



## TIME & MATERIALS SERVICES TERMS

These Time & Materials Services Terms apply to any quote, order, order acknowledgment and invoice, and any sale, performance or delivery of Time & Materials Services (as defined below), in addition to Viavi's General Terms which are included by reference herein and are either attached or available at [www.viavisolutions.com/terms](http://www.viavisolutions.com/terms) or on request.

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

"Personnel" means employees, independent contractors, and subcontractors that Viavi makes available for the performance of Time & Materials Services.

"Time & Materials Services" means services performed against an hourly, daily, weekly, or monthly rate and reimbursement of materials and expenses based on Viavi's costs, expenses and standard rates, available on request. Time & Materials Services may include, for example, technical assistance with the deployment of hardware and software, and repairs beyond warranty coverage and/or maintenance agreements. Time & Materials Services do not include services provided (i) for fixed fees or with a commitment to provide certain deliverables (such services are governed by Viavi's Fixed Fee Services Terms), (ii) under standardized product offerings (e.g., maintenance services, which are subject to Viavi's Software Maintenance Services Terms); or (iii) to install standard Products (such services are governed by Viavi's Installation Services Terms).

**2. TIME & MATERIALS SERVICES.**

**2.1 Scope of Time & Materials Services.** Viavi shall make available Personnel for the agreed-upon days or hours to provide Time & Materials Services to Customer. To the extent the parties agree in a statement of work or other document on specific project or service objectives (e.g., development, 'build to print' or customization of certain software or systems), Viavi will use commercially reasonable efforts to pursue the realization of such objectives in performing the Time & Materials Services, but Viavi shall not be legally obligated to achieve any particular technical, economical, or other results. Unless expressly agreed by Viavi in a statement of work or other such writing, nothing herein shall obligate Viavi to provide Time & Materials Services at a specific Customer site or any other particular location.

**2.2 Contacts and Assigned Personnel.** Each party shall appoint at least one (1) primary and one (1) substitute contact person for all technical communications with the other party in connection with the Time & Materials Services; provided, however, that each party may replace such contacts from time to time upon written notice to the other party. Personnel may receive direction from Customer regarding desired objectives of Time & Materials Services and particularly with respect to the performance thereof, but shall be subject to supervision exclusively by Viavi. Without limiting the foregoing, Viavi (i) may select, remove and replace Personnel from time to time in its sole discretion; and (ii) as between the parties, shall be exclusively responsible for administrative and human resources matters with respect to Personnel.

**2.3 Performance Records.** The Personnel shall keep records of the Time & Materials Services performed for Customer including records with respect to the dates and duration of performances and the type of services performed ("Performance Records"). At Viavi's request, Customer shall review and countersign the Performance Records on a daily or weekly basis.

**2.4 Cooperation.** Customer shall, in a timely manner and free of charge, provide Viavi with all information, materials and cooperation necessary for Viavi to provide Time & Materials Services or as otherwise reasonably requested by Viavi. If Customer fails to meet any of its obligations, Viavi may, without limiting any other remedy (i) delay or suspend its performance and charge Customer for any resulting costs; and/or (ii) charge Customer its then-current time & materials Time & Materials Services rates (available on request) for every day on which Viavi personnel is unable to perform Time & Materials Services. Viavi shall not be liable for, and Customer hereby excuses, any and all delays related to Customer's failure to perform, or comply with, its obligations. If Customer delays any performance, delivery, or acceptance for more than 60 days, (a) Viavi may invoice and Customer shall pay the full amount owing immediately; (b) Customer shall be deemed to waive its right to any refund; and (c) Viavi may, in its discretion, indicate when any applicable warranty period shall start running, if at all.

**3. PAYMENT.**

**3.1 Fees and Expenses.** Viavi may invoice Customer for Time & Materials Services performed on a weekly or monthly basis in arrears for time and out-of-pocket costs or expenses based on Viavi's standard rates and policies. Customer shall

make payment within thirty (30) days of the invoice date and in accordance with the General Terms.

**3.2 Surcharges.** If, at Customer's request, Viavi performs Time & Materials Services on weekends or outside Viavi's regular business hours of 8:00 a.m. to 5:00 p.m. (local time where Time & Materials Services are performed), Viavi may apply surcharges of fifty percent (50%) or as otherwise notified, whichever is higher; provided, however, that Viavi is not obligated to provide Time & Materials Services at those times.

**3.3 Minimum Time.** Whenever Viavi deploys Personnel to Customer's site at Customer's request and Personnel are available and willing to perform Time & Materials Services, Viavi may charge Customer for the time so spent.

