



Spectrotel Master Services Agreement

Terms and Conditions

- 1) **General.** This Master Services Agreement ("MSA") is entered into between Spectrotel Holding Company, LLC, on behalf of the Spectrotel operating telephone company or companies from which Customer (as defined below) purchases services (as such operating companies are set forth on page 4 of this MSA) and Razgate Financial LLC (individually and collectively, "Spectrotel") and "Customer". Spectrotel and Customer may be referred herein individually as a "Party" and collectively as the "Parties". This MSA shall apply to any service(s) Customer receives from Spectrotel or its representatives, affiliates, subsidiaries, successors, or assignees ("Service(s)"). This MSA by itself does not constitute an order for any Service that Spectrotel provides; nor does this MSA establish a contractual relationship between Customer and any Spectrotel operating Telephone Company that is not involved in providing Services to Customer. Customer shall order Service(s) by submitting service agreement(s), customer enrollment form(s), or a Statement of Work ("SOW") for Spectrotel Services (collectively "Service Agreement"), whose Terms and Conditions are located in the Service Agreement or at the specified URL in the Service Agreement and are incorporated herein by reference. Any conflicting, different or additional terms and conditions including changes or additions to this MSA or any Service Agreement are automatically rejected unless agreed to by the Parties in writing. No action by Spectrotel, including without limitation provision of Services to Customer pursuant to such Service Agreements, shall be construed as constituting a waiver or binding or stopping Spectrotel with respect to such term or condition. To the extent that a conflict should arise between this MSA and Service Agreement, the terms of the Service Agreement shall take precedence.
- 2) **Credit Inquiries/Deposits.** Customer authorizes Spectrotel to inquire into Customer's credit history at any time during the term of the MSA, including asking consumer reporting agencies or any other references for credit information, and Spectrotel may require, based on Customer's credit worthiness or payment history with Spectrotel and to the extent permitted by law, a non interest bearing security deposit that will ultimately be refunded upon expiration or termination of the Service Agreements, assuming all amounts owed or due have been paid in full. Should Customer decline to pay a deposit, Spectrotel in its sole discretion, may refuse to install new service.
- 3) **Credits.** In the event of a material adverse change in Customer's financial condition prior to or, subsequent to the Effective Date of this MSA, Spectrotel may request a security deposit. A "material adverse change in financial condition" includes but is not limited to: (i) Customer being a new Customer with no established credit history; (ii) publicly disseminated information regarding Customer describes adverse financial conditions; (iii) Customer has not established satisfactory credit with Spectrotel; (iv) is Customer has been repeatedly delinquent in making its payments; (v) Customer is being reconnected after a disconnection of Service or discontinuance of the processing of orders by Spectrotel due to a previous failure to pay undisputed charges in a timely manner; or (vi) Customer previously failed to cure a breach of this MSA in a timely manner. Spectrotel may require a deposit to be held as security for the payment of charges before the orders from Customer will be provisioned and completed or before reconnection of Service. "Repeatedly Delinquent" means any payment of a material amount of total monthly Billing under this MSA received after the Payment Due Date, two(2) or more times during the last twelve (12) month period. The deposit may not exceed the estimated total monthly charges for three (3) month period based upon recent Billing. The deposit may be an irrevocable bank letter of credit, a letter of credit with terms and conditions acceptable to Spectrotel, or some other form of mutually acceptable security such as a cash deposit. The deposit may be adjusted by Customer's actual monthly average charges, payment history under this MSA, or other relevant factors. Required deposits are due and payable within thirty (30) days after demand.
- 4) **Charges.** The installation and monthly recurring charges for Service(s) addressed herein will be as specified in applicable Service Agreements. Customer is subject to a paper invoice and account maintenance fee for each remittable account, and in the case of an individual child account receiving a paper statement, a paper invoice fee. The paper invoice fee may be waived if Customer elects electronic invoice delivery. Customer is subject to applicable one time and/or monthly charges for moves, adds, changes, and upgrades to existing Services ("MAC"), the costs for which will be provided at time of order and may or may not require a new Service Agreement for said MAC. Unless otherwise specified in a Service Agreement, any feature(s) or Service(s) other than those stated herein will be provided at the prevailing charges set forth in the applicable Spectrotel tariff or price list located at <http://spectrotel.com/Support/faqs/tariffs>. If no charges are set forth in Spectrotel's tariffs or price lists for such Service(s), the charges shall be Spectrotel's prevailing retail rate which shall be disclosed to Customer at time of order. Service records will constitute full proof of the content and nature of Customer's Service(s). The charges stated do not include any international, federal, state, municipal, and local taxes; assessments; fees; or surcharges.
