



# RAILWAYS SYSTEM MAINTENANCE AND SUPPORT SERVICES - STANDARD

These Railways System Maintenance and Support Service – Standard terms and conditions (“Terms and Conditions”) apply to any quote, order, order acknowledgment, and invoice, and any sale or provision of Standard Railways System Maintenance and Support Services as defined herein provided to Customer by Viavi Solutions Inc. (“VIAVI”), in addition to VIAVI’s General Terms (“General Terms”) and/or Software License Terms, which are incorporated by reference herein and are either attached hereto, available at [www.viavisolutions.com/terms](http://www.viavisolutions.com/terms) or available upon request.

## 1. PURPOSE AND SCOPE

These Terms and Conditions describe the Services that VIAVI will provide to, and perform for, Customer. These Terms and Conditions apply to Services for standard Software, as defined herein, and are limited to the System configuration specified in a Statement of Work (“SOW”) or other ordering document (i.e., a quote, order, order acknowledgment or invoice) which contains a description of the System. All Services and Documentation shall be provided in English.

If VIAVI performs any services outside the scope of the Services — including, but not limited to, services requested by Customer in accordance with Section 4 j) (Out-Of-Scope Errors) or services required due to actions or events listed in Section 7 c) SUIS Exclusions and Limitations) of these Terms and Conditions — such services will be rendered at Customer’s additional expense under a separate SOW; provided, however, that VIAVI shall not be obligated to perform any services outside the scope of the applicable Services. VIAVI’s obligation under these Terms and Conditions shall solely be to undertake the agreed Services activities and not to achieve certain technical, economic, or other results.

The Services shall be governed by these Terms and Conditions, including any Annexes hereto, the quotation sent to Customer by VIAVI (“Quotation”), General Terms and any valid SOW, if applicable, between the parties. These documents comprise the entire agreement between Customer and VIAVI with respect to Services for the Software or Systems supported by VIAVI. 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.

## 2. DEFINITIONS

- a) **Acceptance** shall be defined as either (i) the date the System is shipped to Customer if operating under a re-seller or system integrator agreement, or (ii) the date acceptance occurs as defined in an applicable SOW if VIAVI is directly delivering the project and/or responsible for implementation.
- b) **Business Hours** shall be defined as 9 a.m. to 6:00 p.m., Monday to Friday in the CET time zone and excluding France and Italy bank holidays.
- c) **Customer** shall be defined as either (i) the re-seller or system integrator if one is engaged in the delivery or re-sale of the project or (ii) the end customer if VIAVI is directly delivering the project and/or responsible for implementation.
- d) **Customer Contact** means an employee of Customer designated by the Customer to be the primary contact and/or a second employee designated by Customer as the backup contact. Only Customer Contacts will have access to the Services.
- e) **Defect** means a failure to materially conform to VIAVI’s published Documentation in effect on the date VIAVI ships Customer’s Software order.
- f) **Documentation** means VIAVI’s information manuals that (i) contain operating instructions and performance specifications for the Software and/or System; (ii) VIAVI delivers to Customer with the Software and/or System; and (iii) VIAVI generally makes available to all users of its Software and/or System.
- g) **Firmware** means embedded software (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. Software Update Service is provided for Firmware contained within the System.
- h) **Hardware** means tangible and/or physical parts of the System that VIAVI agrees to deliver or make available to Customer under an Agreement.
- i) **Response** means initial contact with Customer by VIAVI System Engineer following Customer’s initial contact with VIAVI’s technical support line.
- j) **Response Time** means the measurement of the amount of time between Receipt of the Problem Report (phone or web) from Customer Contact and the time VIAVI makes initial contact with Customer to acknowledge receipt and notify intent to initiate problem resolution. Response time does not include hours outside coverage period.

