customer and Viavi will take reasonable measures to protect all user IDs and passwords and limit access only to Authorized Users.

8. Limitations on License. Customer shall use the Subscription Service only in accordance with this Agreement and all applicable laws, rules, and regulations. Other than as permitted herein, Customer shall not permit any Customer employee or any third party to: (a) copy all or any portion of the Subscription Service; (b) decompile, disassemble or otherwise reverse engineer the Subscription Service, or determine or attempt to determine any source code, algorithms, methods, or techniques used or embodied in Subscription Service; (c) translate, create derivative works based on, or modify Subscription Service; (d) remove or alter any copyright, trademark, confidentiality, or other proprietary notices, legends, symbols, or labels appearing on or in Subscription Service; (e) perform, or release the results of, benchmark tests or other comparisons of Service with other software or services; or (f) access or use the Subscription Service for or in connection with providing services to third parties or to process data or other information on behalf of any third party except where expressly permitted by the applicable law. Customer acknowledges (and shall inform all Authorized Users) that any access to or use of the Subscription Service inconsistent with this Agreement is prohibited and constitutes infringement of the copyrights and other rights of Viavi and/or its licensors. Customer hereby acknowledges and agrees that Customer is liable for the compliance by each of the Authorized Users with the Terms and Conditions of this Agreement.

9. Limited Warranty.

9.1 Viavi hereby represents and warrants that Viavi shall use commercially reasonable efforts to provide the Subscription Service substantially in accordance with the Documentation. In case of defects or non-conformance of the Subscription Service and its documentation, Customer shall report this immediately to Viavi, by raising a support ticket, and provide detailed information relevant for identifying the defect or non-conformance. THE WARRANTIES SET FORTH IN THIS SECTION CONSTITUTE THE ONLY REPRESENTATIONS AND WARRANTIES MADE BY Viavi WITH RESPECT TO. Viavi MAKES NO OTHER, AND HEREBY DISCLAIMS ALL OTHER, REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY. Viavi EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND ALL WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. Viavi DOES NOT WARRANT THAT ANY USE OF OR ACCESS TO THE SUBSCRIPTION SERVICE SHALL BE ERROR-FREE OR SECURE; THAT OPERATION OF THE SUBSCRIPTION SERVICE SHALL BE UNINTERRUPTED; OR THAT ERRORS OR FAILURES WILL BE CORRECTED OR REMEDIED; AND HEREBY DISCLAIMS ANY AND ALL LIABILITY IN CONNECTION THEREWITH. THIS SECTION SHALL BE ENFORCEABLE TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW. NO INFORMATION OR ADVICE (WHETHER WRITTEN, ORAL OR OTHERWISE) PROVIDED BY Viavi OR ITS REPRESENTATIVES SHALL CREATE ANY WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT. If Viavi is in material breach of this warranty, Viavi shall use commercially reasonable efforts to correct or provide a workaround for such defect or non-conformance at no additional charge to Customer in the course of its support services pursuant to Section 10.

9.2 *Excluded Causes.* Damages for defects that were already existing at the time this Agreement was concluded (Section 536a (1), 1. Variant of the German Civil Code –

BGB) are excluded. Customer has no warranty rights with respect to defects or non-conformities caused by or related to (i) use of the Subscription Service with hardware or software that was not expressly specified in writing by Viavi; and (ii) Customers failure to follow Viavi's operating instructions. ;(iii) changes to the Customer environment, in which the Subscription Service was provided; or (iv) acts or omissions of persons other than Viavi or its authorized representatives.

10. Support. Viavi shall provide support services for the Subscription Service during the term of this Agreement. Details of support services are described in Viavi's terms for "System Software Maintenance and Support Services - Standard" or "System Software Maintenance and Support Services - Premium", as applicable, which are available at: <https://www.viavisolutions.com/en-us/corporate/legal/terms-conditions/customers>.

11. Intellectual Property Warranty. Viavi represents that, to its knowledge, the Subscription Service, as and in the form delivered to Customer hereunder, does not infringe any third party's copyright, trademark or trade secret rights.

12. Proprietary Rights. As between Viavi and Customer, Viavi and its licensors have and retain all right, title and interest, including all intellectual property rights, in and to the Subscription Service, including without limitation all and any data or information used to manage and operate the Subscription Service. Customer shall not take any action to jeopardize, encumber, limit, or interfere in any manner with Viavi's or its licensors' ownership of and rights with respect to the Subscription Service, or such data. Customer shall have only those rights in and to the Subscription Service as are expressly granted to it under this Agreement and no other rights shall be implied.

