

# FULL SPECTRUM LAB SERVICES FROM CBRE

## TERMS AND CONDITIONS

The following Terms and Conditions govern the provision of Services by Full Spectrum Group LLC (Supplier) to the Client as described in quotations issued by Supplier ("Quotations") which, together form the "Agreement".

**1. Services.** The services ("Services") are comprised of the services described in these terms and conditions and as otherwise described in a Quotation.

### 1.1. Asset Services

**a. General.** The asset services ("Asset Services") may include repair, preventative and calibration services for metrology, thermal and analytics Assets as described in Quotations and as set forth in this Section. All instruments and systems ("Assets" or "Equipment") must be fully functional according to the Asset specifications and able to perform specific analytical tests as determined and performed by Supplier ("Pre-Qualification"). If required, Supplier shall undertake the Pre-Qualification of such Assets within 45 days of the Quotation Start date and reserves the right not to commence performance under a Quotation until Supplier confirms that Assets have passed the Pre-Qualification process. Client must provide all specifications to Supplier prior to the Prequalification of any Asset. Any repairs necessary to bring Assets up to a level of performance reasonably acceptable to both Parties will be at Client expense and Supplier may repair and invoice Client separately on a time and materials basis. Assets may be subject to an inspection process should there be a lapse in coverage by a service agreement with Supplier or Quotation for more than 15 working days. Supplier recommends that preventative maintenance service visits coincide with Pre-Qualification visits to provide Assets with a higher chance of passing Pre-Qualification criteria.

**b. "Good Faith Efforts", Obsolescence and Upgrades.** Supplier will make commercially reasonable efforts to repair and maintain Assets that are no longer supported by the manufacturer and will offer maintenance services for as long as replacement components are readily and economically available. These Assets will be identified as "Good Faith Effort" parts in the Quotation. On rare occasions a component or Asset may be deemed Obsolete during the term of this Agreement. "Obsolete" means any part or Asset that is not readily available in current manufacturer inventory or cannot be ordered and received within a reasonable time. Obsolete components will not be covered under this Agreement. Supplier will provide a separate billable Quotation to upgrade Obsolete components. Equipment modifications necessary to accommodate replacement of upgrades will be at Client's expense. If the original manufacturer offers engineering upgrades or software updates at no cost, Supplier will install them onto Assets covered by this Agreement at no cost, as long as there are no acquisition costs or other extended costs to Supplier. If an engineering upgrade is not free of cost from the original manufacturer, and if Client requires an upgrade, Client may purchase the upgrade kit by contracting with Supplier at its own expense. Other components upgraded, such as software, computers, and monitors, will be paid for by Client. Client's failure to (or instruction to Supplier not to) maintain its Assets in accordance with the manufacturer's recommendation will excuse Supplier from failure to perform its obligations or responsibilities under this Agreement. Supplier will verify that the Asset is in working

condition according to the specifications provided by Client to Supplier by utilizing recommended setpoints, columns, standards, and procedures. This Agreement does not cover specific Client applications. It is the responsibility of Client to ensure each analysis, experiment, method, and application performed on the Asset is fit for purpose and that Client's personnel are trained to use the Assets. Supplier is not responsible for training Client personnel or improper use of the Assets by non-Supplier personnel. Laboratory personnel must provide Supplier with details of all circumstances leading to an Asset failure. Client will provide consumable items required to complete the repair. Supplier will not replace or repair any items considered to be consumable items unless otherwise specified in the Quotation. Supplier is not responsible for any specialized, regulated, or non-regulated methods or applications performed on Assets under contract. Asset calibrations, data acquisitions, data accuracy, archiving and recovery of data from computers and other media are the responsibility of Client. The performance of the Services supplied under this Agreement are warranted for a period of thirty (30) days from the date such Services are performed. Under this warranty, Supplier's sole and unique responsibility will be to reperform the Services in conformance with this Agreement and do not cover any defects resulting from improper or inadequate maintenance, installation, repair or calibration performed by Customer or third party not under the control of Supplier. Supplier's liability under this Agreement relating to the Asset Services is limited to repair of the Assets and the replacement of parts as provided for under this Agreement.