- k) **Service or Services** means Standard 8x5 VIAVI Railways System Maintenance and Support Services consisting of Technical Support, and Software Update Subscription (“SUS”) as further described in these Terms and Conditions.
- l) **Severity Level** means a classification of a problem determined by VIAVI personnel based upon the Customer’s assessment of business impact. The three (3) Severity Levels that apply to the Services are as follows:
  - 1) **Problem Report – Critical** means conditions that severely affect the primary functionality of the System and because of the business impact to the Customer requires non-stop immediate corrective action, regardless of the time of day or day of the week as viewed by a Customer on discussion with the organization such as:
    - System inoperability (total or partial outage),
    - a reduction in the capacity capability, that is, traffic/data handling capability, such that expected loads cannot be handled,
    - any loss of emergency capability (for example, emergency 911 calls), or
    - safety hazard or risk of a security breach.
  - 2) **Problem Report – Major** means the System is usable, but a condition exists that seriously degrades the System operation, maintenance or administration, etc., and requires attention during pre-defined standard hours to resolve the situation. The urgency is less than in critical situations because of a lesser immediate or impending effect on System performance, customers and the Customer’s operation and revenue such as:
    - reduction in the System’s capacity (but still able to handle the expected load),
    - any loss of administrative or maintenance visibility of the System and/or diagnostic capability,
    - repeated degradation of an essential component or function, or
    - degradation of the System’s ability to provide any required notification of malfunction.
  - 3) **Problem Report – Minor** means other problems of lesser severity than “critical” or “major” such as conditions that have little or no impairment on the function of the System.
- m) **Software** means the computer software in object code or other format that VIAVI agrees to deliver or make available to Customer and licensed by Customer under an Agreement, excluding related Documentation provided to Customer or supported under these Terms and Conditions. For clarity purposes, no licenses for Software granted under these Terms and Conditions shall extend to any source code.
- n) **Software Maintenance Pack** means a bundle of patches providing fixes for Defects in the Software.
- o) **System Maintenance Period** means a period of twelve (12) consecutive calendar months commencing on either (i) the date of Acceptance of the System, or (ii) the annual renewal thereafter.
- p) **Software Release** means a particular version of Software identified by a change in the version numbering.
- q) **Software Update** means Defect, fixes and Software enhancements on the VIAVI System. A subsequent release of Software that VIAVI makes, at its sole discretion, generally available to purchasers of the Services for such Software.
- r) **System** means a collection of Hardware and/or Software items located at one or more physical locations where all of the items are required for proper operation. No single item can function by itself. This may include third parties’ products.
- s) **System Handle** means a unique reference number, assigned by VIAVI to each Customer that determines entitlement to Services.
- t) **System Support Engineer or SSE** means a qualified and skilled VIAVI engineer designated to assist Customer with technical support issues.

### 3. SCOPE OF SERVICES

During the System Maintenance Period, VIAVI will provide the Services described in Sections 4, 5 and 6 of these Terms and Conditions that VIAVI, at its sole discretion, makes generally available to all of VIAVI's customers. VIAVI products which do not allow self-install of software Updates will also include Services included in Section 7.

### 4. TECHNICAL SUPPORT

Technical Support provides Customer access to an SSE as a single point of contact to help troubleshoot and resolve problems with the System. Such technical support will be provided remotely using telephone, the web and/or remote access.

#### a) TECHNICAL SUPPORT SERVICES INCLUDE:

- Case management of Problem Reports from initiation to closure. An individual case will be assigned to each Customer Problem Report with status documented, tracked and updated through closure.
- Remote problem diagnostics, troubleshooting and repair via telephone, the web and/or remote access;
- Software troubleshooting and repair as needed, (if a problem is determined to be caused by a Software problem and VIAVI determines that it can't be resolved remotely, VIAVI may perform technical support services on-site, if required and agreed upon by the parties);
- Troubleshooting up to isolation of faulty Software and/or Hardware;
- Unlimited number of technical support cases to restore solution functionality and for general questions related to configuration and operation;
- Problem Report logging via phone or web;
- Case management until final resolution;
- Self-serve web-based system support;
- Escalation management;
- Ticket reviews of open cases; and
- Operational reviews based on the type of service level commitment purchased by Customer.

#### b) VIAVI CONTACT

Technical Support is available to Customer through a Services contact number and the Services web interface.

#### c) LOGGING A TECHNICAL SUPPORT CASE

After Customer has logged a Problem Report, VIAVI will assign a SSE to the case. The SSE will be the primary VIAVI person responsible for providing and coordinating the Technical Support services to Customer. The SSE will

- Receive the initial Problem Report via telephone or the Online Problem Report Logging tool;
- Respond to the Customer Contact according to Response Time Criteria, described in Section 4d) Service Level
- Determine the necessary routing to resolve the problem.
- Interact with various system experts and specialists within VIAVI and third parties as necessary and manage the case until final problem resolution.
- Escalate the case according to the VIAVI escalation process, as described below under Section 4i) - Escalation Management.

#### d) SERVICE LEVEL: Technical Support Availability and Response Times

Coverage hours are listed in the time zone of the Customer's designated site. In the case where a System has no Customer designated site, the time zone shall be the time zone of the Customer Contact.

The Customer Contact may log a case using the web twenty-four (24) hours a day at a defined ticketing portal or by telephone during Business Hours or via email.

Customer shall inform VIAVI of an issue by providing the information required that will assist VIAVI with problem isolation and determination as to whether this issue is a Defect, based on which VIAVI will assign to the Defect a Severity Level. VIAVI reserves the right to downgrade at any time the assigned Severity Level (i) if the Defect is determined to be less severe than originally reported; (ii) as VIAVI provides solutions to reduce the impact of the Defect; or (iii) if VIAVI is unable to effectively provide Technical Support due to Customer's failure to provide cooperation reasonably requested by VIAVI.

VIAVI will use commercially reasonable efforts to respond to Customer within the time frames below in time zone of the Customer contact. VIAVI's Response, restoration, and resolution times for Software are as set out below. Such times shall constitute targets only.

