



Master Services Agreement

THIS MASTER SERVICES AGREEMENT (“MSA”) is entered into by you (“Customer”) and Spectra. For purposes of this MSA the term (“Spectra”) shall mean Spectra Logic Corporation and subsidiaries or agents acting on behalf of Spectra. Spectra and Customer agree that Spectra will provide Services in accord with the terms and conditions outlined below.

THE MSA DETAILS THE TERMS AND CONDITIONS UNDER WHICH SPECTRA CAN PROVIDE SERVICE TO THE CUSTOMER. IF THE CUSTOMER DOES NOT AGREE TO THESE TERMS AND CONDITIONS, SPECTRA IS UNABLE TO PROVIDE SERVICE FOR THE EQUIPMENT TO THE CUSTOMER. BY ACCEPTING DELIVERY OF SERVICE BY SPECTRA, CUSTOMER IS AGREEING TO THESE TERMS AND CONDITIONS.

1. Services. Spectra will provide services to Customer. Services are defined as support services and professional services. Details for both can be found in the support offerings documentation at <https://support.spectralogic.com/services-and-contracts/spectraguard-support-offerings> and <https://support.spectralogic.com/services-and-contracts/professional-services>.

2. Terms of Purchase

2.1. Prices. The prices charged for Services purchased under this MSA will be as quoted by Spectra. If the Services are being performed on a time and materials basis, any estimates provided by Spectra are for planning purposes only. Any required deposits are non-refundable.

2.2. Additional Fees, Taxes. Customer shall be responsible for all applicable taxes and fees assessed or imposed upon the Services provided or the amounts charged under this MSA, exclusive of net income taxes.

2.3. Invoicing and Payment. Invoicing is performed in advance with additional charges invoiced at the time of occurrence. Additional charges could include, but are not limited to, work performed outside of this MSA. Spectra will advise Customer of the additional charges pending prior to invoicing. Customer’s payment terms will be net thirty (30) days from the date of invoice, subject to continuing credit approval by Spectra. Customer will pay Spectra in the currency invoiced by Spectra. Additional charges may apply if Customer requests Services that are performed outside contracted hours or are beyond the normal coverage of their contracted support level.

2.4. Non-payment. If Customer does not pay as provided herein and such non-payment continues for 10 days after written notice, Spectra may terminate this MSA and pursue all available remedies. Reasonable attorneys' fees and costs shall be awarded to the prevailing party. No delay or failure of Spectra to exercise any right or remedy under this MSA operates as a waiver thereof. Any material or equipment supplied to the customer in Service of this MSA also becomes due for immediate return to Spectra.

2.5. Cancellation. Spectra may cancel this Service at any time during the Service if the customer refuses to reasonably cooperate with any Spectra resources attempting to deliver Services under this MSA.

2.6. Purchases from a Third-Party Reseller. This Section 2.6 shall not apply to Customers who purchase Services directly from Spectra. If Customer purchases Services from an authorized reseller of Spectra Services, then Customer acknowledges Spectra as a disclosed principle and that this MSA, except for the “Terms of Purchase” provisions above, shall apply to such Customer’s use of the Services.

3. Term & Renewal

3.1. The Services Term is effective from the date of shipment of the hardware or as stated otherwise in your invoice supplied from Spectra ("Effective Date"). The terms and conditions, as detailed in this MSA, reflect a single or multi-year term unless stated otherwise in your invoice document. Spectra is not required to administer Service once the Services term expires.

For units that are self-installed by the Customer (typically T50e and Stack) the support warranty starts at the time of shipment of the product from Spectra. Exceptions, with postponed service warranty starting date, can be processed upon Spectra management's written approval prior to the time of product shipment. In all cases, these exceptions are limited to a maximum period of 90 days.

3.2. Customer may at its sole discretion renew this MSA on the appropriate anniversary (depending on the length of the initial Services term) of the Effective Date for subsequent one year terms ("Term"). In addition, Spectra may, at its option, renew the Service by sending Customer an invoice or continuing to make the Service available to Customer. Customer may (where permitted by law) agree to such renewal of the Service by paying such invoice by its due date or by continuing to use the Service. If Customer renews the MSA by continued use of the Service, Customer will be invoiced in a manner substantially similar to their initial term of Service.

3.3. If Services were purchased through an authorized reseller ("Reseller") of Services, Spectra may send the invoice to the Reseller rather than to the Customer directly. In the event a quote is not received from the Reseller the Customer may contact Spectra's Contracts organization directly. It is the Customer's responsibility to ensure the Services purchased through the Reseller are for Spectra authorized Service and may contact Spectra to verify if it is valid.