- 5) **Payment.** Payment for Service(s), including applicable international, federal, state, municipal, and local taxes; assessments; fees; or surcharges, will be due in accordance with the due date noted on the invoice. Notwithstanding the above, if payment for undisputed charges is not received thirty (30) days after the date of invoice, Customer will be considered past due, and interest on the unpaid past due balance will accrue at the rate of one and one-half percent (1.5%) per month or the maximum rate allowed by law, whichever is less. Customer will be liable to Spectrotel for any costs and/or expenses incurred directly or indirectly, including reasonable attorney's fees and expenses, in collection of any undisputed amounts due and owing to Spectrotel. Should Customer fail to keep its account balance current in accordance with the terms defined herein, Spectrotel reserves the right to suspend Customer's Service(s) upon at least ten (10) days' written notice (except as specified otherwise by FCC or state regulations or laws, where applicable) and continue billing until sufficient payment has been received by Spectrotel to bring Customer's undisputed account balance current. If a Service is suspended due to Customer's non-payment it will not be restored until all undisputed charges (including any interest charges) and a service restoration fee are paid in full. If Customer fails to pay all undisputed charges in full within fourteen (14) days after suspension, Spectrotel reserves the right to terminate Service(s) in full. In the event of termination for non-payment, Customer shall be responsible for all termination charges as defined herein or the applicable Service Agreement.
- 6) **Payment Method.** The charges associated with any agreed to Service Agreement or any additional charges as denoted in this MSA assume that payment will be made either by check or ACH direct deposit. Any other forms of payment, including but not limited to credit cards, may result in a convenience fee or an increase in monthly charges added to the invoice (collectively "Convenience Fee"). Customer will be notified in writing or as required by law prior to the application of the Convenience Fee by Spectrotel, if said Convenience Fee will apply.
- 7) **Taxes, Fees and Surcharges.** Customer will be responsible for all applicable taxes, fees and surcharges that are levied or imposed as a result of Spectrotel's provision of the Service(s) including but not limited to international, federal, state, local and municipal taxes, federal and state Universal Service Charges, FCC Network Access Charges, Number Portability Surcharges, 911 and E911 Fees or charges, payer per call surcharges and telephone relay surcharges, and up to 5% internet surcharge. Unless Customer provides a valid exemption certificate(s), Customer shall be responsible for payment of such applicable taxes, fees or surcharges until said certificate(s) is provided. Spectrotel reserves the right to reject Customer's tax-exempt status if Spectrotel finds that Customer's standing as a tax-exempt entity does not have legal standing. Spectrotel will execute billing under Customer's legal tax-exempt status starting the period immediately following receipt of valid tax-exempt certificate(s). Customer will immediately notify Spectrotel in writing if Customer's tax-exempt status changes during the term of this MSA or in the applicable Service Agreements.
- 8) **Billing.** Unless otherwise expressly set forth in a Service Agreement, charges for all Service(s) shall begin billing on the earliest to occur of (a) the Service Start Date, (b) the date on which any necessary equipment for the Service is placed at the Customer's location, or (c) the billing start date set forth in the Service Agreement or issued in writing or via e-mail by Spectrotel following execution of the Service Agreement (the "Billing Start Date"). If Customer is not able to use the Service beginning on the Billing Start Date solely as a result of delays caused by Spectrotel, then the Billing Start Date set forth in Service Agreement shall be extended instead for each day of delay caused by Spectrotel. In the event Spectrotel has completed installation of a portion (but not all) of the Service set forth in a Service Agreement, Spectrotel may, at its discretion, invoice Customer for that portion of the Service already installed and provided by Spectrotel, and Customer shall be obligated to pay for such Service in accordance with this section. If Customer orders more than one Service from Spectrotel or orders bundled Services from Spectrotel, Customer will be billed as of the Billing Start Date for each individual service in the bundle. Unless otherwise expressly set forth in a Service Agreement, non-recurring charges, including equipment purchase, bi-directional shipping and handling, set-up and installation fees, are payable upon installation of the applicable Service or in advance as determined by Spectrotel.
- 9) **Billing Disputes.** Notification of any dispute regarding Customer's invoice, along with appropriate documentation of any billing discrepancies, in reasonable detail, must be submitted to Spectrotel's Customer Care Center within ninety (90) days of the invoice date. Written notice is recommended. To the extent Customer elects to utilize telephone notification, Customer is responsible for retaining the trouble ticket number for verification. Disputes will not be addressed without a trouble ticket number. Failure to provide the ninety (90) days' notice specified herein shall result in complete waiver of Customer's right to dispute the invoice subject to any legal rights Customer may have under applicable law. Once a billing dispute is identified, Spectrotel will research such disputes in a commercially reasonable time period and will not hold Customer liable for the disputed charges until the Parties reached a conclusion on the validity of the claims in good faith. To the extent such dispute is resolved in the favor of Spectrotel, with the next invoice after resolution Customer shall pay Spectrotel the disputed charges plus interest at lesser of one and one-half percent (1.5%) per month or the highest rate allowed by law. To the extent such dispute is resolved in favor of the Customer, Customer will receive a credit for the disputed charges concurrent with the next invoice following the resolution as well as credit for any interest charges accrued on the disputed charges. However, regardless of any billing disputes, all undisputed balances must be paid in full and in accordance with the Charges and Payment Policies defined herein.
- 10) **Tariffs and Rates.** The terms and conditions of this MSA and any Service Agreements that are regulated by federal, state or local governments or governmental agencies are subject to Spectrotel's tariff(s), which are on file with the applicable state and/or federal regulatory authorities and as required by law are publicly posted and located at <http://www.spectrotel.com/Support/faqs/tariffs>. Tariffs are subject to change without notice to Customer. Other restrictions may apply pursuant to such tariffs. In the event of any express conflict between the terms and conditions of this MSA or any applicable Service Agreements and the language in the applicable Spectrotel tariff(s), the tariff language will supersede this MSA and any Service Agreements to the extent required by law. Spectrotel reserves the right to modify its pricing as set forth in the Service Agreements, this MSA or elsewhere upon thirty (30) days' written notice, including notifications in billing or electronic communications from Spectrotel or as required by applicable law. This notification is not necessary and does not apply to inflationary and/or regulatory rate adjustments.