Restoration and resolution intervals for Software issues in 90% of cases are defined as follows:

Criteria		Standard Plan
Critical	Initial response Restoration	Two (2) Business Hours Two (2) working days <sup>1</sup>
Major	Initial response Restoration Resolution	Eight (8) Business Hours Two (2) working days <sup>2</sup> Sixty (60) working days
Minor	Initial response Restoration Resolution	Eight (8) Business Hours Ten (10) working days One-hundred twenty(120) working days <sup>3</sup>

**Note<sup>1</sup>** – Once VIAVI has performed a restoration for a Critical issue, the severity of the ticket shall be changed to Major and resolved in accordance with resolution timeframe for Major tickets shown above.

**Note<sup>2</sup>** - Major restoration times for issues requiring an engineering change (i.e. change to the Software or Documentation) will be mutually agreed upon between Customer and VIAVI.

**Note<sup>3</sup>** - Minor issues requiring an engineering change will be added to a Defects register and periodically reviewed as candidate fixes in future release plans.

VIAVI will record delays. The cases below will not be counted in elapsed time:

- Excessive delay in testing or deploying a proposed solution due to Customer resource constraints.
- Customer delay in supplying sufficient information to commence or continue problem resolution.
- Not being able to access the Customer's System to resolve a problem, either on-site or remotely.
- If, with the Customer's agreement
  - (1) a fix is deferred to a later patch, Software Maintenance Pack or Software Release; or
  - (2) a temporary fix is in place, the time to deliver the permanent fix is not included.

Repair and/or replacement intervals for Hardware issues in 90% of cases are defined as follows:

QATS and EVOIA Hardware:

Severity	Initial Response	Repair/Replacement
Critical	2 Business Hours	2 working days <sup>1,2</sup>
Major	8 Business Hours	2 working days <sup>1,2</sup>
Minor	8 Business Hours	10 working days <sup>1,2</sup>

Netprobe and EVOIA Drive Test Hardware:

Severity	Initial Response	Repair/Replacement
Critical	2 Business Hours	30 working days <sup>1,2</sup>
Major	8 Business Hours	30 working days <sup>1,2</sup>
Minor	8 Business Hours	30 working days <sup>1,2</sup>

**Note<sup>1</sup>** – A pause for repair and/or replacement intervals referenced above shall apply in accordance with the following terms:

- No pause shall apply to servers (all server types).
- A pause shall apply to:
  - 1) Repair of eProbes (E1, STM1, Ethernet), unattended probe or switch. In such cases the repair and/or replacement intervals will be paused between
    - a) the issue of the RMA number by VIAVI and receipt of Hardware at VIAVI's service center; and
    - b) the receipt of Hardware at Customer's premises and its physical installation.

- 2) Replacement of various cables, Splitter, SFPs. In such cases the repair and/or replacement intervals will be paused between the receipt of Hardware at Customer's premises and its physical installation.
- 3) Repair and/or replacement of other Hardware for which a spare part or spare unit is available on Customer's premises as part of the contracted support and maintenance contract. In such cases the repair and/or replacement intervals will be paused between VIAVI's decision on whether a spare part or spare unit should be used and its physical installation.

**Note<sup>2</sup>** – These repair and/or replacement intervals are based on the assumption that the third party component production lead time is two (2) weeks and VIAVI shall not be liable for delays caused by slower third party component production lead times.

- e) **PROCEDURE FOR OBTAINING TECHNICAL SUPPORT (“Logging a Case”)**  
To obtain technical support as referenced in this Section 4 from VIAVI, Customer is responsible for complying with the following procedure:
- Customer System user finds a System-related problem and reports it to the Customer Contact.
  - Customer Contact takes ownership of the problem and attempts to find a timely solution, identifies the nature of the problem, including eliminating Customer network and hardware not provided by VIAVI as a possible problem cause, reproduces the error if possible and document the steps needed to do so.
  - If Customer Contact is unable to resolve the problem, Customer Contact activates technical support by logging a case, using one of the VIAVI Contact procedures described above to provide the System Handle, events that led up to the problem, the problem description, and Customer's assessment of business impact of the problem.
  - Customer Contact describes to the SSE the parameters, procedures and conditions resulting from the problem in sufficient detail to permit the SSE to isolate the cause of the problem and commits appropriate resources to help isolating the problem.
  - Customer Contact provides the SSE with all data files, database rules and other software, together with remote access and (if VIAVI requires) on-site access, reasonably believed necessary by the SSE to reproduce and analyze the problem. If the problem cannot be reproduced, no further action will be taken by VIAVI.

f) **SYSTEM REMOTE ACCESS**

Customer agrees to provide VIAVI high-speed remote access to the System by a VPN to VPN or SSH-Internet connection as the basic high-speed remote connection including SecureShell, GUI transfer, File transfer and on-site, when necessary. VIAVI reserves the right to increase Services costs or refuse to provide Services in the event that Customer fails to provide high-speed remote access to the System in a timely manner and fails to do so prior to System installation. Customer's failure to provide high-speed remote access may impact VIAVI's ability to effectively troubleshoot and resolve Customer issues in a timely and efficient manner.