3.4 All professional services line items purchased provide the Customer the right to use said Service for the corresponding Services Term. Additionally, lack of response in the scheduling process will be considered a formal waiving of this right to use said Service.

Should Customer request additional services outside the scope of the purchased Services, the Customer will be informed of pending additional charges.

4. Termination: Either party may terminate this MSA if the other party commits a material breach and the breach is not cured within ten (10) days of receipt of written notice from the injured party.

5. Third-Party Products & Warranties: "Third Party Products" means any third-party hardware, Services or software not purchased through Spectra and not included on a Spectra Service contract. Except as agreed to in writing between Customer and Spectra, Spectra shall have no responsibility or liability for Third Party Products and Customer shall look exclusively to the third party provider for any damages or liability with respect to the provision of such Third Party Products.

6. Proprietary Rights

6.1. Customer shall take all reasonable and necessary precautions to safeguard all Spectra property and handle said property with the same care that is applied to its own property. Any damage to said property will be charged to the customer's account at the then-current rates.

6.2. Spectra maintenance materials include all maintenance equipment, tools, ASM parts, documentation, test and verification routines and the outputs of said materials. All maintenance materials are the property of Spectra. Spectra may remove or ask customer to remove/destroy at any time.

6.3. Service Parts Ownership: All Spectra Service parts removed from the supported equipment become the property of Spectra upon replacement. Unless agreed by Spectra in writing, all removed parts must be returned to Spectra. Customer must pay Spectra at the current retail price(s) for any Service parts removed from the System and retained by Customer (except where agreements have been specifically made for part retention) if Customer has received replacement parts from Spectra.

6.4. Assisted Self Maintenance (“ASM”) Parts Ownership: ASM parts are provided on a bailment basis and shall remain the property of Spectra until the ASM part is used in the equipment serviced by Spectra and the removed part is returned to Spectra. Customer must segregate ASM Parts from its own inventory, retains the risk of loss and is responsible for the return of all parts after performing replacement actions. Customer is responsible for the return of all parts at the end of this MSA or if Service is downgraded from ASM. Any parts not returned by Customer will be the responsibility of the Customer to purchase at the then-current list price for those parts. Full return details are in Section 7.9. Refer to Section 1 for description of support levels.

7. Customer Responsibilities

7.1. Customer acknowledges that Spectra’s performance and delivery of the Services are contingent upon: (i) Customer providing safe and hazard-free access to its personnel, facilities, equipment, hardware, software, network, local phone, and internet for Services to be performed at Customer’s location, and (ii) Customer’s timely decision-making, notification of relevant issues or information and granting of approvals or permissions. Customer will promptly obtain and provide to Spectra any required licenses, approvals or consents necessary for Spectra’s performance of the Services. Customer will provide, at no charge to Spectra, reasonably required facilities such as storage and working space. For Spectra Enterprise products (T950 and TFinity), 2 feet (0.6 m) of clearance is required, and 3 feet (0.9 m) is recommended on all sides of the library in order to perform services. In addition, for racked T200, T380, and T680 products, the front and left side access panels must have a minimum of 2 feet of clearance.

7.2. All Spectra parts will be safeguarded and utilized only on equipment associated with this MSA and under the direction of Spectra. This specifically includes the use of ASM parts.

7.3. Customer will use documented ticket submission procedures wherever possible. This procedure can be completed at <https://support.spectrallogic.com/incident/incidents-inventory>.

7.4. In order for Customer to receive Service, Spectra requires the Customer to (i) provide the serial number of the equipment; and (ii) have a valid Service contract on the equipment. The Customer may request technical support via telephone, email, web submission or via the support web portal located at <http://support.spectrallogic.com>.

7.5. Customer will cooperate with Spectra technical support representative and field service representatives. Customer agrees to cooperate with and follow the instructions given by the representatives. Dependent on support level, this includes but is not limited to using reasonable efforts to provide a sufficient amount of information for problem diagnosis prior to parts or on site dispatch which could include but is not limited to software logs, hardware logs, or traces. This may require a customer to install certain hardware or software to assist with diagnosis.

7.6. Customer will provide remote access to Spectra-provided software and hardware for troubleshooting and problem diagnosis. If customer refuses this option, Spectra reserves the right to charge for any Service rendered on site which may have reasonably been provided remotely. All charges would be at the then-current rate for said Service.

