

SPECTRALINK TERMS AND CONDITIONS FOR SERVICES

1. Applicability of these Terms and Conditions.

- a. Except as otherwise mutually agreed in writing, these "Spectralink Terms and Conditions for Services" together with the terms and conditions of any applicable Service Description (defined below) (collectively, the "**Terms and Conditions**") set forth the terms and conditions pursuant to which Spectralink will provide Services (defined below) to Customer (defined below).
- b. By receiving Services from Spectralink, Customer agrees to be bound by these Terms and Conditions. All Services are subject to these Terms and Conditions and Spectralink hereby expressly rejects any inconsistent, conflicting, different or additional terms in a Customer purchase order or any other document and such terms shall have no force or effect, either through acceptance of such purchase order by Spectralink in writing or by performance.

2. Definitions. In addition to terms defined elsewhere in these Terms and Conditions, the following terms shall have the following meanings:

- a. "**Customer**", "**you**", or "**your**" means the entity receiving Services from Spectralink.
- b. "**List Price**" means Spectralink's then-current price of a Product (defined below) or Service (as applicable) specified on the Price List (defined below).
- c. "**Maintenance Service Program**" means a Service Program (defined below) that includes Technical Support, Repairs (both defined below) and, in some cases, additional Services specific to the Service Program.
- d. "**Parts**" means components of the Products.
- e. "**Price List**" means Spectralink's then-current published list of generally available Products and Services and their associated List Price, applicable to specific geographical location(s) or other restrictions as determined by Spectralink from time to time.
- f. "**Products**" means Spectralink's generally available products identified on the Price List, including any Releases (defined below) thereto.
- g. "**Professional Services**" means Services such as installation, network analysis, training and other Services, but excludes Technical Support, Repairs and any other Services provided as part of a Maintenance Service Program.
- h. "**Professional Service Program**" means a Service Program that includes either a bundle of Professional Services or an individual Professional Service.
- i. "**Release**" means a Software update, bug fix, upgrade or modified version of the Software issued by Spectralink.
- j. "**Repair**" means Services intended to restore a Product to working order and refurbish a Product to like-new condition and which may result in replacement of the Product with a new Product or another Repaired Product.
- k. "**RMA**" means a Return Material Authorization issued by Spectralink to approve the return of Product for Repair.
- l. "**Service Description**" means a Spectralink-published document that details the Services provided as part of a Service Program, is descriptive of one or more Service part numbers and functions as a statement of work. The Service Description for each Service Program purchased hereunder will be deemed attached and incorporated herein as a 'statement of work'.
- m. "**Service Program**" means a bundle of Services or an individual Service, each as defined in a Service Description, but excludes T&M (defined below).
- n. "**Services**" means Spectralink's generally available services identified on the Price List, including Service Programs and T&M.
- o. "**Software**" means software created by Spectralink or licensed to Spectralink that is delivered in connection with any Products including, without limitation, firmware, any Releases, and any optional functionality ("**Feature**") you have purchased, whether downloaded via the Internet or otherwise delivered electronically, all in object code format only, and any related documentation. In addition, any supplemental software code provided to you as part of the Services is considered part of the Software. Software does not include any software application developed by a third party that is acquired separately for use with the Products and which may or may not be designed to work interactively with the Software.
- p. "**Spectralink**" means Spectralink Corporation or Spectralink Europe ApS, as applicable.
- q. "**Technical Support**" means Services provided by telephone, email and/or, in certain cases, on-site, which are intended to resolve issues with the operation of the Products.
- r. "**Time and Materials**" or "**T&M**" means Services which are available for a fee which is based on the time spent and the materials used to provide the Services, instead of as part of a Service Program, including Technical Support, Repairs and other Services.