g) **OPERATIONAL REVIEWS**

VIAVI and Customer will evaluate any open cases and/or the performance of the system at mutually agreed-upon intervals. During these meetings, discussion topics may include: Case data and statistics, enhancement requests, corrective action, potential solutions and escalation distribution lists. VIAVI will document and distribute meeting minutes and action items will be assigned to designated owners.

h) **SYSTEM CONFIGURATION DOCUMENTATION**

If VIAVI performed the installation, VIAVI will provide Customer with Service-related information after Customer System acceptance to document system configuration. If Customer (or their agents) performed the installation, Customer shall provide VIAVI with Service-related as-built configuration information, serial numbers, Software Release information, hardware platforms, operating systems, IP addresses for servers and other appropriate specifications required for Customer to engage VIAVI in problem resolution.

i) **ESCALATION MANAGEMENT**

In case a System restoration is possible, the escalation management process will be initiated if there is no significant progress in the problem investigation after eight (8) Business Hours for Critical and Major problems. In case a restoration is impossible for Major problems, the escalation management process will be initiated if there is no significant progress in the problem investigation after thirty (30) Business Hours. VIAVI will communicate to Customer the agreed action plan used as a guide for resolving the technical problem.

j) **OUT-OF-SCOPE ERRORS**

If VIAVI believes that an error reported by Customer may not be due to a Defect or is otherwise outside the scope of the Services, VIAVI will so notify the Customer, who may

then either (i) instruct VIAVI to proceed with services regarding said error at Customer's expense; or (ii) advise VIAVI that Customer does not wish the error pursued, in which case VIAVI may at its sole discretion, close the case and not to pursue the error without any further liability or obligation.

k) **CUSTOMER VIRTUAL MACHINE ENVIRONMENT**

**CUSTOMER RESPONSIBILITIES**

Customer is responsible for the following:

- Installation/commissioning of physical hosts.
- All ongoing maintenance and technical support of physical hosts and computing equipment.
- Virtualization vendor selection, licensing, virtualization software installation.
- Commissioning guest virtual machines.
- Support and maintenance of Customer operating system (“OS”).
- Monitoring of all Customer virtual machine environment (“VM”)/OS telemetry to ensure thresholds are not exceeded
- Providing a network topology diagram (servers/network throughput/datastore connectivity).
- Backup of Customer OS and databases.
- Provision resources requested by VIAVI in the solution description document provided to the Customer (“SDD”) and timely resolution of any problems affecting Customer VM to minimize downtime.
- Providing Customer VM/OS telemetry to VIAVI through KPI collection & appropriate screenshots in accordance with SDD, including the following data:
  - (1) Telemetry monitoring data for the past 30 days starting from the date specified by VIAVI.
  - (2) Host CPU/memory utilization.
  - (3) Host VM density or list.
  - (4) Guest CPU/memory utilization.
  - (5) IO bandwidth/latency.
  - (6) Guest migration logs.
  - (7) Hardware error logs.
  - (8) Storage utilization.
  - (9) How allocations and reservations are set (key).
  - (10) Hyperthreading (on or off).

**VIAVI RESPONSIBILITIES**

VIAVI is responsible for the following:

- Providing SDD describing Product configuration needs.
- Specifying required dimensioning/server sizing/reservation/exclusivity needs.
- Validating that servers have been commissioned, as requested by the Customer.
- Installing/validating applications on the Customer VM.
- Recommending prerequisites on the deployment Services required, security and firewall policies and implications.
- System backup of the configuration of the application server and loaders.
- Setting Customer system telemetry thresholds.
- Monitoring how the VIAVI application performs on VM, CPU, Mem, IOPS, Network Statistics specified by the Customer.

**5. HARDWARE SUPPORT SERVICES**

Hardware support is available to Customer after VIAVI Technical Support troubleshooting has isolated a System problem to a Hardware fault. VIAVI will provide Hardware support services through its own staffing or by working with third-party suppliers.

a) **SERVICE DELIVERABLES**

- Unlimited number of Hardware support cases.
- Technical interface between 3<sup>rd</sup> party providers and Customer personnel.
- Remote support to Customer on-site personnel for physical replacement and reconfiguration of spares.
- Shipment of replacement parts (VIAVI may use replacement parts that are new or equivalent to new, defective parts removed during this process become the property of VIAVI).
- Includes the cost of all VIAVI supplied labor, travel and materials necessary for Hardware repair.
- Includes the repair warranty extension of the listed Hardware.

b) **SERVICE LEVEL: Hardware Support Availability**

Hardware support may be provided by one of the processes below, as determined by the contracted support agreement.