## **1.2. Monitoring Services.**

**a. General.** Supplier is a licensed distributor of certain monitoring equipment ("Monitoring Equipment" or "Equipment") on behalf of various Monitoring Equipment providers ("Equipment Providers"), and provides monitoring services ("Monitoring Services"), which may include the following, each as set forth in a Quotation:

- i. the supply, installation, repair and maintenance of the Monitoring Equipment in accordance with the manufacturer's operating specifications;
- ii. coordination of Client's subscription to such user licenses as may be required by the Equipment Provider; and
- iii. connection of the software ("Software") to systems as set forth in a Quotation.

**b. Client Obligations and Acknowledgements.** Client shall: (a) be responsible for the procurement of supplies necessary for the proper operation of the Monitoring Equipment or for procurement of such supplies as Client may otherwise agree under a contract with an Equipment Provider; and (b) provide full and free access to the Monitoring Equipment during the hours of coverage under this Agreement as set forth more fully in a Quotation, and access to and use of any machines, attachments or other equipment of Client reasonably necessary to provide the Monitoring Services. Client acknowledges Supplier's recommendation that it install multiple monitoring alarms using different technologies and have appropriate independent backup procedures in place as neither Supplier nor Equipment Provider may be held responsible for the destruction of files or programs. The Monitoring Equipment is provided on an as-is, pass-through warranty basis and Client agrees to the terms of the End-User-License Agreement or warranty terms as provided by the Equipment Provider. All warranties, indemnification and support obligations with respect to any Monitoring Equipment is provided by the applicable third-party licensor

or supplier. Supplier does not provide any warranty, indemnification or support with respect to any Monitoring Equipment but will assist Client in the registration of the warranty in the name of the Client (if applicable). Client agrees not to (i) use the Monitoring Equipment for the benefit of a third party and to ensure compliance with Equipment Provider's recommendations contained in the guidelines or rules of use provided to it (including electrical installation compliance with the technical specifications and computer system adapted to access the Monitoring Equipment, (ii) reproduce, copy, translate, or transcribe the Equipment Provider's systems or Monitoring Equipment, in whole or in part, and not to adapt or develop the Equipment Provider's systems or Monitoring Equipment; and (iii) use the graphic and audio elements from the Equipment Manufacturer's systems or Monitoring Equipment. In the case of interruption or suspension of the Software, Client will notify Supplier as quickly as possible. In relation to the installation of new Monitoring Equipment, Supplier's sole and exclusive responsibility shall be to repair the defective Monitoring Equipment. In all cases, any claim for breach of the warranty must be submitted to Supplier within the warranty period applicable to the Monitoring Equipment for which such claim is made.

**2. Relocations.** Relocation services are available through Supplier on a flat-rate or time-and-materials basis. If Client finds it necessary to relocate an Asset or Monitoring Equipment, they do so at their own risk and discretion. Supplier will not be liable for any damage resulting from the relocation of Assets or Monitoring Equipment by Client or a third party. All labor and parts required to correct Assets or Monitoring Equipment malfunctions resulting from causes set forth above, shall be invoiced by Supplier to Client on a time-and-materials basis. Supplier will only be responsible for any Asset or Monitoring Equipment malfunctions to the extent that such are caused by Supplier's negligence, gross negligence or willful misconduct.

**3. Technical Call Center and On-site Calls.** The Technical Call Center and On-Site Service Calls are available Monday to Friday between 8:00 am to 5:00 pm local standard time excluding holidays. Holidays include national and state public holidays in the Service Location ("Holidays"). On-Site Service Call response timeframes and other information will be set forth in Quotations.

**4. Pricing and Payments.** All payments are due within net 30 days of the invoice date and must be paid in accordance with the Quotation. If applicable and where subject to agreement, Supplier may implement an annual price increase on the anniversary of the Effective Date, in accordance with the Producer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics. If applicable, Supplier may otherwise increase fees and prices by mutual agreement and as set forth in a Quotation. Fees and expenses may be charged on a fixed, hourly or unit rate basis and materials marked up as agreed in each Quotation. Fixed fees, rates and charges will not be subject to audit or reconciliation.