3. Ordering Services.

- a. In order to provide Services, Spectralink must first receive a purchase order for validly quoted Services. Such purchase order must contain, at least, the following information: (i) the Services being purchased; (ii) contact name, telephone and email; (iii) if applicable, the models and serial numbers of the applicable Products; (iv) the appropriate pricing information; (v) the site location(s) where the Products will be installed, together with a contact name, contact email address, and telephone number at the location; and (vi) the Maintenance Period (defined in Section 6(d)(ii) below), if applicable. All purchase orders are subject to acceptance by Spectralink and shall be of no effect absent such acceptance. Spectralink may signify acceptance of a purchase order either in writing or by performance.
- b. Any payment due hereunder shall be paid by electronic transfer or by other means, as specified by Spectralink within thirty (30) days of the invoice date and shall not be subject to any offset, discount, allowance, set off, recoupment or other deduction. Payment terms are subject to an approved line of credit. Any payment not made when due shall be subject to a late payment charge in the amount of one and one half percent (1½%) per month or the legal maximum, whichever is less, on the past due balance.

4. Availability of Services.

- c. Unless otherwise provided in an applicable Service Description, Services will be provided during Spectralink's business hours Monday through Friday, exclusive of Spectralink holidays.
- d. Spectralink reserves the right to terminate or modify any Services at any time in its sole discretion; provided, that any such modifications will not affect any Services already ordered and accepted by Spectralink prior to such modifications.

5. Scope of Services. Spectralink will provide the Services only for those Products: (a) for which Spectralink has been paid all applicable fees in full; and (b) which are properly registered with Spectralink in accordance with Spectralink's then-current policies (each a "**Registered Product**"). Spectralink shall have no obligation to perform any Services for any Product that is not a Registered Product. The purchase of Services for one or more Registered Products does not entitle you to receive Services for other Products that are not Registered Products and/or not covered by such Services. The scope of the Services provided under a Service Program will be defined in the applicable Service Description. If you request or require Services that are outside the scope of the Services purchased, Spectralink may charge for such Services at the then-current T&M rate or the List Price for such Services, as applicable.