- 11) **Installation.** Spectrotel will use best efforts to provide Service(s) by the requested Customer installation date. Scheduled installation dates are estimates only. Spectrotel will not be liable for any damages whatsoever related to delays in meeting any installation or service dates including but not limited to, delays resulting from normal construction procedures or for any reason beyond Spectrotel's control. If a Service installation date is scheduled, and Customer misses the appointment or otherwise does not allow the scheduled implementation to occur, as determined in Spectrotel's sole discretion (collectively "Customer Missed Appointment"), Spectrotel reserves the right to charge a missed appointment fee of not more than \$300. Spectrotel will notify Customer when Service(s) is operational ("Service Start Date"). Unless Customer notifies Spectrotel within five (5) business days that the Service(s) is not operational, Service(s) will be deemed accepted by Customer as of the Service Start Date. To facilitate the installation and maintenance of the Service(s), Customer will: a) prepare its premises as necessary; b) provide any inside wiring, equipment and/or software necessary to connect Service(s); and c) provide Spectrotel all required access and security, as necessary. Spectrotel reserves the right to substitute, change or rearrange equipment used to provide the Service(s) so long as the quality or type of Service is not materially impaired or degraded. Installation of the Service is to the nearest point of entry of Customer's premise ("Demarc") which may or may not be within the Customer's premise. If Customer requests or requires additional cabling between Demarc and Customer's desired entry point or if it is determined during the installation process that additional work must be done to prepare the Customer's infrastructure to accept a Spectrotel Service, the additional charges to extend the Demarc or to prepare the Customer's infrastructure are the sole responsibility of Customer. Customer may request Spectrotel to install the additional cabling or other necessary infrastructure work. If so, Spectrotel requires a Statement of Work ("SOW") to be executed by the Parties detailing the time, materials, and applicable charges for the additional work. Alternatively, Customer may also engage a third party to provide the additional work and/or materials. To the extent that Customer engages a third party to install the additional cabling or other necessary infrastructure work, Customer will be responsible for the timely completion of that work or a Customer Missed Appointment may be determined by Spectrotel. Again, Spectrotel shall not be liable for any damages whatsoever related to delays in meeting any installation or service dates including but not limited to delays resulting from the third party installation work.
- 12) **Expedite Charges.** In the event Customer requests expedited Services and/or changes to requests for Services and Spectrotel agrees to such request, Spectrotel will pass through the charges assessed by any supplying parties for such expedited charges at the same rate to Customer. Spectrotel may further condition its performance and such request upon Customer's payment of such additional charges to Spectrotel.
- 13) **Cancellation Prior to Installation.** If Customer desires to modify the Service Agreement or Service installation date, including cancellation of the Service(s) after Spectrotel has initiated implementation of Service(s) but prior to the Service Start Date, Customer shall



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- be responsible for the greater of (i) the actual costs incurred by Spectrotel for cancellation or modification of the Service Agreement, including the costs for all work done and materials, equipment, or software purchased up to the time of the cancellation or modification, or as identified in the applicable Service Agreement, which may be modified at any time. If Special Construction has started, Customer will be responsible for all construction materials and costs to date, possibly in addition to any upfront customer contribution collected. Spectrotel shall provide an itemized breakdown of actual costs upon request. Spectrotel also reserves the right to cancel the Service Agreement and charge the fees for cancellation defined in the applicable Service Agreement if there is a Customer Missed Appointment or a Customer Not Ready (CNR), which right Spectrotel may exercise, in its sole discretion.
- 14) **Moves and Upgrades.** If Customer moves within the initial Term of the MSA, the request will be processed as a disconnect and new order and Termination Charges will apply. Request to Upgrade or Downgrade a Customer's speed will be considered on an ICB basis and may result in additional charges.
- 15) **Ramp Period:** Within the first twelve (12) months after the Effective Date of a Service Agreement (the "Ramp Period"), Customer agrees to (i) request installation dates for at least 80% of the Service locations identified in a Service Agreement and (ii) accept delivery of Services at no less than 80% of the Service locations identified in the contracted MRC. If the Customer does not meet the 80% threshold by the end of the Ramp Period, Spectrotel reserves the right to adjust the pricing on a going forward basis. In addition, if Spectrotel has been billed any third-party charges above and beyond, what has already been invoiced to the Customer, Spectrotel may bill said third-party expenses to the Customer.