12.1 Viavi Ownership. Viavi Documentation shall be deemed to include any and all Documents and enhancements, Updates, improvements or other modifications to any of such Documentation, developed or owned by Viavi whether developed before, during or after performance of the Subscription Services. As between Customer and Viavi, Viavi and its licensors and suppliers shall own all right, title and interest, including all intellectual property rights, in and to the Viavi Documentation Viavi hereby grants Customer a non-exclusive, non-transferable license to reproduce, modify, distribute, and use the Viavi Documentation solely for Customers internal business purposes.

13. Confidential Information. The recipient party will protect the secrecy of the disclosing party's Confidential Information with due care. The recipient party 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 its obligations or exercise its express rights under the Agreement 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 its obligations or the exercise of its express rights under the Agreement.

14. Data Retention and Incident Notification. Viavi shall retain Customer Data only for as long as necessary to perform the Subscription Services or as required by applicable law. Viavi shall, upon the Customer's written request following the expiration or termination of the Subscription Period, return or safely destroy all Customer Data that Viavi obtained in connection with performing the Subscription Services. Where continued storage is required by the applicable law, Viavi shall inform the Customer of those requirements. In the event of a data incident, where Viavi is aware of, or suspects, loss, alteration or unauthorized access to Customer Data while being stored or in transit, VIIVI will notify Customer without undue delay. If Personal Data is affected and involved by the data incident then Customer, as data controller or Customer Data owner, will be responsible for notifying relevant regulatory authorities.

15. Indemnification. Viavi shall defend any action brought against Customer to the extent it is based on a third-party claim that the Subscription Service as furnished hereunder infringes any valid copyright, trademark or trade secret. Viavi shall pay any damages and expenses (including reasonable attorneys' fees) finally awarded against Customer in such action that are attributable to such claim. As conditions to such defense and payment obligations, (a) Customer shall notify Viavi in writing of any such claim promptly after learning of such claim; (b) Viavi shall have sole control of the defense and all related settlement negotiations; and (c) Customer shall cooperate with Viavi, at Viavi's expense, in defending or settling such claim (provided that Viavi shall not enter into any settlement that adversely affects Customer without Customers written approval, which approval shall not be unreasonably withheld, delayed, or conditioned). In addition to the foregoing, Customer shall promptly notify Viavi of any known or suspected infringement or misappropriation of Viavi's proprietary rights of which Customer becomes aware. Should the Subscription Service become, or be likely to become in Viavi's opinion, the subject of any claim of infringement, Viavi may, at its option: (i) procure for Customer the right to continue using the potentially infringing



materials; (ii) replace or modify the potentially infringing materials to make them non-infringing; or (iii) terminate this Agreement and refund to Customer a pro-rated portion of any fees paid hereunder.

15.1 Exclusions. Viavi shall have no liability for any claim based on: (a) the use of the Subscription Service with non-Viavi programs, data, equipment, or documentation; (b) Customers or its employees' or other representatives' activities after Viavi has notified Customer that Viavi believes such activities may result in infringement; (c) any modifications to the Subscription Service that are not specifically authorized in writing by Viavi; (d) any third party software; (e) Customers breach or alleged breach of this Agreement; (f) acts or omissions of the third party provider of hosting services for Viavi's Subscription Service; (g) any disruptions and/or availability of Viavi's Subscription Service associated with maintenance performed by the third party hosting service provider for Viavi's Subscription Service. Customer shall defend any action brought against Viavi to the extent it is based on such a claim and shall pay any damages and expenses (including reasonable attorneys' fees) awarded against Viavi in such action that are attributable to such claim. As conditions to such defense and payment obligations, (i) Viavi shall notify Customer in writing of any such claim promptly after learning of such claim; (ii) Customer shall have sole control of the defense and all related settlement negotiations; and (iii) Viavi shall cooperate with Customer, at Customers expense, in defending or settling such claim (provided that Customer shall not enter into any settlement or other compromise that adversely affects Viavi without Viavi's written approval, which approval shall not be unreasonably withheld, delayed, or conditioned).

16. Limitation of Liability.

16.1 IN NO EVENT SHALL VIIVI 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 VIIVI FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THE SUBSCRIPTION SERVICES SHALL NOT EXCEED A TOTAL AMOUNT EQUAL TO THE PURCHASE PRICE PAID OR PAYABLE BY CUSTOMER FOR THE SUBSCRIPTION SERVICES PRINCIPALLY RESPONSIBLE FOR SUCH DAMAGES WITHIN THE LAST 12 MONTHS PRECEDING THE CLAIM UNDER THIS AGREEMENT.