6. Services.

- a. Releases. Spectralink will provide Releases subject to, as applicable, (i) the Product warranty, (ii) a Maintenance Service Program, or (iii) payment of the List Price (minus any applicable discount) for the Release. Spectralink will support only the current Release and the next previous Release.
- b. Repairs. Spectralink will Repair a Product subject to, as applicable, (i) the Product warranty, (ii) a Maintenance Service Program, or (iii) T&M fees. All Products returned for Repair must be sent to Spectralink's designated facility in accordance with Spectralink's then-current RMA policies and procedures and in compliance with any applicable law, regulation or safety standard. Spectralink is not responsible for Products returned to it without an RMA. You must make reasonable efforts to provide a reason for failure prior to requesting an RMA and submit all RMA requests exclusively through Spectralink's web portal at www.support.spectralink.com. The sender bears all delivery costs (including, without limitation, insurance) and risk of loss associated with the shipping an RMA to Spectralink and must adequately package any Products or Parts being returned to Spectralink. Upon receipt of a returned Product, Spectralink shall determine, in its sole discretion, whether the Product defect or damage is covered. Products that are damaged due to any of the Services exclusions set forth in Section 8 below or which are not repairable shall be replaced by an equivalent Product at List Price minus any applicable discount, except as otherwise stated in an applicable Maintenance Service Program. Replacement Products or Parts will be either new or equivalent in performance to new. Spectralink will bear all delivery costs and risk of loss associated with shipping Repaired Product to Customer. Returned Products or Parts removed from a Product, when exchanged for an equivalent item, will become the property of Spectralink.
- c. Technical Support.
 - (i) Spectralink will provide Technical Support subject to, as applicable, (x) a Maintenance Service Program, or (y) T&M fees.
 - (ii) If an issue is not resolved by remote Technical Support and if Spectralink determines that on-site Services are necessary, Spectralink will dispatch Technical Support personnel to the affected site subject to, (x) Customer's entitlement to on-site Technical Support under a Maintenance Service Program, or (y) receipt of a purchase order or payment in advance for T&M fees and associated expenses, and (z) the availability of Spectralink personnel. Customer shall ensure that the site is accessible by Spectralink's personnel. Spectralink reserves the right to invoice for all applicable re-visit fees, as published in the Price List, in the event that a site is not available or properly prepared for Services when a Spectralink technician is dispatched. Customer will pay all travel and living expenses in accordance with Spectralink's then-current travel expenses guidelines, unless otherwise stated in an applicable Service Description.
- d. Maintenance Service Programs.
 - (i) Services are provided and Maintenance Service Programs must be purchased on a per Registered Product basis.
 - (ii) The term for Maintenance Service Programs will be one (1) year or as provided on Spectralink's quotation or the purchase order (each, a "**Maintenance Period**"). You must provide Spectralink with notice of renewal or modification of a Maintenance Service Program no less than ninety (90) days prior to the expiration of the Maintenance Period. Spectralink reserves the right to charge the then-current T&M rate for any Services which Spectralink provides after the expiration of a Maintenance Service Program if Spectralink does not receive a purchase order renewing such Maintenance Service Program prior to its expiration.
 - (iii) Products must be running the latest Release and be fully operational to qualify for a Maintenance Service Program. Any non-functioning Products for which you wish to purchase a Maintenance Service Program must first be Repaired at Spectralink's then-current T&M rate.
 - (iv) Any purchase order for a Maintenance Service Program will be reviewed by Spectralink, and if the Products to be covered have not been under a continuous Maintenance Service Program, the purchase order may be rejected. However, with Spectralink's consent, if a Product is not under warranty and has not been under a continuous Maintenance Service Program within the prior sixty (60) days for whatever reason, a Maintenance Service Program may be ordered for such Product for a processing fee, as determined by Spectralink, plus fees for the subsequent Maintenance Period. Additional penalties may apply if the Product was formally covered by a multi-year Maintenance Service Program that has lapsed or been terminated. Acceptance of any such purchase order may be conditioned upon, (i) an on-site inspection and re-certification of the Products to be supported, (ii) the Products being updated to the latest Release, and (iii) the payment of any fees associated with such inspection, recertification and/or updating.
 - (v) All Products comprising the same installation site must be under the same Maintenance Service Program. By agreeing to the selected Maintenance Service Program you agree to purchase any warranty upgrade required to provide the same level of Service to any subsequently purchased Products for the location covered by such Maintenance Service Program (e.g. If the Maintenance Service Program selected includes advance replacement Service, then a warranty upgrade for advance replacement Service must be purchased for subsequent Products purchased for the location covered by such Maintenance Service Program). Any required warranty upgrade can be purchased at the point of sale or retroactively to the purchase date of the affected Product(s) at the time that such Product(s) are added to the applicable Maintenance Service Program. Pricing for the warranty upgrade will be calculated according to the List Price at the date of the purchase of the affected Product(s).
- e. Professional Service Programs. Spectralink will provide Professional Services subject to a Professional Service Program that has been purchased for the applicable Registered Product(s).

7. Customer Obligations.

In addition to Customer's responsibilities stated elsewhere in these Terms and Conditions, Customer agrees to comply with the following.

