

# **Visual UpTime® *Select*™**

## **Limited Hardware Warranty and Disposal Terms**

### 1. Warranty Coverage.

1.1 Standard Warranty. Visual Networks Operations, Inc. (“Visual”) warrants (“Warranty”) to you (“you”), the purchaser of this Analysis Service Element (“ASE”), that the ASE will be free from significant defects in materials and workmanship that affect the ASE’s ability to operate substantially in accordance with the specifications (“Specifications”) for the ASE supplied by Visual for a period of one (1) year from the date of shipment by Visual or its authorized reseller.

1.2 Extended Warranty Period. Visual may offer the ability to purchase an extended warranty period with respect to the ASE. Such extended warranty period may only be purchased before the expiration of the then-current warranty period of the ASE. The Visual price list then in effect will include all warranty offerings and any limitations.

1.3 Enhanced Warranty Services. Standard warranty coverage requires return of the ASE to Visual for repair or replacement. There are no guarantees under standard warranty coverage with respect to how quickly a repair can be completed and a functioning ASE will be returned. If you require a committed response time, Visual offers enhanced warranty coverage. Enhanced warranty coverage is simply an enhancement of the services provided under standard warranty coverage and does not serve to extend or otherwise affect the term of warranty coverage. Bronze and Gold warranty enhancements are available in the United States. International Gold warranty enhancement is available outside the United States. Warranty enhancements go into effect on either the first or fifteenth day of the month if ordered and accepted by Visual prior to such date, respectively.

1.3.1 Bronze. Upon confirmation by the Visual Technical Assistance Center (“VTAC”) of warranty coverage and an apparent hardware defect, a replacement unit will be shipped as quickly as reasonably possible via overnight express courier for next business day delivery to your location. Upon shipment of the replacement unit, the warranty coverage will be transferred from the original unit to the replacement unit. If the original unit is not returned to Visual within fifteen days of shipment of the replacement, you will be charged full price for the replacement unit. If the original unit is a “No Trouble Found” unit as described in Section 2.3, then you will be responsible for the payment of the Hardware Testing Fee described in Section 2.3, the original unit will be returned to you at your expense and you will be charged full price for the replacement unit.

1.3.2 Gold. Upon confirmation by VTAC of warranty coverage and an apparent hardware defect, a replacement unit will be installed at your location as soon as possible which is usually within four hours. The original unit will be shipped to Visual for confirmation of the defect. Upon installation of the replacement unit, the warranty coverage will be transferred from the original unit to the replacement unit. If the original unit is a “No Trouble Found” unit as described in Section 2.3, then you will be responsible for the payment of the Hardware Testing Fee described in Section 2.3, the original unit will be returned to you at your expense and you will be charged full price for the replacement unit.

1.3.3 International Gold. Upon confirmation by VTAC of warranty coverage and an apparent hardware defect, a replacement unit will be installed at your location by the

following business day. The original unit will be shipped to Visual for confirmation of the defect. Upon installation of the replacement unit, the warranty coverage will be transferred from the original unit to the replacement unit. If the original unit is a “No Trouble Found” unit as described in Section 2.3, then you will be responsible for the payment of the Hardware Testing Fee described in Section 2.3, the original unit will be returned to you at your expense and you will be charged full price for the replacement unit.

1.4 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS: (A) VISUAL AND ITS AFFILIATES AND THIRD PARTY PROVIDERS HEREBY DISCLAIM ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND IN CONNECTION WITH THE ASE, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE AND QUIET ENJOYMENT; (B) THE ASE IS PROVIDED "AS IS"; AND (C) VISUAL AND ITS AFFILIATES AND THIRD PARTY PROVIDERS MAKE NO WARRANTIES THAT ANY DEFECT OR MALFUNCTION OF THE ASE IS CORRECTABLE OR WILL BE CORRECTED.

IF VISUAL CANNOT LAWFULLY DISCLAIM IMPLIED WARRANTIES UNDER THESE TERMS, ALL APPLICABLE WARRANTIES ARE LIMITED IN DURATION TO THE DURATION OF THE EXPRESS WARRANTY APPLICABLE TO THE ASE.

## 2. Warranty Service Procedure.

2.1 Registration. Enhanced warranty coverage requires pre-registration of all sites covered. No credit will be granted to you in respect of any unregistered sites.