**5. Payments to Third Parties.** Client acknowledges that if the Services include the use of subcontractors or vendors (as applicable), Supplier may, from time to time, enter into agreements or arrangements with its supplier base in connection with Supplier's global sourcing program, and related rebates, fees, charges and discounts that Supplier may receive will be retained by Supplier and are not subject to reconciliation or audit. If applicable, Supplier will not be liable for making payments late or failing to make payments to subcontractors, vendors or other third parties (i) if so directed by Client or due to Client's delay, (ii) if Client fails to provide sufficient funds, or (iii) if Client is in default under this Agreement.

**6. Exclusions:** Notwithstanding anything to the contrary, Supplier will not be responsible for any loss, damage, delay or failure to provide Services due to any cause beyond Supplier's control including: (a) the error, negligence, damage or misconduct of Client or its employees or third parties in handling or operating the Equipment or the use of it for a purpose other than that for which it was designed, (b) acts of government, strikes, fire, explosions, theft, riots, flood, civil disorder, national emergencies, epidemics, pandemics, war, unusually severe weather, vandalism, terrorism, or other acts of violence, earthquakes or other acts of God, (c) surges in electric currents, failures due to power fluctuations and/or power loss, (d) Client's failure to maintain the Equipment in accordance with the routine maintenance requirements set forth in any manuals, failure to provide a suitable environment for the Equipment or failure to adequately furnish all facilities required by the manufacturer's installation manual, including, but not limited to, proper electrical power, air conditioning, and humidity control, (e) the failure of others to supply parts, materials, or supplies in a timely manner, (f) repairs or alterations performed by any party other than Supplier or its authorized representative, which may include, but not be limited to, any deviation from the manufacturer's physical, mechanical, or electrical design of the Equipment, (g) devices which have not been specifically designated as compatible with the Equipment by the manufacturer, but which are nevertheless mechanically, electrically, or electronically connected to the Equipment, (g) software not provided by Supplier or for the consequences of the use thereof, or for damage caused by computer viruses introduced or activated by the Client. This Section 6 will survive termination of this Agreement.

**7. Hazardous Materials and Pre-Existing Conditions.** Client acknowledges that Supplier is not an environmental expert, or a generator, operator, or transporter of hazardous materials and is not responsible for detecting, handling, removing, or remediating hazardous materials, pre-existing conditions, or structural or latent defects and will not be responsible for detecting or remediating any pre-existing conditions, latent defects or other defects in the design or construction of a property or manufacturing defects in or improper installation by others of equipment within a property, whether pre-existing or arising during the term. Client will indemnify Supplier for any claims, demands, lawsuits, costs, or damages arising from hazardous materials, pre-existing conditions, or structural or latent defects, except to the extent such condition is caused by Supplier's negligence, gross negligence or willful misconduct. This Section 7 will survive the expiration or termination of this Agreement.

**8. Limitation on Liability.** Notwithstanding anything to the contrary contained herein:

**8.1.** IN NO EVENT WILL SUPPLIER BE LIABLE FOR ANY LOST OR PROSPECTIVE PROFITS, DIMINUTION IN VALUE, ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OTHER EXEMPLARY LOSSES OR DAMAGES, LOSS OF OR DAMAGE TO DATA, OR LOSS OF EMPLOYEE OR CONSULTANT TIME IN CONNECTION WITH ANY MATTERS RELATING DIRECTLY OR INDIRECTLY TO ITS BUSINESS RELATIONSHIP WITH SUPPLIER (INCLUDING DUE TO THE FAILURE OF CLIENT ASSETS, INFRASTRUCTURE, ASSETS, SERVICES OR PARTS), WHETHER BASED IN CONTRACT, WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT OR OTHERWISE REGARDLESS OF THE FORESEEABILITY OR THE CAUSE THEREOF.

**8.2.** Supplier's maximum aggregate liability to Client under or in connection with this Agreement, whether in contract, warranty, negligence, tort or otherwise, will not exceed the amounts paid or payable to Supplier (excluding any reimbursed amounts) under the Quotation to which the claim relates in the 12-month period immediately preceding the related claim. Notwithstanding the foregoing, Supplier's liability for the Monitoring Services is limited to the resupply of the Monitoring Services only.