- 16) **Purchase/Maintenance/Return of Equipment.** The costs to maintain, repair or replace, or shipping necessary to repair or for replacement of Spectrotel owned hardware and software (collectively "Spectrotel Equipment") provided as part of the Service(s) will be at no additional charge unless such charges are: a) specifically set forth in the Service Agreements; or b) for maintenance that is necessitated by unauthorized modifications or other acts or omissions of Customer or its employees, agents, or consultants. Customer understands that Spectrotel Equipment provided with the Service may require scheduled or emergency maintenance ("Maintenance Events") that may cause Service interruption. Spectrotel will use commercially reasonable efforts to provide advanced notice to Customer of a Maintenance Event. Spectrotel shall not be liable for, nor shall customer be entitled to, Service credits for downtime caused by Maintenance Events. Customer agrees to obtain and maintain (with an insurer reasonably acceptable to Spectrotel) insurance coverage with respect to the Spectrotel Equipment in the amount of its replacement cost. Upon request, Customer shall provide Spectrotel with a certificate of such insurance showing such coverage. Spectrotel may require the insurance policy to name Spectrotel as a loss payee. Customer acknowledges that except for equipment that Customer purchases outright from Spectrotel as indicated in any Service Agreements, the title to all Spectrotel Equipment not purchased by Customer, but provided as part of the Service(s), is and shall remain with Spectrotel throughout the term of the Services Agreements including any renewal term and such Spectrotel Equipment shall be returned to Spectrotel upon discontinuance of the applicable Service. Notwithstanding the foregoing, Customer hereby authorizes Spectrotel to prepare and file precautionary financing statements under the Uniform Commercial Code in any applicable jurisdiction describing such Spectrotel Equipment naming the Customer as debtor and Spectrotel as secured party. Customer may also choose to purchase from Spectrotel some or all of the necessary equipment for Spectrotel Services, and if so, the Customer shall only be entitled to the available manufacturers' warranty period and terms of repair or replacement therein, unless a paid maintenance plan covering a post-warranty period is otherwise agreed to by the Parties in a Service Agreement. Customer is responsible for arranging access to its premises to permit Spectrotel's authorized personnel, employees or agents to repair, maintain, inspect, replace, remove or install any and all equipment required by the Services. Customer will surrender any Spectrotel Equipment promptly upon the discontinuance of the Service(s) for which same is being used, in the same condition as delivered subject only to reasonable wear and tear. At its sole discretion, Spectrotel may also choose to dispatch personnel to retrieve Spectrotel Equipment from the Service location in which the Spectrotel Equipment is located and shall use commercially reasonable efforts to coordinate retrieval with Customer. Customer agrees that access to said location for retrieval, shall not be unreasonably withheld. If Spectrotel Equipment is surrendered in damaged condition or if Spectrotel Equipment is found by Spectrotel to be in damaged condition during the retrieval process (excluding reasonable wear and tear), Customer will pay Spectrotel any additional charges necessary to repair or replace the damaged Spectrotel Equipment. Should Customer fail to surrender Spectrotel Equipment within thirty (30) days after Spectrotel's request or in accordance with the Service Agreement terms and conditions or if Customer refuses to provide access for retrieval, Customer will be liable for Spectrotel's reasonable expenses representing the reasonable replacement value of the Spectrotel Equipment plus collection expenses including reasonable attorney's fees. Customer's obligations pursuant to this section will survive termination of this MSA.
- 17) **Equipment, Intellectual Property, and Software.** Spectrotel may deploy equipment, such as routers, firewalls, integrated access devices and modems, that are manufactured, sold and supported by third-party companies. Such equipment includes hardware along with software that is licensed to Spectrotel. "Software" is the machine-readable (object code) version of computer programs including firmware and any related documentation. Such equipment, including Software, may be included as part, some, or all of the Services, as necessary, for said Services to function. While Customer may purchase the hardware from Spectrotel as provided in a Service Agreement, unless otherwise provided for in a Service Agreement, the licenses for Software from the equipment vendors remain with Spectrotel and do not transfer to the Customer during their use. Spectrotel and its underlying providers reserve all rights, title, and interest in and to each proprietary right embedded in or contained in any Service or Spectrotel Equipment provided as part of the Service(s) including but not limited to Software. Customer acknowledges that it shall not copy Software for the benefit of, or distribute any Software to, any other person or entity. No "sale" of any Software is conveyed by this MSA or any Service Agreement. Customer will not remove, alter, or destroy any form of copyright notice, trademark, logo, or confidentiality notice provided with Service(s) or Spectrotel Equipment or Software. Customer will not affix any other mark or name to any Service(s) or Spectrotel Equipment without Spectrotel's express written permission. Customer will not translate, reverse compile or disassemble the Software deployed by Spectrotel. Customer shall notify Spectrotel promptly of any breach or suspected breach of these terms and further agrees that it will, at Spectrotel's request, assist Spectrotel in efforts to preserve Spectrotel's or its underlying provider's intellectual property rights including pursuing an action against any breaching third parties. Furthermore, Customer acknowledges that Spectrotel provides its Service(s) in accordance with the licenses, terms and conditions, service agreements, and limitations of the equipment and/or Software providers. The terms, conditions, limitations, and restrictions of such licenses are understood to apply in the use of the Spectrotel Equipment and/or Software by the Customer as carried through the Service(s) provided by Spectrotel. Customer's obligations pursuant to this section will survive termination of Services or this MSA.
- 18) **Initial Term.** This MSA shall become effective on the date it is accepted by the Parties and shall remain in effect for successive one-month periods until the last Service is terminated. The term for each Service is specified on the Service Agreements and shall commence on the Service Start Date.