**Return-to-Depot:** Applies to VIAVI provided Hardware products that are a component of the respective VIAVI System. Return-to-Depot provides a return in accordance with VIAVI Return Material Authorization ("RMA") process, available only for VIAVI manufactured Hardware:

- Customer works with VIAVI to generate an RMA number.
- Customer ships the faulty item to VIAVI according to instructions.
- Upon receipt, VIAVI will, at its discretion, either repair or replace the failed Hardware.
- Customer is responsible for all shipping charges related to the return of the failed Hardware or individual part, as applicable.
- VIAVI is responsible for all shipping charges related to the delivery of the repaired/replaced Hardware or individual part, as applicable. Customer is responsible for all customs processing and related charges in its own country.

**Advanced Replacement:** For limited Hardware products which VIAVI offers advanced replacement items maintained at a VIAVI global storage facility (when and where available):

- VIAVI will ship those replacement parts with sparing to account for a quick turnaround time.
- Customer will be responsible for the return of the failed item to VIAVI using the pre-addressed pre-paid shipping package and label.
- VIAVI is responsible for all shipping charges related to the delivery of the replacement part. Customer is responsible for all customs processing and related charges in its own country.

If the Customer returns any failed Hardware or individual part, as applicable, without the proper RMA, VIAVI will not evaluate such failed Hardware or parts and will return them to the Customer at the Customer's expense. Any failed Hardware or parts that are returned to VIAVI but which are found to meet the applicable specifications for the Hardware and/or are not defective in workmanship and materials may be subject to VIAVI's standard examination charge in effect at the time, which shall be charged to, and paid for, by Customer.

**c) THIRD-PARTY COMPUTING HARDWARE:**

When and where available, onsite hardware support will be provisioned by contracting and engaging third-party OEMs.

- For third-party hardware provided to the Customer by VIAVI, VIAVI will initiate the engagement with the third-party OEM, plan, schedule and execute onsite activity after VIAVI diagnosis of a hardware fault.
- For third-party computing hardware provided by the Customer, and given onsite security considerations, Customer will initiate the engagement with the third-party OEM, plan, schedule and execute onsite activity after VIAVI diagnosis of a hardware fault.
- VIAVI will work with the Customer to provide data and validate operation after intervention.

## 6. SOFTWARE UPDATE SUBSCRIPTION (SUS)

Software Updates will be made available as VIAVI deems necessary and appropriate. VIAVI may make available Software Updates in such form and format and on such media as VIAVI, in its discretion, deems appropriate. VIAVI is under no obligation to develop any future programs, enhancements or functionality and reserves the right not to create any Software Updates. While VIAVI may market new versions of the Software as Software Releases or new products for additional consideration, nothing herein shall obligate VIAVI to make available, or entitle Customer to receive, any Software Releases and/or new products. Customer may use Software Updates only to update or replace previous versions; if Customer installs a Software Update, Customer will no longer have a license to the previous version(s) and must discontinue use of such previous version(s). Software Updates are covered by these Terms and Conditions, but without limiting Section 16 c), (Disclaimer) of these Terms and Conditions, are not covered by the warranties applicable to the updated Software. Notwithstanding the foregoing, Customer's use of any Software Updates shall be subject to the infringement indemnity provisions of General Terms, and Customer's use of the Software Updates shall additionally be subject to all license limitations and restrictions contained in the Software License Terms and General Terms applicable to the updated Software. VIAVI owns, retains and reserves ownership, title, and all rights and interest, including, but not limited to, all Proprietary Rights in and to the Software Updates, subject only to the limited rights that VIAVI expressly grants herein. Without limiting the foregoing, Customer

acknowledges that nothing herein shall constitute a sale of any Software Updates (or any Intellectual Property in and to Software Updates) including any copies and portions thereof.

**a) SOFTWARE UPDATE SUBSCRIPTION SERVICES MAY INCLUDE:**

- Functionality enhancements and performance improvements for Software options that VIAVI has licensed the Customer to use. This does not include any new or additional Software functionality, applications or user licenses that are not covered by the Customer's existing license.
- Updates to third-party vendors' software, when provided by VIAVI, except where a separate agreement exists between Customer and the third-party software vendor.
- Formal Defect fixes as required to resolve operating and other Defects in Software.
- Documentation detailing Software Update functionalities and their impact on Customer's System.

Software Updates will be made if and when available as VIAVI deems necessary and appropriate.

**b) NOTIFICATION**

VIAVI will notify Customer as Software Updates become available.

**c) DOCUMENTATION**

VIAVI will provide Customer with one (1) copy of the appropriate Documentation for the Software Updates. VIAVI will provide applicable release notes on the media of its choice, which may include information on product changes through Software Updates, product modifications or general support information, as well as special advice that relates to the Software Updates.

## 7. SOFTWARE UPDATE IMPLEMENTATION SERVICES (SUIS)

The majority of VIAVI systems products are engineered to allow self-installation of software Updates with no assistance required from VIAVI. For these products, no specific Update installation services will be provided, but standard troubleshooting and diagnostic support are available for any update installation-related questions. For products which do not support software Update self-installation, VIAVI will provide SUIS to address all of the activities necessary to plan, install, test and document the installation of Software Maintenance Packs. SUIS are provided by VIAVI in coordination with Customer Contact based on an implementation schedule defined and agreed between the parties.