**8.3.** Client acknowledges and agrees that neither Supplier nor its Affiliates (as defined below) will have any liability with respect to any loss, damage, claim or expense (i) incurred by or asserted against Client or its Affiliates arising out of any erroneous or incomplete data, documentation or information provided by Client, its Affiliates or any third party or otherwise contained in Client's or its Affiliates' databases, (ii) to the extent arising out of Client's failure to comply with its obligations under this Agreement (iii) to the extent a claim arises because Service Provider acted or failed to act because of adherence to Client's policies, rules, regulations, agreements and/or instructions. No representation or recommendation is or will be made by Supplier as to the legal sufficiency, legal effect, tax or accounting consequences of any transaction or documentation. All Client policies and instructions with which Service Provider must comply shall be consistent with this Agreement and provided to Service Provider in advance in writing. "Affiliate" means any person or entity which, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the specified person or entity. Where applicable, references to Supplier or Client in this Agreement will be deemed to include any Affiliate of Supplier or Client that provides or receives Services pursuant to this Agreement.

**8.4.** Supplier will not be liable for the acts or omissions of Client or any third party or arising out of or in connection with, the manufacture, design, formulation, preparation, assembly, processing, installation, testing, warnings, instructions, marketing, packaging or labeling of any goods, products or components thereof (collectively, "Client Products") including, without limitation, the safety, reliability, adequacy, compliance, durability, operability, effectiveness or performance of any Client Products or any defects therein (collectively, "Product Liability Claims").

**8.5.** This Section 2 will survive termination or expiration of this Agreement.

**9.** SUPPLIER MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL WARRANTIES AND REPRESENTATIONS NOT SET FORTH IN THIS AGREEMENT ARE EXPRESSLY DENIED BY SUPPLIER AND WAIVED BY CLIENT.

**10. Indemnification.** Client agrees to (a) indemnify and hold Supplier harmless from and against all third party claims, liabilities, judgments, actions, penalties and other expenses (collectively, "Claims") asserted against Supplier for bodily injury, personal injury and/or property damages to the extent such Claims are due to Client's negligence, gross negligence or willful misconduct or Client's failure to comply with applicable law (other than by reason of an act or omission of Supplier) and (b) defend promptly and diligently, at Client's sole expense, with attorneys reasonably acceptable to Supplier, any Claim, action or proceeding brought against Supplier or Supplier and Client jointly or severally, arising out of or connected with the matters for which Client provides indemnification above. Nothing contained in this Section will relieve Supplier from responsibility for its negligence, gross negligence or willful misconduct. Notwithstanding any provision to the contrary contained within any Client Terms (as defined below), Section 1.2(b), Section 7 and this Section 10 are the only provisions that shall govern the Parties' indemnification obligations under this Agreement.

**11. Insurance.** Supplier will maintain adequate insurances for its performance of the Services during the term of the Agreement. Client will maintain the following insurance coverages during the term of the Agreement: (i) Commercial general liability ("CGL") insurance (ISO Occurrence Form CG 00 01 or its equivalent), with per occurrence limits of \$5,000,000, which limits may be provided by any combination of primary and following form excess policies. Supplier will be included as an additional insured under the

CGL policy and the CGL policy will be primary except to the extent of Supplier's liability obligations under this Agreement; and (ii) The equivalent of ISO special form property insurance, insuring the site of the Services on an all risks, full replacement value basis, and including at least twelve (12) months business interruption insurance. Supplier's insurance will not be called upon to respond to or cover Client's negligence or willful misconduct, and Client's insurance will not be called upon to respond to or cover Supplier's negligence or willful misconduct. Client and Supplier each hereby waives, for itself and its Affiliates, right of recovery, and agrees that no third party will have any right of recovery by way of subrogation, assignment or otherwise, against the other Party or its Affiliates with regard to losses or claims insured against under this Agreement.

**12. Confidentiality.** The Parties agree that any information or data relating to the research, development and/or business operations, strategies or ideas ("Confidential Information") of the other Party ("Discloser") may not be disclosed by the receiving Party ("Recipient") without the written consent of the other Party or unless otherwise permitted by this Agreement. Confidential Information will not include information: (i) already in the public domain, (ii) disclosed by the Recipient with the Discloser's written permission, (iii) received from a source other than the Discloser without a breach hereof, or (iv) independently developed by the Recipient without information received from the Discloser. In addition, the Parties may disclose Confidential Information: (A) to employees who have a need to know in connection with this Agreement, (B) in any action to enforce the provisions of this Agreement, (C) as required by applicable law or legal process, or (D) to professional advisors, insurers and Supplier subcontractors who agree to or are otherwise required to maintain the information in confidence. Notwithstanding anything to the contrary herein, Client agrees that Supplier may collect and use information provided or generated through the Services in the usual course of Supplier's business, including to improve and monitor service offerings and create benchmarking. If information is confidential, Supplier will not identify Client as a Supplier client and will anonymize the information. Supplier will not receive any right, claim, title or interest in or to any proprietary products or intellectual property of Client. This Section 6 will survive the expiration or termination of this Agreement.