16.2 THE LIMITATIONS OF LIABILITY IN THIS SECTION 16.2 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 VIIVI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE UNDER THESE TERMS AND CONDITIONS FAIL OF THEIR ESSENTIAL PURPOSE.

17. Data Integrity. Customer shall be responsible for properly backing up all of the Customers systems and ensuring the integrity of the data stored in these systems before the commencement of any Subscription Service where Viavi interacts with Customer systems. If the Customer is unable or unwilling to back-up the data, the Customer hereby exempts Viavi of any liability for data loss or corruption on any of Customers system(s) Viavi interacts with.

18. Entire Agreement. This Agreement contains the entire agreement between Viavi and Customer concerning the subject matter of this Agreement, and apart from any existing non-disclosure agreements, this Agreement supersedes any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. No provisions in any purchase orders, or in any other documentation employed by or on behalf of either party in connection this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by the receiving party, with such provisions being deemed deleted. Any notices and any modifications of, or amendments to, the 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 at the address specified in the preamble of the General Terms with a copy to Viavi Solutions Inc., Attn. Legal Department, 1455 South Spectrum Blvd, Suite 102, Chandler, AZ 85286 or at such other address(es) as may be specified by Viavi to Customer in writing as the appropriate address for notices.

19. Choice of Law and Jurisdiction. The Agreement and its validity, interpretation and performance, and any related dispute between the parties ("Disputes") shall be:

EEU: German Law and courts in Stuttgart, Germany having jurisdiction over disputes. The language of the court proceedings shall be English.

UK: English Law and courts of London, England having jurisdiction over disputes.

Rest of the world: New York Law and courts of the State of New York having jurisdiction over disputes.

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 Stuttgart, Germany over any disputes. 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.

20. Assignment and Delegation. Customer may not assign any of its rights against Viavi, and any (purported) assignment, either voluntarily or by operation of law, is invalid. Any warranties extended by Viavi are non-transferable and for Customers benefit only. Viavi may assign its rights and delegate its obligations.

21. Security. Viavi currently uses commercial cloud services in order to provide the Subscription Services to Customer. Viavi agrees to keep commercially reasonable security measures for Customers Personal Data and Customers Confidential Information.

21.1 Service Analyses. Viavi may (i) compile statistical and other information related to the performance, operation and use of the Subscription Services, and (ii) use Customer Data from the Subscription Service environment in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (the information and data in (i) and (ii) are collectively referred to as "Service Data"). Viavi may make Service Data publicly available; however, Service Data will not incorporate Customer content or Confidential Information in a form that could serve to identify Customer or any individual, and Service Data do not constitute Personal Data. Viavi retains all intellectual property rights in Service Data.

21.2. Data Protection. The Parties shall observe the applicable Data Protection Law. Customer agrees to provide any notices and obtain any consents related to Customer's use of the Subscription Services, including those related to the collection, use, processing, transfer and disclosure of Personal Data.

22. Service Availability. Viavi may perform maintenance works or make changes or Updates or Upgrades to the Subscription Services (such as infrastructure, security, technical configurations, application features, etc.) during the Subscription Service term, including to reflect changes in technology, industry practices, patterns of system use, and availability of third party content. In such cases Viavi will make reasonable efforts to select the appropriate time period to perform such maintenance works or make changes or Updates or Upgrades to the Subscription Services. Such maintenance works, changes or Updates or Upgrades to the Subscription Services do not constitute an interference with the availability of the Subscription Service(s). The Documentation is subject to change at Viavi's sole discretion; however, changes made by Viavi to the Documentation will not result in a material reduction in the level of performance or availability of the Subscription Services provided to Customer Subscription Service Period.

23. Professional Services. Professional Services that might be included as part of the Subscription Service will adhere to the following terms "FIELD APPLICATION ENGINEERING DAYS SERVICE TERMS", available at: <https://www.viavisolutions.com/en-us/corporate/legal/terms-conditions/customers>.

24. Final provisions. In the event of any discrepancy between the provisions of this Agreement and the provisions set forth in other terms and conditions for further services that are part of this Agreement, such as support services or Professional Services this Agreement shall prevail, unless the other terms and conditions include express reference to the respective provision of this Agreement. This shall not apply to the provisions of an agreement on ordered data processing which shall always take precedence over this Agreement.