- 19) **Renewal Term.** Except for initial term lengths or any renewal term lengths of less than one (1) year, the term will automatically renew for successive one (1) year periods unless in not less than thirty (30) days of the end of the then current term, Customer notifies Spectrotel of its desire to a) renew for a longer term (in which case a new Service Agreement shall be executed); or b) initiate termination of Service(s). For the avoidance of doubt, term lengths of less than one-year shall automatically renew for successive one (1) month periods unless Customer provides not less than thirty (30) days' notice to terminate Service(s). To initiate termination of service at the end of the term, Customer must provide at least thirty (30) days' notice.
- 20) **Material Breach.** Spectrotel may, without prejudice to any other remedies available to it at law, terminate this MSA and the associated Service Agreement(s) in their entirety in the event the Customer has committed a material breach and such material breach will have continued and/or remained uncured for thirty (30) days (except in the case of a failure to make any payment due under the terms of this MSA, in which case such failure to pay must be cured within fourteen (14) days), after written notice thereof was provided to the Customer. Customer may, without prejudice to any other remedies available to it at law, terminate the Service(s) with respect to a Customer location(s) in the event Spectrotel has committed a material breach with respect to such location(s) and such material breach will have continued and/or remained uncured for thirty (30) days' after written notice is provided to Spectrotel. Any such termination will become effective at the end of such thirty (30) day period (or, in the case of a failure to make a payment, at the end of such fourteen (14) day period), unless the material breach has been cured any such material breach prior to the expiration of such thirty (30) day period or fourteen (14) day period, as the case may be. Parties agree and acknowledge that in no event shall termination of Service(s) with respect to a Customer location(s) affect the entire MSA for any other location(s). The right of either Party to terminate this MSA as provided in this section will not be affected in any way by such Party's waiver or failure to take action with respect to any previous default.
- 21) **Termination and Termination Charges.** In the event of any disconnection by Spectrotel for non-payment by Customer or if Customer terminates early for any reason other than a material breach by Spectrotel (before which Spectrotel shall be given written notice and 30 days to cure), Customer will be obligated to pay an early termination fee ("ETF"), which shall be calculated as either: (a) the number of months remaining in the then current Term for each of the Service(s) being disconnected multiplied by the agreed upon monthly recurring charges as denoted in the Service Agreements; OR (b) in the case of usage-only allowance or subscription based Services the minimum revenue commitment for usage based charges associated with the Service(s) as denoted in the applicable Service Agreement or if no minimum revenue commitment is denoted, the number of months remaining in the then-current term of the Service Agreements multiplied by the average monthly usage charges over the two most recent 30-day billing periods. The ETF is not a penalty and has been determined based upon the facts and circumstances known by the Parties at the time of the negotiation and entering into this MSA, with due consideration given to the performance expectations of each Party. The ETF constitutes a reasonable approximation of the damages Spectrotel would sustain if its damages were readily ascertainable. Neither Party will be required to provide any proof of these damages, and the ETF provided herein will constitute full compensation as the sole and exclusive remedy for any failure by Customer to meet its specified performance. Any termination of Service or of the applicable Service Agreements or this MSA either by Customer or Spectrotel (in the event of breach of this MSA or Service Agreements) could result in Customer's loss of all IP addresses and phone numbers assigned should Customer fail to move services to another carrier prior to termination. In addition, all Spectrotel property (including but not limited to Spectrotel routers, switches, equipment, facilities, and software) shall be returned to Spectrotel in accordance with the terms herein, and Spectrotel reserves the right to recover any and all Spectrotel property in accordance with applicable law. Spectrotel reserves the right to restrict, suspend or terminate Service(s) and terminate this MSA and/or Service Agreements in the event Customer is found to be in breach of the terms of this MSA as defined herein and/or Service Agreements. Except for breach due to non-payment or violation of certain provisions of the Acceptable Use Policy or otherwise expressly defined in this MSA or a Service Agreement, a Customer's cure period for breach shall be thirty (30) days following written notice from Spectrotel.
- 22) **Change in Law.** During the term of the Service Agreements or this MSA, if the FCC, a state public utility commission or board or any other administrative governing body, or a court of competent jurisdiction issues a rule, regulation, law or order which has the effect of canceling, changing, or superseding any material term or provision of this MSA or Service Agreements (collectively, "Change of Law"), then this MSA or Service Agreements shall be deemed modified in such a way as the Parties mutually agree is consistent with the form, intent and purpose of this MSA or Service Agreements and is necessary to comply with a Change of Law. Parties agree to negotiate said changes in good faith, but should the Parties not be able to agree on modifications necessary to comply with a Change of Law within thirty (30) calendar days after the Change of Law is effective, then upon written notice either Party may either terminate this MSA or Service Agreement or, to the extent practicable, Parties may terminate that portion of the MSA or Service Agreement impacted by the Change of Law. In the case of termination, Spectrotel agrees Customer shall be responsible for all undisputed fees up to the end of the thirty-day period and will not be liable for any further early termination fees.
- 23) **Notices.** Notices under this MSA to Spectrotel shall be sent by first-class US Mail, postage prepaid, certified, return receipt requested, or by overnight carrier (delivery signature required) to: Spectrotel Holding Company LLC, PO Box 339, Neptune, NJ 07754, Attention: Director of Customer Care, with a copy to Attention: Chief Operating Officer. Unless otherwise provided differently by Customer, Notices to Customer shall be sent to the billing address provided by Customer to the attention of the main contact provided.