**13. Intellectual Property.** Notwithstanding anything to the contrary herein, all methodologies, systems, procedures, management tools, software, ideas, inventions, know-how and other intellectual capital that Supplier has developed, created or acquired prior to performing Services under this Agreement, or develops, creates or acquires during the term of this Agreement or thereafter ("Supplier Intellectual Capital") are and will remain the sole and exclusive proprietary property of Supplier, and Client will not have any right, claim, title or interest in or to any of Supplier's Intellectual Capital. This Section 7 will survive the expiration or termination of this Agreement.

#### **14. Termination.**

**14.1 Termination for Breach.** Either Party may terminate this Agreement or an individual Quotation for material breach of Agreement that is not cured within thirty (30) days following written notice thereof.

**14.2 Termination for Convenience.** If this Agreement and/or any Quotations under it do not include Supplier's provision of personnel dedicated to the Client's site, this Agreement and/or such Quotation may be terminated by either Party by 60 days' written notice.

**14.3 Termination Payments.** If Supplier agrees to perform any Services after the expiration of this Agreement, such Services will be provided on a time and materials basis. Client will pay Supplier for all Services rendered prior to the date of termination, and, in the event of termination without cause by Client, all direct costs incurred by reason of the termination (including severance costs if Supplier provides personnel dedicated to Client's site, third party costs, and equipment ordered at Client's request that cannot be returned.

**15. Order of Precedence.** Notwithstanding anything to the contrary under a contract or a request for services issued by the Client, including any purchase orders, documents or attachments thereto, ("Client Terms"), the Parties hereby agree that in the event of any conflict or inconsistency between the Client Terms and this Agreement, this Agreement will prevail.

**16. Severability, Entire Agreement and Counterparts.** If any provision of this Agreement is declared invalid, illegal or unenforceable under any applicable law, such provision will be deemed omitted from this Agreement, but the remaining provisions will continue in effect. This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter hereof and all prior agreements, understandings and negotiations pertaining to such subject matter are superseded by and merged into this Agreement. This Agreement may not be amended or modified, nor may any term be waived, except in a writing signed by both Parties. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

**17. Governing Law.** Each Party will comply with all laws applicable to it with respect to the Services. This Agreement shall be governed by, construed, and enforced for all purposes in accordance with the laws of the State of Delaware, without giving effect to its conflict of laws' provisions. The state and federal courts in New Castle County, Delaware shall have exclusive jurisdiction over any dispute regarding this Agreement and the matters contemplated herein. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY AND VOLUNTARILY, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION IN ANY WAY RELATED TO, THIS AGREEMENT.

**18.1 Notices.** All notices, waivers, approvals, consents, demands, requests or other formal communications under this Agreement will, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (a) if delivered by messenger, when personally delivered, (b) if mailed, on the third business day after deposit in the U.S. Mail, certified or registered, postage prepaid, return receipt requested, or (c) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier, (d) and in each case, followed up with an electronic (email) notice to the email addresses provided below. Notices to Client under this Agreement will be delivered to the Client Site address and Client contact as indicated in the Quotation. Notices to Supplier under this Agreement will be delivered as follows:

**Notices to Supplier:**

Full Spectrum Lab Services from CBRE  
3501 Jamboree Rd, Suite 100  
Newport Beach, CA 92660  
Attn: Contracts Department  
Email: [FSG-Contracts@cbre.com](mailto:FSG-Contracts@cbre.com)

With a required copy sent at the same time to:  
CBRE, Inc.  
2121 N. Pearl Street, Suite 300  
Dallas, Texas 75201  
Attn: Banke Odunaike, General Counsel – Global Workplace Solutions