- a. You have the continuing obligation to keep all Products which are under a Maintenance Service Program at either the then-current Release or the next previous major Release.
- b. You must provide Spectralink personnel with free and full access to the Registered Products and, for any on-site Services, appropriate access to the facilities where the Registered Products are installed at all times during which Services are to be provided and adequate working space within a reasonable distance from the Registered Products (including heat, light, ventilation, electric current and outlets) at no charge to Spectralink. All environments where Spectralink personnel will provide on-site Services must be free from all risks to health and safety, except to the extent notified to Spectralink in writing and specifically accepted in writing by Spectralink.
- c. You are responsible to ensure the proper maintenance of the installation site and to provide the proper environment for the Registered Products in accordance with Spectralink's applicable published specifications, including, the necessary utility services for use of the Registered Products.
- d. You will be responsible for replacing, at your own expense, any and all consumable items used in connection with the Products, including without limitation, batteries.
- e. Spectralink strongly recommends the use of a current, reputable anti-virus program in connection with any PC-based, open-architecture Product, and that is regularly updated and run, especially in connection with the emergence of any new viruses and/or 'worms'.
- f. You are solely responsible for backing up your data.
- g. Spectralink may require an open purchase order or credit card number to cover any out-of-scope Services that may be requested or required during the term of a Service Program.
- h. It is your responsibility to ensure that the Products are Registered Products in order for Spectralink to provide the Services.

- i. You are responsible for any additional Customer obligations or responsibilities identified in an applicable Service Description.
- j. You agree to pay Spectralink all fees and expenses incurred pursuant to this Agreement.

8. Services Exclusions. Not limiting any disclaimers in these Terms and Conditions, Services do not cover or include any of the following, except as otherwise stated in an applicable Service Description:

- a. Damage to or defects in the Product resulting from causes external to the Product, including without limitation:
 - disaster, fire, accident, neglect, misuse, vandalism, water, power surges, lightning;
 - excessive use of chemical cleaning agents or the use of unsupported chemical cleaning agents;
 - failure of the installation site to conform to Spectralink's applicable specifications;
 - use of the Product for other than intended purposes;
 - viruses or conflicts involving software that is not installed or introduced by Spectralink;
 - use of the Product with third party items, products, components or software not provided or approved by Spectralink; or
 - the performance of maintenance or the attempted Repair of a Product by persons other than Spectralink employees or persons authorized by Spectralink;
- b. Electrical work external to the Product;
- c. Supplies or accessories, or painting or refinishing the Product;
- d. Relocation of the Product;
- e. The addition or removal of equipment or parts, attachments, features, to or from other devices not furnished by Spectralink, including communications devices, video devices, audio devices, networks or links;
- f. Repair of visual defects such as minor scratches, paint wear or any other cosmetic issues that do not impact the operations or durability of the Product;
- g. The back up or restoration of data.

9. Intellectual Property. Spectralink shall retain all right, title and interest in and to, and possession of, any know-how, technical information, specifications, documents, ideas, concepts, methods, processes, techniques and inventions developed or created by or on behalf of Spectralink relating to the Services. Any intellectual property, know-how, information or documents supplied at any time by one party to the other shall be treated as confidential and covered by the confidentiality obligations set forth in Section 13 below.

10. Termination. Either Spectralink or Customer may terminate any Services, in whole or in part, (a) if the other party fails to perform any material obligation hereunder or under any applicable Service Description, and fails to remedy such failure within thirty (30) calendar days after receipt of written notice of such default; (b) in the event that any proceedings are commenced against the other party or such party seeks protection under bankruptcy, insolvency, or other debtor's relief law, or (c) the other party becomes insolvent or dissolves. Spectralink may terminate any Services, in whole or in part, if any person other than a Spectralink employee, or a Spectralink-designated service representative, alters a Product without Spectralink's prior written consent, or in any way renders a Product unsafe. Services are non-cancellable except as set forth in this Section 10.

11. Indemnity. Customer and Spectralink shall each indemnify, defend and hold harmless the other from all claims, suits, losses, expenses, judgments and liabilities (including reasonable attorney's fees) arising out of personal injury or death to the extent caused by the negligence of the indemnifying party or its employees. The indemnitee shall give the indemnifying party prompt notice of and authority to defend or settle any such claim and shall give, at the indemnifying party's request and expense, reasonable information and assistance thereto.