2.2 Return Authorization. Before returning the ASE for any warranty services, you must contact the VTAC. VTAC will work with you to attempt reasonable remote diagnostics and/or debugging. If VTAC determines that the problem appears to be a hardware problem and confirms that the ASE is under then-current warranty coverage, then VTAC will generate a Return Material Authorization (“RMA”) number to place on the outer package of the returned ASE. Visual cannot accept the ASE without an RMA number on the package.

2.3 No Trouble Found. If the ASE is returned for warranty service and is found to operate substantially in accordance with the Specifications and one of the following situations apply (“No Trouble Found”), then you will be responsible for the payment of the “Hardware Testing Fee” specified in the Visual price list then in effect: (a) you fail to perform reasonable field debugging at VTAC’s direction; (b) you fail to provide specific problem documentation; or (c) you disregard VTAC’s determination that the problem is not due to a hardware defect.

3. Remedies. Upon receipt of the ASE, Visual shall, at Visual’s option, either: (a) repair or replace the ASE so that it satisfies the Warranty; or (b) refund the original purchase price paid for the ASE. The remedies set forth in this Section 3 are the only remedies available against Visual in connection with the ASE and are, therefore, exclusive and in lieu of all other warranties, remedies and conditions, whether oral or written, expressed or implied.

## 4. Exclusions and Limitations.

4.1 Exclusions Applicable to Warranty Coverage. Visual shall have no responsibility or obligation in connection with the ASE resulting from accidents, misuse, modifications, improper installation or from maintenance not performed by Visual.

4.2 Limitations of Liability. IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF VISUAL OR ITS AFFILIATES OR THIRD PARTY PROVIDERS UNDER THESE TERMS OR IN CONNECTION WITH THE ASE, UNDER ANY THEORIES OF ACTION WHATSOEVER OR IN ANY FORUMS, EXCEED THE ORIGINAL PURCHASE PRICE PAID FOR THE ASE. IN NO EVENT SHALL VISUAL OR ITS AFFILIATES OR THIRD PARTY PROVIDERS BE LIABLE UNDER THESE TERMS OR IN CONNECTION WITH THE ASE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR DATA AND INTERRUPTION OF BUSINESS), WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, GUARANTEE OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4.3 Miscellaneous.

4.3.1 Maximum Warranty Period. Extended warranties may not be available with respect to discontinued products or that would extend the warranty period for the ASE beyond a warranty period cap. Any such limitations will be specified in the Visual price list then in effect.

4.3.2 Alternative Replacement Equipment. Visual reserves the right to substitute alternative equipment that substantially meets or exceeds the specifications and functionality of the returned ASE.

4.3.3 Unit-Specific Coverage. All warranty coverage is specific to the ASE and is not transferable to any other unit except as described above with respect to enhanced warranty swap outs.

4.3.4 Non-Cancelable. Warranty coverage is not cancelable by you and no refund or credit will be provided in connection with any such cancellation of coverage including any cancellation of extended or enhanced warranty coverage.

4.3.5 Continuity of Coverage. The ASE must have been continuously covered by the original or extended warranty coverage for it to be eligible for extended warranty coverage or enhanced warranty coverage. If Visual elects to offer such extended or enhanced warranty coverage even though warranty coverage has expired, then Visual may impose a surcharge in respect of the lapsed warranty coverage.

5. Waste Disposal. You are responsible for the collection, treatment, recovery and environmentally sound disposal of the ASE (and any equivalent products fulfilling the same function which the ASE replaces) as well as all related costs and expenses (“Disposal Obligation”). In connection with your Disposal Obligations, you shall: (a) comply with the requirements of any and all laws and regulations applicable to such obligation, including European Union Directive 2002/96/EC and any implementing legislation (“WEEE Directive”), (b) comply with any related reporting requirements if required by such laws or regulations, including any notice and provision of other information to Visual, and (c) provide to Visual any additional information that Visual may reasonably request. For more information regarding your Disposal Obligation, visit [www.visualnetworks.com](http://www.visualnetworks.com).

6. Governing Law. These Terms shall be governed by and construed in accordance with the laws of the State of Maryland, without giving effect to its conflicts of laws principles.