7.7. Customers without a valid Service MSA are not entitled to receive new software releases, firmware updates, maintenance requests, or technical support Services. Software and firmware downloaded for equipment under a Service contract cannot be utilized in any unsupported equipment. Parts may not be moved from one supported system to another without prior approval from Spectra. Parts in an unsupported system may not move to a supported system.

7.8. Supportability

7.8.1. Customer must conform to all mandatory firmware and EC levels as determined by Spectra. Spectra is only required to maintain up to two versions behind the latest firmware versions and software releases. Spectra will make these updates available for download. It is Customer's responsibility to perform these updates, unless they have an uplifted support level which includes assistance with firmware upgrades.

7.8.2. Customer agrees to perform all system maintenance recommended by Spectra. This includes, but is not limited to, firmware and software updates, replacing air filters, drive cleaning and tracking of diagnostic logs.

7.8.3. Customer must ensure the appropriate installation of all Customer Replaceable Units ("CRUs") or additional Service parts, as well as firmware and software releases, are followed in accordance with instructions from Spectra.

7.8.4. If Spectra determines a technical issue may be associated with a product from a third party vendor that Spectra has a mutual support relationship with, then Spectra will work with that vendor to address the technical issue. If Spectra does not have a mutual support relationship with the third party vendor, Spectra will request that Customer engage that vendor to work with us to address the technical issue. If the technical issue is associated with the third party product then the third party vendor (and not Spectra) will determine the corrective actions on that issue. Services do not include installing, troubleshooting, fixing, providing product updates or otherwise supporting third party products.

7.8.5. Acceptance of Service: Re-instatement of Service for any hardware where Service has lapsed is subject to an inspection, a repair fee charged at prevailing rates or a reinstatement fee to determine serviceability of the equipment. The amount of these fees will be determined by the greater of the current reinstatement fee or the cost of repairs required to make the equipment serviceable.

7.9. Parts Handling Responsibility

7.9.1. It is Customer's responsibility to check the condition of the equipment upon receipt. Customer's signature indicates the Customer accountability for the equipment condition.

7.9.2. For support levels requiring the Customer to return parts to a Spectra depot for repair, Customer is responsible for the shipment of the malfunctioning equipment to Spectra for repair and back to Customer's site after repair unless otherwise reflected in the support offerings document referenced in section 1. Customer is to pay all duties, taxes, freight, insurance, and miscellaneous shipping costs associated with the transport of the equipment.

7.9.3. For all other Spectra support levels where the replacement part is shipped to the Customer from Spectra, Customer is responsible for shipping the malfunctioning equipment and/or temporary equipment to Spectra within five business days of receiving the replacement equipment. If Customer does not return the replacement equipment or the malfunctioning equipment within the above time frame, Customer will immediately be liable for the full cost of said equipment, and all associated charges including but not limited to shipping, customs, duties and taxes that apply to the recovery of the equipment. If Customer does not pay the invoice nor return the malfunctioning or replacement equipment, and such non-payment continues for 10 business days after written notice, Spectra reserves the right to without limitation cancel the Customer's Service to recover the cost of the unreturned equipment.

7.9.4. If the replacement equipment is brought to the Customers site by Spectra or a Spectra-authorized field service representative, the field service representative is responsible for the return of the component. If the Customer requests the malfunctioning equipment remain on site then this becomes the responsibility of the customer according to section 7.9.3.

7.9.5. All equipment returned to Spectra must have an RMA number, RSO number, or other Spectra issued reference number clearly indicated on the outside of the package. Where return labels are supplied, these labels must be used. In the event that equipment is received by Spectra and a Spectra-issued reference number or return label cannot be located, Customer may not be credited for the returned equipment and Customer will remain liable for the value of the equipment until the equipment has been clearly identified. If Spectra cannot reasonably determine that it has received a shipment from the Customer, it is the responsibility of Customer to provide documentation/evidence of shipment upon request by Spectra. If no evidence of shipment can be shown by Customer, Customer will remain liable for the value of the equipment.

7.9.6. All equipment returned to Spectra must use Spectra-approved packaging. It is the Customer's responsibility to contact Spectra to purchase the approved packaging if it is not already available to the Customer. Customers will be responsible for all damages to equipment returned in packaging not approved by Spectra.

7.9.7. With respect to secure sites or data confidentiality issues which prevent the removal and exchange of parts from a Customer's site, Customers may purchase an uplifted Service Agreement that allows specifically-identified parts to be retained for secure disposal by Customer. In the event the Customer does not choose this option with advance notice and purchase of said uplift, Customer will be responsible for purchase of all retained materials at the then-current list price.

8. Scope of Support

8.1. To assist with the equipment operating at optimal performance, Spectra provides the Customer with a variety of technical support assistance, tools, and resources.