**4. LIMITED WARRANTY AND DISCLAIMER.**

**4.1 Limited Warranty.** Viavi shall perform Time & Materials Services in a professional and workmanlike manner.

**4.2 Exclusive Remedy.** If Time & Materials Services materially fail to conform to the limited warranty set forth in Section 4.1 (Limited Warranty) and Viavi fails to cure such non-conformance (i.e. re-perform such Time & Materials Services) within ten (10) days after receiving Customer's detailed request to cure, Customer may terminate Time & Materials Services in accordance with Section 6 (Termination). Termination shall not affect (i) Customer's obligations to pay for Time & Materials Services already performed before, and any costs or expenses incurred prior to the date, Viavi receives Customer's request to cure; or (ii) any other obligations of Customer under these Time & Materials Services Terms. THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION 4.2 (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 VIIVI WITH RESPECT TO ANY NON-CONFORMANCE OF TIME & MATERIALS SERVICES OR PARTS.

**4.3 Warranty Period.** The warranty period shall be ten (10) days from the day on which the non-conforming Time & Materials Services have been performed. Customer shall have no warranty claims, unless Viavi receives from Customer, during the warranty period (i) a written notice describing the warranty breach in reasonable detail, and (ii) remote and physical access to the affected parts as well as information in sufficient detail to enable Viavi to reproduce and analyze the failure.

**4.4 Disclaimer.** EXCEPT AS SPECIFIED IN SECTION 4.1 (LIMITED WARRANTY), VIIVI MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY TIME & MATERIALS SERVICES OR PARTS. 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.

**5. WORK PRODUCT.**

**5.1 License to Work Product.** Viavi shall grant to Customer a personal, non-exclusive, non-transferable, and non-sublicensable license to use Work Product solely for Customer's internal business purposes if and to the extent that (i) Viavi intentionally makes such Work Product available to Customer as part of Time & Materials Services; (ii) the Work Product is not covered by any other written terms or agreements between the parties (otherwise such other terms or agreements, e.g., Fixed Fee Services Terms or Software License Terms, shall exclusively govern); and (iii) Customer complies with all provisions of these Time & Materials Services 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.

**5.2 All Other Rights Reserved.** Viavi reserves ownership, title, and all rights and interest, including, but not limited to, all Proprietary Rights not expressly granted to Customer in these Time & Materials Services Terms in and to all Work Product as well as all information, materials and technology developed or acquired by Viavi prior to, or independently of, the provision of Time & Materials Services hereunder, including, without limitation, all Intellectual Property embodied therein and all Proprietary

Rights therein and thereto. Customer reserves ownership, title, and all rights and interest, including, but not limited to, all Proprietary Rights in and to all Intellectual Property that Customer owns or acquires independently of the provision of Time & Materials Services hereunder.

## **6. TERMINATION.**

**6.1 Right to Terminate.** Either party may terminate any or all orders of Time & Materials Services with or without cause, at any time by giving the other party thirty (30) days' prior written notice. Either party may terminate any or all orders of Time & Materials Services by written notice, effective immediately, if the other party fails to cure any material breach of these Time & Materials Services Terms within ten (10) days after receiving written notice from the non-breaching party detailing the alleged material breach. For the avoidance of doubt, VIAMI may terminate an order regarding Training Services under this Section 6.1 if the Customer fails to comply with the terms of Section 2.4.

**6.2 Consequences.** Unless Customer terminates Time & Materials Services because of Viavi's material breach of these Time & Materials Services Terms or Viavi terminates the Time & Materials Services without cause, Customer shall pay to Viavi the agreed-upon cancellation fees, or, if none are agreed, at Viavi's choice, an amount equaling (i) Viavi's ramp-down costs (recovery of costs for hiring, employing, and laying off additional personnel in case of specific ramp-up), or (ii) the estimated

total fees for Time & Materials Services contemplated, the costs for materials, and the expenses actually incurred less the expenses saved by Viavi as a result of the early termination. If Customer validly terminates Time & Materials Services because of Viavi's material breach, Customer shall not be obligated to pay the fees for the time spent, the costs for materials, and the expenses incurred performing Time & Materials Services during the ten (10) days preceding the termination. If Viavi terminates Time & Materials Services because of Customer's material breach of these Time & Materials Services Terms, Customer shall return to Viavi all Work Product, Viavi's Confidential Information and other tangibles and intangibles received in connection with Time & Materials Services, without retaining any copies thereof, and all licenses granted to Customer under these Time & Materials Services Terms for Work Product shall be automatically revoked.

**6.3 Survival.** Sections 3 (Payment), 4 (Limited Warranty and Disclaimer), 5 (Work Product), and Section 6 (Termination) of these Time & Materials Services Terms and Viavi's General Terms shall survive any termination of these Time & Materials Services Terms, provided that the license to Work Product granted to Customer by Viavi in Section 5.1 (License to Work Product) shall survive only so long as Customer continues to fully comply with these Time & Materials Services Terms.