**a) DELIVERABLES**

- VIAVI will perform the Software Update in coordination with Customer SSE will perform a System Hardware and Software assessment prior to all Software Updates and will identify pre-requisite Hardware and software. VIAVI will notify Customer, in writing, if the assessment indicates that Customer is required to acquire additional Hardware or software licenses.
- SSE will conduct and document a System operability assessment prior to the installation of Software Updates. This assessment will be used as a post-update operability benchmark to ensure the Software Update did not negatively impact the System.
- VIAVI will develop a plan for each Software Update based on Customer's System configuration and operational requirements. This plan will be documented in a detailed Method of Procedure (MoP). The MoP will provide a detailed description of the Software Update process, System requirements, Customer and VIAVI roles and responsibilities, schedule, System impacts, known issues with the Software Update or process, and post update System verification tests.
- VIAVI will perform the Software Update in coordination with Customer and according to the agreed-upon MoP.
- SUIS shall be performed remotely or on-site at VIAVI's discretion, during standard Business Hours. If Customer requests VIAVI to perform SUIS during alternative hours, this will be charged at VIAVI's then-current rate unless mutually agreed to otherwise.
- Upon completion of the installation process, VIAVI will coordinate with Customer to execute the agreed upon VIAVI-defined verification test and will perform and document a software configuration audit and operability assessment and provide these to Customer.

**b) SUIS CUSTOMER RESPONSIBILITIES**

Customer will:

- Acquire and install any additional hardware or software identified during the assessment.
- Permit access to the System for Software Update activities to be performed.
- Provide remote access, if necessary.
- Identify and provide other necessary servers and systems to be used by SSE as required in the MoP.
- Be responsible for resolving all network connectivity/communications (including firewall and latency) issues.
- Disable all custom scripts until after the Software Update has been completed.
- Freeze network and System changes one (1) week prior to the Software Update, or as required in the MoP, and enforce this freeze until after the Software Update is complete.
- Perform back-ups of their System prior to the Software Update(s) and make these backups available to SSE for emergency recovery as necessary.

#### c) **SUIS EXCLUSIONS AND LIMITATIONS**

##### SUIS DOES NOT INCLUDE:

- New hardware or hardware installation or the installation of new software or applications that are not already part of the Customer's existing System or installation of applications developed by the Customer for the System.
- Installation of Customer software scripts and customized software.
- Services for installing, decommissioning, relocating or removal of Customer equipment even if it is integrated as part of the SUS upgrade. These services can be provided and coordinated with the SUIS activity but must be purchased separately.

### 8. OPERATIONAL ASSISTANCE (OA)

In addition to the Services set out herein, VIAVI offers the VIAVI Operational Assistance (OA) as an additional optional service. If OA is purchased by Customer, services will be performed in accordance with the terms of a VIAVI Operational Assistance - Statement of Work. OA encompasses a suite of proactive services that help the Customer use, maintain and administer the System. Services may be delivered either remotely or on-site and are provided in coordination with a Customer Contact.

### 9. Field Application Engineer Days (FAE Days)

In addition to the Services set out herein, VIAVI offers the option to purchase a predetermined number of days of Field Application Engineer (FAE) services for needs which are not covered by the included components for Software Maintenance and Support Plans. FAE Days can be used for many different uses including these examples (non-exhaustive list):

- Custom test automation
- Expert use model consultation
- Specialized training/knowledge transfer
- Custom test case development

FAE Days require an active Maintenance and Support agreement and may not be used as a substitute for:

- Mainline code development/bug fix generation
- General system troubleshooting included in SW Maintenance and Support Plans

### 10. 3rd PARTY INTERFACE ENHANCEMENT

- Some VIAVI systems support interfaces with 3<sup>rd</sup> party systems to provide enhanced functionalities. Strategy for adding these 3<sup>rd</sup> party interfaces and enhancements to them are defined by product management as part of the roadmap planning process. VIAVI reserves the right to charge for these enhancements or to include them free of charge as part of Software Update Subscription plans on a case-by-case basis. If a 3<sup>rd</sup> party enhancement is desired which is not planned as part of the existing product roadmap in some cases these can be delivered as optional Professional Services from VIAVI.
- If a Customer is aware that any of these interfaces are going to be changing, they may notify VIAVI of the change in advance to determine if an update will be needed to maintain the functionality of each interface. VIAVI will then evaluate the interface change and determine if and when a 3<sup>rd</sup> party Enhancement may be developed.

- In cases where VIAVI is planning to provide a customer-requested 3<sup>rd</sup> party interface enhancement, Customer will provide full documentation and sample data for each of the vendors' new releases to VIAVI a minimum of 90 days prior to the implementation of such releases in the network. The Customer will assist VIAVI in testing of such new interfaces in a controlled fashion, either in a lab environment or live network, before they are rolled out across the complete system footprint.