- 24) **Assumption/Purchase of Contract.** Spectrotel shall not be responsible for any termination liability incurred by Customer from the other telecommunications providers as a result of moving services to Spectrotel unless Spectrotel explicitly agrees and approves in writing in advance the explicit amount of the termination liability Spectrotel would agree to cover as part of the Service Agreement with Spectrotel. Customer must provide proof of billing and payment of termination liability from said provider(s) before Spectrotel will



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provide credit to Spectrotel's invoice for the written approved amount of any termination liability Spectrotel agreed to cover on behalf of the Customer.

- 25) **Acceptable Use Policy ("AUP").** Customer agrees not to allow the use of the Service in any way to transmit or post material that as Spectrotel determines in its sole reasonable discretion: (a) is prohibited by any law or regulation, or facilitates or encourages the violation of any law or regulation; (b) disrupts third parties, or violates the intellectual property rights or other rights of Spectrotel or any third party; (c) is abusive, profane, libelous, slanderous, obscene, threatening, misleading, harassing, discriminatory, or otherwise harmful or disruptive; (d) violates or tampers with the security of any computer equipment, network, or program, (e) constitutes, facilitates, or encourages unsolicited commercial email or "spam". If Customer Violates the AUP, Spectrotel reserves the right to immediately suspend or disconnect Service and charge all applicable termination fees. SPECTROTEL RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO MODIFY, ALTER OR OTHERWISE UPDATE ITS AUP AT ANY TIME AND SHALL NOTIFY CUSTOMER OF A CHANGE IN THE AUP THROUGH A MESSAGE ON ITS INVOICE TO THE CUSTOMER. SUCH MODIFICATIONS SHALL BE EFFECTIVE IMMEDIATELY UPON THE POSTING OF THE MODIFIED TERMS OF USE ON SPECTROTEL'S WEBSITE AFTER NOTIFICATION. WWW.SPECTROTEL.COM. BY USING THE SERVICE AFTER SPECTROTEL HAS POSTED NOTICE OF SUCH MODIFICATIONS, ALTERATIONS OR UPDATES, CUSTOMER AGREES TO BE BOUND BY THE REVISED ACCEPTABLE USE POLICY TERMS. This MSA together with the actual removal of material or denial of access to material by Spectrotel is deemed notice to Customer within the meaning of the Digital Millennium Copyright Act.
- 26) **Other Acceptable Use Items.** Line Usage: Customer agrees that for voice services purchased with unlimited calling plans, if Spectrotel finds that the volume of usage is over and above what is considered Standard Business Use for the Service, Spectrotel may place the service line on a measured usage plan for the duration of applicable Service Agreement with notice to Customer. Customer has a choice to accept the change in call plan or disconnect Service, but if Service is disconnected, the Customer remains liable for any ETF charges described herein. At its discretion, Customer may change call plan on a line within 2 months of installation and once per year thereafter, as measured from the Service Start Date. Standard Business Use is defined as follows. Spectrotel's voice services are engineered to process and deliver traffic profiles and utilization levels of our typical business customers' calling patterns (hereafter also referred to as Standard Business Use). "Typical" refers to the calling patterns of at least 95% of our customers on a particular calling plan in any calendar month (or billing cycle, if applicable). Use of the Unlimited SIP Service Plans for activities including, but not limited to, any Auto or Predictive dialing (i.e., non-manual dialing or other means to continuously place outbound calls), continuous or extensive call forwarding or connectivity, fax broadcast service, spamming, or any other activity that would be inconsistent with Standard Business Use is prohibited.
- 27) **Indemnification and Limitations on Liability.** Customer will defend, indemnify and hold Spectrotel, its affiliates, representatives, successors, and assignees, and each of their respective owners, directors, officers, employees and agents, harmless from and against all third-party claims, suits, expenses, losses, demands, actions, causes of action, judgments, costs and reasonable attorney's fees and expenses of any kind or nature for any and all damages of any kind arising from or related to any use or misuse of the Service(s) or otherwise arising under the applicable Service Agreements or this MSA. Spectrotel will defend, indemnify and hold Customer, its affiliates and each of their respective owners, directors, officers, employees and agents harmless from and against all third-party claims, suits, expenses of any kind of any nature for any and all damages of any kind arising from or related to (a) any claim that the Services, equipment, software, and any other materials provided by Spectrotel under the MSA or an applicable Service Agreement infringes any intellectual property or other proprietary right of a third party or (b) physical damage to personal or real property or bodily injury including death (but excluding, with respect to Spectrotel's indemnification obligation, any claim based on the Service or inability to use the Service including without limitation inability to reach emergency services or 911), directly caused by the gross negligence or willful misconduct of Spectrotel, its employees or contractors, at a Customer location as a direct result of Spectrotel's installation, removal or maintenance of Service or Equipment at Customer locations. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER, ITS EMPLOYEES, SUBCONTRACTORS AND AGENTS OR TO ANY THIRD PARTY FOR ANY LOSS OF PROFITS OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES. IN NO EVENT WILL SPECTROTEL BE LIABLE TO CUSTOMER, ITS EMPLOYEES, SUBCONTRACTORS AND AGENTS OR TO ANY THIRD PARTY FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT, ARISING OUT OF ITS PROVISION OF SERVICES OR FAILURE TO PROVIDE SERVICES UNDER THE APPLICABLE SERVICE AGREEMENTS OR THIS MSA, WHETHER ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR NOT. WITH EXCEPTION OF OBLIGATIONS FOR INDEMNIFICATION ABOVE, EACH PARTY'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THE APPLICABLE SERVICE AGREEMENTS OR THIS MSA WILL NOT EXCEED THE TOTAL CHARGES FOR THE SERVICE(S) IN THE PRIOR THREE MONTHS. Without limiting the generality of the foregoing, Spectrotel shall have no liability for any damages resulting from unauthorized access to Customer's phone system, computer system, Local Area Network or equipment by third parties or hackers, including, without limitation any damages resulting from any fraudulent phone or data usage, computer virus, worm or other malicious code. Customer expressly agrees that its use of any of Spectrotel's websites is at Customer's own risk.