8.1.1. Technical support is offered by telephone, email, web submission or support web portal, located at <http://support.spectrallogic.com>.

8.1.2. Knowledge base and product documentation is available for customers to assist with diagnosis and problem resolution.

8.1.3. Remote diagnosis of technical problem when available and applicable.

8.1.4. Effective problem isolation and presentation of solution.

8.1.5. Trace and log review to assist with problem resolution.

8.1.6. On site resources, through Spectra or Spectra-authorized partner field engineer, are provided when applicable, based on support level, which may require initial remote troubleshooting with Customer's assistance to allow for correct problem diagnosis.

8.1.7. Spectra provides replacement hardware when applicable. Spectra uses new and reconditioned parts made by various manufacturers for replacement parts.

8.1.8. Once Spectra establishes the need to replace a hardware part, a replacement part is sent to the Customer's location or brought to the location by Spectra or a Spectra-authorized partner field engineer depending on support level. If support level includes on site assistance, a field engineer will install the replacement part. Under certain circumstances the Customer may be permitted to install the part themselves. If support level does not include on site assistance, the replacement part will be installed by Customer using provided documentation. Spectra will attempt all reasonable efforts to send replacement parts consistent with the support level purchased.

8.1.8.1. Spectra stocks most commonly used parts at local service depots to meet support level requirements. In some cases a part may be needed that is not stocked at the local depot. If the required part is not available from the local depot, the part will ship from a Spectra regional logistics hub or the Spectra factory location.

8.1.8.2. In most circumstances a part replacement will fix the issue, however, in some cases it may be necessary to replace a whole unit. Configured whole unit replacements may require additional time for preparation and delivery. Whole units are not stocked at service depots and shall be supplied from a regional logistics hub or the Spectra factory location.

8.1.9. Software and firmware updates are supplied to improve the performance and functionality of Customer's hardware system.

8.1.10. Spectra will provide any hardware updates deemed necessary by Spectra for the proper performance of Customer's hardware system.

8.1.11. Feature releases and functionality improvements will be communicated to the Customer when appropriate.

9. Confidentiality: In the performance of the Services, Customer and Spectra may have access to or be exposed to confidential information of the other party. This information shall not be shared unless such disclosure is to personnel of Spectra or Customer or to third parties with the prior notice and consent of the disclosing party, and in all events only on a "need-to-know" basis in connection with its performance of this MSA. No disclosure will be made to any person unless the person who receives the confidential information has first executed a statement that such person will maintain the confidential nature of the information. Spectra's third party support provider may from time to time have access to confidential information. Spectra warrants that such third party personnel have signed appropriate non-disclosure agreements.

10. Support Services: When Services consist of repair of Spectra-branded systems, such Services shall be those repair Services that are necessary because of any existing defect or a defect that occurs in materials or workmanship in the system or in any system component covered by this MSA.

10.1. Unless specifically purchased as an option and detailed via order, this MSA, or a specific statement of work, Service does not include preventive maintenance, accessories, supply items, peripherals, repairs necessitated by problems with third-party components, or repair required as a result of alteration, adjustment, or repair by anyone other than Spectra or its representatives.

10.2. Customer is responsible for all costs (including diagnosis, shipping, parts and labor) incurred as a result of the following:

10.2.1. Accident, misuse, abuse or neglect of the system or equipment (such as, but not limited to, use of incorrect line voltages, use of incorrect fuses, use of incompatible devices or accessories, improper or insufficient ventilation, failure to follow operating instructions, or improper racking/setup).

10.2.2. Occurrences outside the environmental specifications (such as, but not limited to, fire in the data center, sprinkler system damage, unreasonable temperature variations, exceeding temperature and humidity or other specifications as provided by manufacturer, unregulated power, or poor air quality including dust).

10.2.3. Failure to follow routine preventive maintenance procedures (such as, but not limited to, filter replacement, periodic cleaning of drives in accordance with manufacturing recommendations, or removal of faulty or worn media).

10.2.4. Failure to apply a hardware, firmware or software update or any workaround supplied by Spectra to the Customer that would have corrected or prevented the malfunction.

10.2.5. Damage, premature failure or reliability issues which are considered to be the result of the use of incompatible, remanufactured, faulty or refurbished media unless Spectra certified media is utilized.

10.2.6. Damage, premature failure or reliability issues which can be attributed to the addition of incompatible, remanufactured, faulty or refurbished equipment within the host environment, which was not part of the original unit configuration unless previously certified by Spectra.