### 11. ADVANCED DATABASE SUPPORT (if applicable)

- To receive Advanced Database Support from VIAVI, the Customer will ensure that it has a competent database administrator to deal with basic database issues and the Customer will be responsible for procuring and managing Support services for the Oracle database itself direct from the third-party vendor.
- VIAVI will provide the Customer with expert Support for the interaction between the Oracle database and the Software.
- VIAVI will not provide any Support in respect of infrastructure including but not limited to local area network (LAN), data storage or server hardware.

### 12. CUSTOMER RESPONSIBILITIES

Customer will:

- Assign the Customer Contact and maintain his/her expertise and knowledge at an appropriate level to collaborate with VIAVI for the Services VIAVI provides under these Terms and Conditions, as well for the System administrators and users.
- Notify VIAVI of any System problem in a timely manner.
- Agree with VIAVI on System maintenance processes and schedule and follow routine operator and maintenance procedures as specified in the Documentation supplied with the System. For instance, perform regular System back-ups and data archiving.
- Keep on-site and make available to VIAVI the original installation media for the Software in case recovery to the last backup is not possible.
- Maintain Customer developed/custom software and interfaces, and obtain support from third parties, as required, for components not included in the System.
- Ensure that the System is on a supported Software Release level, update the System as soon as possible when new Software Maintenance Packs and Software Releases are available and before the currently installed Software Release is out of support.
- Maintain an up-to-date record of System changes, such as Software, Defect fixes and modifications to System.
- Participate in operational review meetings, as necessary.

### 13. DATA PRIVACY

VIAVI may require samples of Customer network traffic in an effort to reproduce issues within VIAVI labs or analyze data as part of the resolution process for Customer raised support issues. Where VIAVI requires a copy of Customer network traffic the following process will be followed for securing and deletion of the data:

- VIAVI will update the case indicating the requirements of Customer network data to support the investigation, and details of the sample data that is required.
- VIAVI will copy the required data, focused on the case and only its requirements.
- The data will be held in VIAVI's secure network and only used for the purposes of investigating the support case.
- When the case is closed Customer network data will be deleted.

VIAVI may also require samples of other data from the Customer's system, such as screenshots, VIAVI system-generated output files, logs and etc. This data will be securely controlled by VIAVI in the support ticketing system.

### 14. PAYMENT

VIAVI shall invoice Customer in advance of the System Maintenance Period at the agreed-upon rates. Customer shall make payment within thirty (30) days of the invoice date and in accordance with the General Terms. VIAVI reserves the right to, upon written

notice to Customer, adjust the pricing for the Services if there is a change in System configuration or the level of Customer's Service requirements.

## 15. LIMITATIONS AND EXCLUSIONS

- a) Data recovery services are not included as part of the Services, regardless of the cause of data loss. If the Customer requests VIAVI to perform data recovery, this service, if available, will be charged at VIAVI's then-current rates.
- b) Services do not include program development, coding, isolation of coding problems, assistance to or consulting or implementation of the Customer's application on the System, customization of VIAVI tools or integration of VIAVI tools with Customer systems.
- c) Services are not a substitute for any formal Customer education course. VIAVI and Customer may plan and implement a training program to train Customer Contacts, System administrators and users on the current revision of the Software.
- d) VIAVI will provide Services through its own staffing or by working with qualified third-party suppliers and subcontractors, as appropriate.
- e) VIAVI will use commercially reasonable efforts to resolving problems but does not guarantee that it will be able to do so or that any resolution will be satisfactory to Customer.
- f) Decommissioning and disposal of system Hardware is not included as part of the Services.
- g) Support for cases relating to integration or communication between two or more VIAVI systems requires all of the systems to have a valid support contract unless agreed in advance, in writing, by VIAVI.
- h) VIAVI shall not be obligated to provide Services if Defects are caused by or related to the following:
  - (i) Customer's mishandling, abuse, misuse, or use of the Software other than in accordance with VIAVI's operating instructions;
  - (ii) use of the Software with Hardware or software that was not expressly specified in writing by VIAVI as suited for use with the Software;
  - (iii) changes to the Customer environment, in which the Software was provided;
  - (iv) actions or omissions of persons other than VIAVI;
  - (v) installation, maintenance, or repair of Software by someone other than VIAVI, except maintenance performed by Customer if and to the extent authorized by VIAVI in a duly signed writing;
  - (vi) failure to implement all Software Updates, Software Releases, and other new upgrades of the Software made available to Customer (provided, for the avoidance of doubt, that VIAVI is not obligated to make available any minimum number of such new upgrades); or
  - (vii) Force Majeure conditions as defined in the General Terms.
- i) VIAVI shall not be obligated to provide Services for the following:
  - (i) Software that has been modified by someone other than VIAVI, unless such modifications were directed or approved by VIAVI in writing and made in strict conformance with all specifications and instructions provided by VIAVI in such writing;
  - (ii) Software that VIAVI modified in accordance with Customer's request, specifications, or instructions; or
  - (iii) third-party products.
- j) VIAVI shall not be obligated to provide Services, except for the (i) most recent (Major or Minor) Software Release and (ii) immediately preceding (Major or Minor) Software Release for a period of twelve (12) months following the issuance of the next Major or Minor Software Release, and only when used with VIAVI specified Hardware configurations and VIAVI recommended operating system, database and applied Software Updates. VIAVI shall have no obligation to provide Services for any Software that has been superseded by a current release more than twelve (12) months prior to the then-current date.