- 28) **Force Majeure.** In no event will Spectrotel be liable for failure to perform its obligations hereunder where such nonperformance is caused, in whole or in part, by force majeure, including but not limited to acts of God or government, war, national emergencies, riot, insurrection, acts of terrorism, vandalism, criminal action taken against Spectrotel or its affiliates, disturbance, strike, lockout, work stoppage or other labor dispute, failure of usual sources of supply, unavailability, failure or malfunction of equipment or facilities provided by the Customer or third parties, pole hits, storm, fire, flood, earthquake, accident, or any other cause not within Spectrotel's reasonable control, including, but not limited to local or foreign telephone company action and any law, order, regulation or other action of any governmental entity. In addition, other than Spectrotel's indemnification obligations defined herein, Spectrotel will not be liable for claims or damages resulting from or caused by: a) Customer's fault, negligence or failure to perform Customer's responsibilities; b) claims against Customer by a third party; c) any act or omission of any other party; or d) equipment or services furnished by a third party.

This section will survive termination or expiration of the Service Agreements and/or this MSA and will continue to apply after the Service Agreements and/or this MSA ends.

- 29) **Security and Fraud.** Spectrotel has implemented technical and administrative measures designed to secure Customer's information and Services from unauthorized access, use, alteration or disclosure and to assure its availability in all cases either in accordance with the commitments in the applicable Service Agreements or, in the absence of such commitments, in a manner Spectrotel believes is prudent for common business information. However, Spectrotel cannot and does not guarantee that these measures will be sufficient to prevent unauthorized access, use, alteration or disclosure or to assure availability. Moreover, an attacker with sufficient time and resources could defeat the measures Spectrotel has in place and gain access to customer information. Except as may be expressly provided in a corresponding Service Agreement, none of the Services are designed to protect confidential information (including but not limited to financial or health information). Accordingly, if Customer requires protection of sensitive information, Customer should not use such Services to transmit or store such information without implementing additional Customer-controlled security measures, such as encryption, to protect such information. Customer shall bear the risk of loss arising from, and under no circumstances will Spectrotel be responsible for any damages, loss or injury resulting from (i) use of the Service, whether authorized or unauthorized by Customer, including any charges or fees incurred as a result of fraudulent or unauthorized use of the Services, (ii) access to, alteration or destruction of or the unavailability of any information transmitted [or stored] through the Service or (iii) the unavailability of all or any part of the Service. Customer will notify Spectrotel immediately of any breach or suspected breach of security or unauthorized use of Customer's Spectrotel account, telephony services, or profile. Customer acknowledges that Spectrotel reserves the right, but is not required, to take any and all action it deems appropriate (including, without limitation, blocking access to particular calling numbers or geographic areas) to prevent or terminate any fraud or abuse in connection with the Services, or any use thereof. In addition, Spectrotel may temporarily suspend or permanently terminate Services to Customer, without notice or liability, if Spectrotel deems such action necessary to protect itself or third parties from unlawful conduct or other harm.
- 30) **Assignment.** Spectrotel may assign the rights, privileges or obligations conveyed under this MSA without written notice to Customer unless notice is required by law. Customer may not assign the rights, privileges, or obligations conveyed under this MSA without first obtaining the written consent of Spectrotel, which consent will not be unreasonably withheld, provided, however, that the party to whom this MSA is being assigned by Customer expressly assumes, in writing, the obligations of the Customer.
- 31) **Warranties.** EXCEPT AS OTHERWISE PROVIDED HEREIN AND IN THE APPLICABLE SPECTROTEL TARIFF(S), THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORILY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE SERVICE(S). ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED AND DISCLAIMED. SPECTROTEL ALSO MAKES NO WARRANTY THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SPECTROTEL SPECIFICALLY DOES NOT WARRANT THAT THE SERVICES INCLUDING SECURITY SERVICES WILL BE: (1) UNINTERRUPTED AND CONTINUOUS, (2) ERROR OR VIRUS FREE, OR (3) CONTINUOUSLY AVAILABLE. SPECTROTEL ALSO DOES NOT WARRANT ANY SERVICE, EQUIPMENT, OR SOFTWARE PROVIDED BY A THIRD PARTY FOR WHICH SPECTROTEL IS A RESELLER OR AGENT. By executing this MSA, each Party hereto represents and warrants that it has all requisite power and authority to enter into this Agreement and perform its obligations hereunder, that the execution and delivery of this MSA has been duly and validly authorized and approved by it, and that this MSA is valid and binding upon it in accordance with its terms.