10.2.7. Improper installation or repairs made by any third party not authorized by Spectra.

10.2.8. Failure to abide by Spectra's relocation procedures requiring appropriate packing materials, Spectra or partner field service representative, and notification of any movement of Spectra equipment prior to its relocation. Support availability in the new location must also be verified as part of the mandatory relocation procedures.

10.2.9. Failure to complete appropriate and agreed upon site readiness activities prior to the arrival of the Spectra Professional Services Team causing the need to extend the scheduled visit or return at a later date.

10.3. Spectra will notify Customer if, in the opinion of Spectra, maintaining any equipment in good working condition is no longer possible. Spectra may remove such equipment from Service, with a pro rata refund to Customer of prepaid charges. Refurbishment is outside the scope of this MSA. Spectra may provide refurbishment Services, as available, in accordance with Spectra's then-current terms, conditions and charges.

11. Limited Warranty & Limitation of Liability

11.1. Limited Warranty

11.1.1. Spectra warrants and represents that (i) the Services shall be performed in a good, workmanlike and professional manner in accordance with industry standards and practices, (ii) title to all hardware and materials furnished by Spectra in accordance with this MSA shall be good and clear title, free and clear of all liens and encumbrances, and (iii) all equipment supported under this Agreement shall have been produced, sold, priced, and delivered in compliance with all federal, state, municipal and local laws, rules, regulations, ordinances and directions existing at the time of delivery. Except as expressly stated herein, there are no express or implied warranties, including the implied warranties of merchantability and fitness for a particular purpose respecting this agreement or the Services, products and materials provided.

11.1.2. LIMITATION OF LIABILITY: EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 11, SPECTRA AND CUSTOMER ARE NOT LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST DATA TO ANYONE ARISING OUT OF THIS AGREEMENT OR THE USE OF MAINTENANCE SERVICE, DOCUMENTATION, OR MAINTENANCE MATERIALS. CUSTOMER'S EXCLUSIVE REMEDY AND SPECTRA'S ENTIRE LIABILITY IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE FOR MAINTENANCE SERVICE IS THE REPAIR OR EXCHANGE OF ANY EQUIPMENT OR PART THEREOF WHICH IS INOPERABLE. IF SPECTRA IS UNABLE TO MAKE SUCH REPAIR OR EXCHANGE, THEN SPECTRA SHALL PAY CUSTOMER'S ACTUAL DAMAGES NOT TO EXCEED THE CHARGES PAID BY CUSTOMER TO SPECTRA FOR THE PERIOD THAT THE MAINTENANCE SERVICE CAUSED THE ACTUAL DAMAGES.

12. Indemnification: Each party agrees to indemnify and hold harmless the other party from any third-party claim or action for personal bodily injuries, including death, resulting from the indemnifying party's gross negligence or willful misconduct resulting from the Services (excluding Third-Party Products) provided hereunder. This section states each party's exclusive remedies for any third-party claim or action, and nothing in this MSA or elsewhere will obligate either party to provide any greater indemnity to the other.

13. Important Additional Terms

13.1. Assignment. Customer may assign this Agreement in whole or in part only with the prior written consent of Spectra. Spectra may assign its rights and/or delegate its obligations in whole or in part under this Agreement, or all or part of the payments, to the extent that Spectra obligations to Customer are not affected.

13.2. Force Majeure. Except for Customer's obligation of payment, neither party is liable for failure or delay in performance due to causes beyond its reasonable control. If the ability of Spectra to render Service is impaired by circumstances beyond its reasonable control, Spectra may terminate Service for the affected equipment with a pro rata refund to Customer for prepaid charges.

13.3. Entire Agreement, Governing Law, Forum and Language. This Agreement is governed by Colorado, USA law, venue and jurisdiction, and is the complete and exclusive statement of the agreement between the parties and supersedes all prior oral and written proposals and communications. Customer and Spectra will attempt to resolve any claim, or dispute or controversy relating to this MSA, (a "Dispute") through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. This Agreement form is applicable to Services rendered throughout the world except as set forth in the following sentence. Concerning Services in Europe, the Middle East and Africa, the form shall and disputes shall be settled by binding arbitration in accordance with the rules of the London Court of International Arbitration, the site of which shall be London England.

13.4. Limitation Period. Neither party may institute any action in any form arising out of this MSA more than two (2) years after the cause of action has arisen, or in the case of nonpayment, more than two (2) years from the date of last payment.

13.5. Updates. Spectra reserves the right to update its MSA at any time, effective upon posting an updated version at <https://support.spectrallogic.com/services-and-contracts/master-services-agreement/>.