## 16. LIMITED WARRANTY AND DISCLAIMER

- a) **LIMITED WARRANTY**  
VIAVI will perform Services substantially in accordance with these Terms and Conditions.

Repair parts and labor for any Hardware repairs made hereunder will be warranted for a period of ninety (90) days and such period shall commence upon the return shipping date. This Hardware repairs warranty does not apply to separate defects pertaining to, or where the same defect arises again as a result of, the following:

- (i) abuse issues resulting from willful, intentional or accidental damage;
  - (ii) use of the Hardware other than in accordance with the VIAVI user instructions or Documentation;
  - (iii) any tampering with, or alteration of, the Hardware by a third party other than an authorized VIAVI Service Center; or
  - (iv) a fault in any other third party or Customer equipment, such as (without limitation) ancillary components or accessories associated with the use of the Hardware.
- b) **EXCLUSIVE REMEDY**  
If the Services materially fail to conform to the limited warranty set forth in Section 16 a) (Limited Warranty), Customer may terminate the Services in accordance with Section 17 f) (Termination for Cause) if VIAVI fails to cure a non-conformance within thirty (30) days after receiving Customer's detailed request to cure the non-conformance. Termination shall not affect (i) Customer's obligations to pay for Services already performed before VIAVI receives Customer's request to cure; or (ii) any other obligations of Customer under these Terms and Conditions. **THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION 14 B) (EXCLUSIVE REMEDY) WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST VIAVI WITH RESPECT TO A NON-CONFORMANCE OF THE SERVICES.**
  - c) **DISCLAIMER**  
EXCEPT AS SPECIFIED IN SECTION 16 A), ABOVE, (LIMITED WARRANTY) VIAVI MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VIAVI 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. CUSTOMER SHALL HAVE NO WARRANTY CLAIM UNDER SECTION 16 A) (LIMITED WARRANTY) OF THESE TERMS AND CONDITIONS, UNLESS VIAVI RECEIVES CUSTOMER'S WRITTEN REQUEST TO CURE A NON-CONFORMANCE WITHIN THIRTY (30) DAYS AFTER ITS OCCURRENCE.

## 17. TERM AND TERMINATION

- a) VIAVI will provide the Services during the System Maintenance Period, which shall not be automatically renewed. If Customer wishes to obtain the Services beyond the initial System Maintenance Period or for additional Software, Customer has to submit a new order. Nothing herein obligates VIAVI to accept such order for a subsequent renewal period. Rates for subsequent System Maintenance Periods may vary. Additional fees may apply if Customer allows the Services to lapse and wishes to restart such Software Maintenance Services at some future date.
- b) Either party terminate the Services 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.
- c) Services shall be automatically terminated with respect to Software for which the license has expired or was terminated for any reason.
- d) In case Customer has not paid its fees for the future System Maintenance Period before the end of the then-current System Maintenance Period, no further Services will be provided by VIAVI. All technical support cases will be closed, except "Critical" cases submitted before the expiration of the then-current System Maintenance Period on which VIAVI, at VIAVI's discretion, will continue to work towards a resolution.
- e) Customer may reinstate lapsed Services by paying all missed fees in arrears, plus any payment as determined by VIAVI or, that VIAVI requires, to update Customer installation to the current Software Release.

- f) Unless VIAVI validly terminates the Services for cause due to Customer's material breach of these Terms and Conditions, or such Services automatically terminate in accordance with Section 17 c) of these Terms and Conditions, Customer shall be entitled to receive a proportionate credit equal to any prepaid fees applicable to the terminated portion of the then-current System Maintenance Period. If Customer validly terminates the Services for cause because of VIAVI's material breach of these Terms and Conditions, Customer shall be entitled to receive a proportionate credit equal to any fees applicable to the thirty (30) days immediately preceding the date of termination. Customer shall not be entitled to receive any refunds. If VIAVI terminates Services due to Customer's material breach, Customer shall return to VIAVI all Software Updates, VIAVI's Confidential Information and other tangibles and intangibles received in connection with the Services, without retaining any copies thereof and all licenses granted to Customer under these Terms and Conditions for the Software Updates shall be automatically revoked.

## **18. SURVIVAL**

The General Terms, and Sections 14 (Payment), 16 (Limited Warranty and Disclaimer), and 17 (Term and Termination) of these Terms and Conditions shall survive any termination of Services. Customer's licenses to Software Updates shall survive only so long as Customer continues to fully comply with all provisions of these Terms and Conditions, the General Terms, and the Software License Terms.