- 32) **No Agency.** This MSA does not create any agency, joint venture, or partnership between Spectrotel and Customer, each of which are independent business entities. Neither Spectrotel nor Customer will have the right, power or authority to act for the other in any manner, except as expressly provided herein.
- 33) **Governing Law.** The rights and obligations of the Parties under this MSA will be governed by and construed in accordance with the laws of the State of New York without giving effect to its conflict of laws principles that would result in the application of the laws of any other jurisdiction. Customer agrees that in the event any billing related dispute arises related to this MSA, the dispute will be governed in the first instance by the procedure set forth in the Billing Disputes section of this MSA. With regard to any other disputes, the Customer shall first attempt to resolve the dispute with Spectrotel by sending written notice of the issue Customer experienced (with as much supporting facts, details, and documentation as possible) in accordance with the Notices section of this MSA, and allowing Spectrotel at least thirty (30) days to resolve the issue. Spectrotel will determine how best to respond to Customer's notice on receiving it. In the event such a dispute is not resolved by such procedure or in the event Customer wishes to appeal the outcome of a billing-related dispute conducted under the Billing Disputes section of this MSA, Customer acknowledges and agrees that any such unresolved dispute shall be settled through binding arbitration. To begin arbitration, Customer must send a letter requesting arbitration to Spectrotel to the address denoted in Notices section of this MSA. Customer agrees that arbitration will be conducted by the American Arbitration Association ("AAA"), www.adr.org or 1-800-778-7879. Customer can contact AAA for further information. Payment of all filing, administrative, and arbitrator fees will be governed by AAA's rules. Customer agrees that any dispute in arbitration will only be on an individual basis, and not as a class action, consolidated or joined action. The Federal Arbitration Act and federal arbitration law apply to this agreement. THIS SECTION LIMITS CERTAIN RIGHTS, INCLUDING THE RIGHT TO FILE AN ACTION IN COURT, THE RIGHT TO A JURY TRIAL, THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR OTHER CONSOLIDATED ACTION, AND THE RIGHT TO CONDUCT DISCOVERY OR OTHERWISE PROCEED IN ARBITRATION BEYOND THE AAA RULES. In the event of an ambiguity or question of intent or interpretation, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the extent to which any such party or its counsel participated in the drafting of any provision hereof. This MSA does not and is not intended to confer any rights or remedies upon any person other than Spectrotel and Customer and their successors and assigns.
- 34) **Third Party Beneficiaries.** CUSTOMER AGREES THAT ALL OF SPECTROTEL'S RIGHTS, LIMITATIONS AND DISCLAIMERS STATED IN THIS TERMS AND CONDITIONS ALSO APPLY TO AND MAY BE EXERCISED OR ENFORCED BY SPECTROTEL'S THIRD PARTY LICENSORS, PROVIDERS, SUBCONTRACTORS AND SUPPLIERS AS THIRD PARTY BENEFICIARIES OF THIS AGREEMENT.



Spectrotel Master Services Agreement

- 35) **Miscellaneous.** This MSA (together with the Service Agreements and SOWs), is binding upon the Parties' respective successors and assigns, and together with any applicable tariff(s), constitutes, the entire agreement between Spectrotel and Customer. No prior agreements, understandings, statements, proposals, understandings or representations, either oral or written apply. The terms and conditions of this MSA shall not be amended, varied, supplemented, waived, qualified, modified, or interpreted by any prior or subsequent course of dealing between Spectrotel and the Customer, failure or delay to enforce any rights hereunder, or by any usage of trade or manner other than by a subsequent writing signed by authorized representatives of both Parties. Neither Party shall be bound by any pre-printed terms additional to or different from those in this MSA that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices, or other communications. This MSA can be modified only in writing by the Parties. Headings used herein are included only for convenience and will not control or affect the meaning or construction of this MSA. If any provision of this MSA is held to be illegal or unenforceable, the MSA's unaffected provisions will remain in effect. If either Party fails to enforce any right or remedy under this MSA, said Party does not waive the right or remedy. The rights and remedies of the Parties shall be cumulative and in addition to any other rights or remedies provided by law or equity.

Spectrotel Operating Companies: Spectrotel Holding Company, LLC; Spectrotel, Inc.; Spectrotel of Alabama, LLC; Spectrotel of California, LLC; Spectrotel of Canada, LLC; Spectrotel of Florida, LLC; Spectrotel of Illinois, LLC; Spectrotel of Maryland, LLC; Spectrotel of New England, LLC; Spectrotel of New Jersey, LLC; Spectrotel of New York, LLC; Spectrotel of Pennsylvania, LLC; Spectrotel of Texas, LLC; Spectrotel of the East, LLC; Spectrotel of the Midwest, LLC; Spectrotel of the South, LLC; Spectrotel of the West, LLC; Spectrotel of Virginia, LLC; Razgate Financial LLC