12. WARRANTY/LIMITATION OF LIABILITY.

- a. SPECTRALINK WARRANTS FOR NINETY (90) DAYS FROM THE PERFORMANCE OF ANY SERVICES HEREUNDER THAT SUCH SERVICES SHALL BE PERFORMED IN A WORKMANLIKE MANNER CONSISTENT WITH GENERALLY ACCEPTED INDUSTRY STANDARDS. SPECTRALINK MAKES NO OTHER WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY. SPECTRALINK MAKES NO WARRANTY THAT OPERATION OF THE SPECTRALINK PRODUCT SERVICED WILL BE UNINTERRUPTED OR ERROR FREE. IN NO EVENT WILL SPECTRALINK BE LIABLE FOR ANY DELAY IN FURNISHING SERVICES. CUSTOMER MUST REPORT IN WRITING ANY BREACH OF THIS WARRANTY TO SPECTRALINK DURING THE ABOVE WARRANTY PERIOD. CUSTOMER'S EXCLUSIVE REMEDY AND SPECTRALINK'S ENTIRE LIABILITY FOR ANY BREACH OF SUCH WARRANTY SHALL BE TO RE-PERFORM THE SERVICES.
- b. EXCEPT FOR BREACHES OF CONFIDENTIALITY (SECTION 13) OR INTELLECTUAL PROPERTY (SECTION 9), IN NO EVENT WILL EITHER CUSTOMER OR SPECTRALINK BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES, LOST BUSINESS PROFITS, OR LOSS, DAMAGE OR DESTRUCTION OF DATA, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY OR OTHERWISE, EVEN IF SUCH DAMAGES COULD HAVE BEEN FORESEEN OR IF SUCH PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES.
- c. SUBJECT TO SUB-CLAUSE b ABOVE, EXCEPT FOR BREACHES OF CONFIDENTIALITY OR INDEMNITY OBLIGATIONS, SPECTRALINK'S MAXIMUM LIABILITY FOR ALL OTHER DAMAGES WILL BE LIMITED TO, (I) IN THE CASE OF MAINTENANCE SERVICE PROGRAMS, ONE (1) YEAR'S SERVICE FEES, OR (II) FOR ALL OTHER SERVICES, THE AGGREGATE SERVICE FEES PAYABLE TO SPECTRALINK FOR THE APPLICABLE SERVICES. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

13. Confidentiality.

- a. Confidential Information. A party hereto (the "**Disclosing Party**") may from time to time disclose to the other party (the "**Recipient**") certain non-public information regarding the Disclosing Party's business ("**Confidential Information**"). Spectralink's Confidential Information includes (without limitation) the function and performance of the Products, these Terms and Conditions, and any other information relating to the Products and Services. Confidential Information includes information disclosed orally, visually, or through any tangible medium.
- b. Protection of Confidential Information. Recipient will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by these Terms and Conditions and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of carrying out the Services and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.
- c. Exceptions. Recipient's obligations under Section 13b with respect to any Confidential Information of the Disclosing Party will terminate if and when Recipient can document that such information: (i) was already lawfully known to Recipient at the time of disclosure by the Disclosing Party; (ii) was disclosed to Recipient without any confidentiality restrictions by a third party who had the right to make such disclosure; (iii) is or becomes generally publicly available neither through any fault of the Receiving Party nor through a breach of another agreement covering the Confidential Information by a third party; or (iv) was independently developed by Recipient without access to or use of the Disclosing Party's Confidential Information. In

addition, Recipient will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is, (x) approved in advance, in writing by the Disclosing Party; (y) necessary for Recipient to enforce its rights under these Terms and Conditions in connection with a legal proceeding; or (z) required by law or by the order of a court or similar judicial or administrative body, provided that Recipient promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party, at the Disclosing Party's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

16. Force Majeure. Except for the obligation to make timely payments, neither party hereto will be liable to the other for delays or failures to perform occasioned by causes beyond its reasonable control. Such acts or events shall include, without limitation, acts of God, civil or military authority, civil disturbance, riot, fire, strikes, lockouts or slowdowns, factory or labor conditions, inability to obtain necessary labor, materials or manufacturing facilities, delayed issuance of export control licenses. In the event of such delays or failures to perform, any dates or times by which Spectralink is otherwise scheduled to perform Services shall be extended automatically for a period of time equal in duration to the additional time required because of the delay or failure to perform. Each of the parties shall promptly inform the other of any event of force majeure, its expected duration and cessation, respectively.

17. General.

- a. Any notices required or permitted to be given hereunder shall be in writing and effective when received by a party at the address last notified to the other party by prior written notice. In the case of Spectralink such address, unless otherwise notified in writing, shall be as follows: Spectralink Corporation, 2560 55th Street, Boulder, CO 80301, Attention: Chief Financial Officer.
- b. Except as otherwise set forth in these Terms and Conditions, these Terms and Conditions may only be modified by a written agreement duly signed by authorized representatives of the parties hereto, and variance from or addition to these Terms and Conditions in any order or other written notification will be of no effect. If any provision of these Terms and Conditions shall be held to be invalid, illegal, or unenforceable, the remaining terms of these Terms and Conditions shall in no way be affected or impaired. The waiver by a party of a breach of these Terms and Conditions shall not be construed as a waiver of any subsequent breach. You may not assign any or all of your rights or obligations under these Terms and Conditions including by purchase, merger or operation of law, without the prior written consent of Spectralink, which consent shall not be unreasonably withheld. Any attempted assignment or transfer in violation of this provision shall be null and void. Spectralink may assign its rights and obligations under these Terms and Conditions without prior written consent or notice. Spectralink's affiliates may participate in Spectralink's performance of the Services and Spectralink may also sub-contract performance of the Services provided that Spectralink remains liable for the performance of its affiliates and/or sub-contractors in respect thereof. Save as expressly provided, these Terms and Conditions shall not be enforceable by a third party (being any person other than the Customer or Spectralink and their permitted successors and assignees). Customer acknowledges that Spectralink has trained personnel who perform Services and has made an investment in such personnel. Therefore, at no time during the term of any Services or for one year thereafter, will Customer directly solicit for employment any Spectralink employees who perform Services on behalf of Spectralink without Spectralink's express prior written consent. In the event that Customer is in breach of this provision, Spectralink shall have the right to invoice Customer, and Customer agrees to pay, a sum equal to 12 month's salary in respect of the hired individual. In performing the Services, Spectralink shall be deemed to be an independent contractor and its personnel and representatives shall not act as nor be Customer's agents or employees. Spectralink shall have complete charge and responsibility for personnel employed or engaged by Spectralink. These Terms and Conditions and all Services provided hereunder shall be governed by, (i) the laws of the State of Colorado, in the case of Spectralink Corporation and any disputes will be subject to the exclusive jurisdiction of Boulder County; (ii) English law, in the case of Spectralink Europe ApS and any disputes will be subject to the exclusive jurisdiction of the English courts. The losing party in any dispute will pay all court costs and legal fees finally awarded. The U.N. Convention on Contracts for the International Sale of Goods does not apply. Spectralink shall have the option to bring a suit before the courts of your domicile when the claim is for payments due and either party may bring action for injunctive relief in any jurisdiction pending final disposition of the dispute. These Terms and Conditions shall be written and construed in the English language.
- c. UNLESS OTHERWISE EXPRESSLY AGREED IN A SIGNED WRITING BY THE PARTIES IN ACCORDANCE HERewith, THESE TERMS AND CONDITIONS, TOGETHER WITH ANY APPLICABLE SERVICE DESCRIPTION, ARE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT OF TERMS AND CONDITIONS BETWEEN THE PARTIES, SUPERSIDING ALL PRIOR TERMS AND CONDITIONS, AGREEMENTS OR COMMUNICATIONS, ORAL OR WRITTEN, BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF.