



CONTRACT FOR THE PURCHASE OF GOODS.

----- **PR17055** -----

D100X 100J Adaptive Optics System

SECTION A

This Contract is dated 10th August 2017.

Parties

- (1) **UK Shared Business Services Ltd** (a limited company registered in England and Wales with company number 06330639)] **on behalf of the Science & Technology Facilities Council**, established under the Science and Technology Act 1965, as a body incorporated by Royal Charter, of Rutherford Appleton Laboratory, Harwell Oxford, OX11 0QX (**the Customer**)
- (2) **Imagine Optic SA**, a company incorporated and registered in France with company number SIRET 410 072 532 000 30 and registered VAT number FR73410072532 whose office is at 18 rue Charles de Gaulle 91400 Orsay, France (**the Supplier**).

Background

The Customer wishes the Supplier to supply, and the Supplier wishes to supply, the Goods (as defined below) in accordance with the terms of the Contract (as defined below).

Agreed terms

A1 Interpretation

A1-1 **Definitions.** In the Contract (as defined below), the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Confidential Information: any confidential information, know how and data (in any form or medium) which relates to UK SBS, the Research Councils or the Supplier, including information relating to the businesses of UK SBS, the Research Councils or the Supplier and information relating to their staff, finances, policies and procedures. This includes information identified as confidential in the Order or the Special Conditions (if any).

Contract: the contract between the Customer and the Supplier for the sale and purchase of the Goods, in accordance with the terms of this Contract, any Special

Conditions and the Order only.

Delivery Date: the date for delivery of the Goods specified in the Order or, if no such date is specified, within 28 days of the date of the Order.

Delivery Location: has the meaning set out in clause B2-2-3.

Delivery Note: has the meaning set out in clause B2-1-2.

EIR: the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Goods: the goods (or any part of them) set out in the Order.

Information: has the meaning given under section 84 of FOIA.

Order: the Customer's order for the Goods or associated services necessary as part of the provision of the Goods, as set out in the Customer's completed purchase order form (including any Specification) which is in the format of the pro forma order form attached at Schedule 2. For the avoidance of doubt, if the Customer's purchase order form is not in the format of the pro forma order form at Schedule 2, it will not constitute an Order.

Public Body: any part of the government of the United Kingdom including but not limited to the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales, local authorities, government ministers and government departments and government agencies.

UK SBS: UK Shared Business Services Limited (a limited company registered in England and Wales with company number 06330639).

Request for Information: a request for Information or an apparent request under FOIA or EIR.

Research Councils: the Arts and Humanities Research Council, the Biotechnology and Biological Sciences Research Council, the Engineering and Physical Sciences Research Council, the Economic and Social Research Council, the Medical Research Council, the Natural Environment Research Council, the Science and Technology Facilities Council, and any replacement or successor organisations to any of those bodies from time to time.

Special Conditions: the special conditions (if any) set out in Schedule 1.

Specification: any specification for the Goods, including any related plans and drawings that is supplied to the Supplier by the Customer, or produced by the Supplier and agreed in writing by the Customer.

Supplier or Suppliers: the parties to the contract as named in Section A (2)

Supplier's Associate: any individual or entity associated with the Supplier including, without limitation, the Supplier's subsidiary, affiliated or holding companies and any employees, agents or contractors of the Supplier and / or its subsidiary, affiliated or holding companies or any entity that provides Goods or associated services necessary as part of the provision of the Goods, for or on

behalf of the Supplier.

Working Day: any Business Day excluding 27, 28, 29, 30 and 31 December in any year.

A1-2 **Construction.** In the Contract, unless the context requires otherwise, the following rules apply:

A1-2-1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A1-2-2 A reference to a party includes its personal representatives, successors or permitted assigns.

A1-2-3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

A1-2-4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

A1-2-5 The headings in the Contract are for ease of reference only and do not affect the interpretation or construction of the Contract.

A1-2-6 A reference to **writing** or **written** includes faxes and e-mails.

A2 Basis of contract

A2-1 Where UK SBS is not the Customer, UK SBS is the agent of the Customer for the purpose of procurement and is authorised to negotiate and enter into contracts for the supply of goods on behalf of the Customer. UK SBS will not itself be a party to, nor have any liability under, the Contract unless it is expressly specified as Customer.

A2-2 The terms of this Contract, any Special Conditions and the Order apply to the Contract to the exclusion of all other terms and conditions, including any other terms that the Supplier seeks to impose or incorporate (whether in any quotation, confirmation of order, in correspondence or in any other context), or which are implied by trade, custom, practice or course of dealing.

A2-3 If there is any conflict or inconsistency between the terms of this Contract, the Special Conditions (if any) and the Order (including any Specification), the terms of this Contract will prevail over the Special Conditions and the Special Conditions will prevail over the Order (including any Specification), in each case to the extent necessary to resolve that conflict or inconsistency.

A2-4 The Order constitutes an offer by the Customer to purchase the Goods in accordance with the terms of this Contract (and any Special Conditions). This offer shall remain valid for acceptance by the Supplier, in accordance with clause A2-5, for 28 days from the date of the Order. Notwithstanding that after 28 days the offer will have expired, the Customer may, at its discretion, nevertheless treat the offer as still valid and may elect to accept acceptance by the Supplier, in accordance with clause A2-5, as valid acceptance of the offer.

A2-5 Subject to clause A2-4, the Order shall be deemed to be accepted on the date on which authorised representatives of both parties have signed a copy of this Contract, at which point the Contract shall come into existence. The Contract shall remain in force until all the parties' obligations have been performed in accordance with the Contract, at which point it shall expire, or until the Contract has been terminated in accordance with clause A3.

A3 Termination

- A3-1 The Customer may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss. The Supplier shall have a duty to mitigate its costs and shall on request provide proof of expenditure for any compensation claimed.
- A3-2 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- A3-2-1 the circumstances set out in clauses B3-1-1, C3-1 or C4-1 apply; or
 - A3-2-2 the Supplier breaches any term of the Contract and (if such breach is remediable) fails to remedy that breach within **30 days** of being notified in writing of the breach; or
 - A3-2-3 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
 - A3-2-4 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
 - A3-2-5 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier; or
 - A3-2-6 (being an individual) the Supplier is the subject of a bankruptcy petition or order; or
 - A3-2-7 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
 - A3-2-8 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier; or
 - A3-2-9 (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver; or
 - A3-2-10 a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets; or
 - A3-2-11 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause A3-2-3 to clause A3-2-10 inclusive; or
 - A3-2-12 there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010); or

A3-2-13 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business; or

A3-2-14 the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

A3-2-15 (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

A3-3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination or expiry of the Contract shall continue in full force and effect.

A3-4 Without prejudice to clause A3-3, clauses B1, B2, B3, B4, B6, B7, B8, C1, C2, C6 and C7 shall survive the termination or expiry of the Contract and shall continue in full force and effect.

A3-5 Upon termination or expiry of the Contract, the Supplier shall immediately:

A3-5-1 cease all work on the Contract;

A3-5-2 deliver to the Customer all Goods which are ready for delivery (upon the Customer's election);

A3-5-3 cease use of and return (or, at the Customer's election, destroy) all Customer Materials in the Supplier's possession or control; and

A3-5-4 cease all use of, and delete all copies of, UK SBS's and the Customer's Confidential Information.

A3-6

The Customer may terminate the Contract by written notice to the Supplier in any of the following circumstances:

A3-6-1 Where it considers that the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 ("PCR 2015");

A3-6-2 Where it considers that the Supplier has at the time of the award of the Contract been in one of the situations referred to in Regulation 57(1) of the PCR 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure;

A3-6-3 Where the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the EU Treaties and Directive 2014/24/EU of the European Parliament and of the Council that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU;

A3-6-4 Where the European Commission sends a reasoned opinion to the United Kingdom or brings the matter before the Court of Justice of the European Union under Article 258 of the TFEU alleging that the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and Directive 2014/24/EU of the European Parliament and of the Council; or

A3-6-5 Where a third party starts court proceedings against the Customer seeking a declaration that the Contract is ineffective or should be shortened under Regulations 98 to 101 of the PCR 2015, which the Customer considers have a reasonable prospect of success.

A3-6-6 Such termination shall be effective immediately or at such later date as is specified in the notice. The Customer shall not incur any liability to the Supplier by reason of such termination and shall not be required to pay any costs, losses or damage to the Supplier. Termination under this clause shall be without prejudice to any other rights of the Customer.

- A3-7 The Customer shall at any time have the right for convenience to terminate the Contract or reduce the quantity of Goods to be provided by the Supplier in each case by giving to the Supplier reasonable written notice. During the period of notice the Customer may direct the Supplier to perform all or any of the work under the Contract. Where The Customer has invoked either of these rights, the Supplier may claim reasonable costs necessarily and properly incurred by him as a result of the termination or reduction, excluding loss of profit, provided that the claim shall not exceed the total cost of the Contract. The Supplier shall have a duty to mitigate its costs and shall on request provide proof of expenditure for any compensation claimed.

SECTION B

B1 The goods

- B1-1 The Supplier shall supply all Goods in accordance with the Contract. In particular, the Supplier warrants that the Goods shall:
- B1-1-1 correspond with their description in the Order (including any Special Conditions and any applicable Specification)
 - B1-1-2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by UK SBS or the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;
 - B1-1-3 where applicable, be free from defects in design, material and workmanship and remain so for 12 months after delivery and acceptance;
 - B1-1-4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
 - B1-1-5 be supplied in accordance with all applicable legislation in force from time to time; and
 - B1-1-6 be destined for supply into, and fully compliant for use in, the United Kingdom (unless specifically stated otherwise in the Order).
- B1-2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract
- B1-3 UK SBS or the Customer shall have the right to inspect and test the Goods at any time before delivery.
- B1-4 If following such inspection or testing UK SBS or the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause B1-1, UK SBS or the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

- B1-5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and UK SBS or the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- B1-6 The Customer's rights under the Contract are without prejudice to and in addition to the statutory terms implied in favour of the Customer under the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and any other applicable legislation.

B2 Delivery

- B2-1 The Supplier shall ensure that:

B2-1-1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

B2-1-2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered (the **Delivery Note**); and

B2-1-3 if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the Delivery Note. Any such packaging material shall be returned to the Supplier at the Supplier's cost.

- B2-2 The Supplier shall deliver the Goods:

B2-2-1 on the Delivery Date;

B2-2-2 carriage paid;

B2-2-3 to the location or locations as is or are set out in the Order, or as instructed by UK SBS or the Customer in writing prior to delivery (the **Delivery Location**);

B2-2-4 during the Customer's normal business hours on a Working Day, or as instructed by UK SBS or the Customer.

- B2-3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location and in accordance with the provisions of this clause B2. The Supplier will unload the Goods at its own risk as directed by UK SBS or the Customer. The Goods will remain at the risk of the Supplier until delivery to the Customer (including unloading) is complete, including that the Supplier has obtained sign-off of the Delivery Note by or on behalf of the Customer, at which point ownership of the Goods shall transfer to the Customer.
- B2-4 If the Supplier delivers to the Customer more than the quantity of Goods ordered, the Customer will not be bound to pay for the excess and any excess will remain at the Supplier's risk and will be returnable to the Supplier at the Supplier's expense.
- B2-5 If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

- B2-6 The Supplier shall not deliver the Goods in instalments without UK SBS or the Customer's prior written consent. Where it is agreed that the Goods are to be delivered in instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time, or at all, or any defect in an instalment, shall entitle the Customer to the remedies set out in clause B3.
- B2-7 The Supplier shall:
- B2-7-1 obtain, at its risk and expense, any export and import licences or other authorisations necessary for the export and import of the Goods and their transit through any country or territory; and
 - B2-7-2 deal with all customs formalities necessary for the export, import and transit of the Goods, and will bear the costs of complying with those formalities and all duties, taxes and other charges payable for export, import and transit.
- B2-8 Without prejudice to the Customer's statutory rights, the Customer will not be deemed to have accepted any Goods until the Customer has had at least 14 Working Days after delivery to inspect them and the Customer also has the right to reject any Goods as though they had not been accepted for 14 Working Days after any latent defect in the Goods has become apparent.
- B2-9 If, in connection with the supply of the Goods, the Customer permits any employees or representatives of the Supplier to have access to any of the Customer's premises, the Supplier will ensure that, whilst on the Customer's premises, the Supplier's employees and representatives comply with
- B2-9-1 all applicable health and safety, security, environmental and other legislation which may be in force from time to time; and
 - B2-9-2 any Customer policy, regulation, code of practice or instruction relating to health and safety, security, the environment or access to and use of any Customer laboratory, facility or equipment which is brought to their attention or given to them whilst they are on Customer premises by any employee or representative of the Customer.

B3 Remedies

- B3-1 If the Goods, or any part of them, including any instalment(s), are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause B1-1 or any requirements set out in the Special Conditions (if any), or the Supplier has otherwise not supplied the Goods in accordance with, or the Supplier has failed to comply with, any of the terms of the Contract, then, without limiting any of its other rights or remedies, the Customer shall have the right, at its discretion, to any one or more of the following remedies, whether or not it has accepted the Goods or any part of them:
- B3-1-1 to terminate the Contract in whole or in part without liability to the Supplier;
 - B3-1-2 at its discretion reject any of the Goods which have been delivered by the Delivery Date and refuse to accept any subsequent delivery of Goods that the Supplier attempts to make (and any such rejected Goods shall be stored and are returnable at the Supplier's sole risk and expense);
 - B3-1-3 purchase substitute Goods from elsewhere;
 - B3-1-4 accept late delivery of the Goods;
 - B3-1-5 to require the Supplier to remedy any defect in, repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;

B3-1-6 to recover from the Supplier any costs incurred by UK SBS or the Customer in obtaining substitute goods from a third party; and

B3-1-7 to claim damages for any other costs, loss or expenses incurred by UK SBS or the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

B3-2 If the Goods are not delivered on the Delivery Date the Customer may at its option claim or deduct 1% per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 10% per cent of the total price of the Goods. If the Customer exercises its rights under this clause B3-2, it shall not be entitled to any of the remedies set out in clause B3-1 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).

B3-3 The Contract shall apply to any repaired or replacement Goods supplied by the Supplier.

B3-4 The Supplier shall indemnify, and shall keep indemnified, UK SBS and the Customer in full and hold UK SBS and the Customer harmless against all claims, costs, expenses, damages and losses, whether direct or indirect (including loss of profits, loss of business, depletion of goodwill and similar losses), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by UK SBS and the Customer as a result of or in connection with:

B3-4-1 any claim made against UK SBS or the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

B3-4-2 any claim made against UK SBS or the Customer by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

B3-4-3 any claim made against UK SBS or the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

This clause B3-4 shall survive termination or expiry of the Contract.

B3-5 The Customer's rights and remedies under the Contract are in addition to its rights and remedies implied by statute and common law.

B3-6 The Supplier warrants that it has full clear and unencumbered title to the Goods and that upon completion of delivery the Supplier has full and unrestricted rights to sell and transfer absolutely all Goods to the Customer.

B4 Title, risk and use

B4-1 Title and risk in the Goods shall pass to the Customer on completion of delivery.

B5 Price and payment

B5-1 The price of the Goods shall be the price set out in the Order.

- B5-2 The price of the Goods excludes amounts in respect of value added tax (**VAT**) or other applicable sales tax, but includes the costs of all materials, costs charges, expenses, packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by or on behalf of the Customer.
- B5-3 The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the statutory rate in force at the relevant time.
- B5-4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- B5-5 The Customer shall pay correctly rendered invoices within **30 days** of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier unless the Customer agrees in writing to another payment method.
- B5-6 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part. The Customer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.
- B5-7 The Supplier acknowledges and agrees that it will pay correctly rendered invoices from any of its suppliers or other sub-contractors within **30 days** of receipt of the invoice.
- B5-8 **Payment to other parties.** The Supplier shall ensure, pursuant to Regulation 113(2)(c) of the Public Contracts Regulations 2015, that any subcontract awarded by the Supplier contains suitable provisions to impose, as between the parties to the subcontract, requirements that:
- B5-8-1 any payment due from the Supplier to the subcontract or under the subcontract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;
- B5-8-2 any invoices for payment submitted by the subcontract or are considered and verified by the Supplier in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed;
; and
- B5-8-3 any subcontract or will include, in any subcontract which it in turn awards, suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect as those imposed in paragraphs B5-8-1, B5-8-2 and B5-8-3 of this Clause B5-8, subject to suitable amendment to reflect the identities of the relevant parties.

B6 Customer property

- B6-1 The Supplier acknowledges that all information (including confidential information), equipment and tools, drawings, specifications, data, software and any other materials supplied by UK SBS and the Customer to the Supplier (**Customer Materials**) and all rights in the Customer Materials are and shall remain at all times the exclusive property of UK SBS or the Customer (as appropriate). The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to UK SBS or the Customer, and not dispose or use the same other than for the sole purpose of performing the Supplier's obligations under the Contract and in accordance with UK SBS's or the Customer's written instructions or authorisation.

B7 Insurance

- B7-1 During the term of the Contract and for a period of 3 years thereafter, the Supplier shall maintain in force the following insurance policies with reputable insurance companies:
- B7-1-1 public liability insurance for not less than **£2million GBP** per claim (unlimited claims);
 - B7-1-2 employer liability insurance for not less than **£5million GBP** per claim (unlimited claims); and
 - B7-1-3 product liability insurance for not less than **£2million GBP** for claims arising from any single event and not less than **£3million GBP** in aggregate for all claims arising in a year.
- B7-2 The Supplier shall ensure that the Customer's interest is noted on each insurance policy, or that a generic interest clause has been included.
- B7-3 On UK SBS's or the Customer's written request, the Supplier shall provide UK SBS or the Customer with copies of the insurance policy certificates and details of the cover provided.
- B7-4 The Supplier shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the Contract which they are contracted to fulfil.
- B7-5 The Supplier shall:
- B7-5-1 do nothing to invalidate any insurance policy or to prejudice the Customer's entitlement under it; and
 - B7-5-2 notify the Customer if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- B7-6 The Supplier's liabilities under the Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause B7-1.
- B7-7 Not Used

B8 Liability

- B8-1 In this clause B8, a reference to UK SBS's or the Customer's liability for something is a reference to any liability whatsoever which UK SBS or the Customer might have for it, its consequences, and any direct, indirect or consequential loss, damage, costs or expenses resulting from it or its consequences, whether the liability arises under the Contract, in tort or otherwise, and even if it results from UK SBS's or the Customer's negligence or from negligence for which UK SBS or the Customer would otherwise be liable.
- B8-2 Neither UK SBS nor the Customer is in breach of the Contract, and neither UK SBS nor the Customer have any liability for anything, to the extent that the apparent breach or liability is attributable to the Supplier's breach of the Contract.
- B8-3 Subject to clause B8-6, neither UK SBS nor the Customer shall have any liability for:
- B8-3-1 any indirect or consequential loss or damage;
 - B8-3-2 any loss of business, rent, profit or anticipated savings;

B8-3-3 any damage to goodwill or reputation;

B8-3-4 loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto the Customer's premises by or on behalf of the Supplier; or

B8-3-5 any loss, damage, costs or expenses suffered or incurred by any third party.

B8-4 Subject to clause B8-6, UK SBS and the Customer's total liability shall be limited to the price of the Goods.

B8-5 Subject to clause B8-6, the Supplier's total liability in connection with the Contract shall be limited to **£1million GBP**.

B8-6 Nothing in the Contract restricts either UK SBS's, the Customer's or the Supplier's liability for:

B8-6-1 death or personal injury resulting from its negligence; or

B8-6-2 its fraud (including fraudulent misrepresentation); or

B8-6-3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Service Act 1982.

SECTION C

C1 Confidential information

C1-1 A party who receives Confidential Information shall keep in strict confidence (both during the term of the Contract and after its expiry or termination) all Confidential Information which is disclosed to it. That party shall only disclose such Confidential Information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging that party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep all such information confidential in accordance with this clause C1. Neither party shall, without the prior written consent of the other party, disclose to any third party any Confidential Information, unless the information:

C1-1-1 was public knowledge or already known to that party at the time of disclosure; or

C1-1-2 subsequently becomes public knowledge other than by breach of the Contract; or

C1-1-3 subsequently comes lawfully into the possession of that party from a third party; or

C1-1-4 is agreed by the parties not to be confidential or to be disclosable.

- C1-2 To the extent necessary to implement the provisions of the Contract (but not further or otherwise), either party may disclose the Confidential Information to any relevant governmental or other authority or regulatory body, provided that before any such disclosure that party shall make those persons aware of its obligations of confidentiality under the Contract and shall use reasonable endeavours to obtain a binding undertaking as to confidentiality from all such persons.
- C1-3 All documents and other records (in whatever form) containing Confidential Information supplied to or acquired by a party from the other party shall be returned promptly to the other party (or, at UK SBS's or the Customer's election, destroyed) on expiry or termination of the Contract, and no copies shall be kept.

C2 Transparency.

- C2-1 In order to comply with the Government's policy on transparency in the areas of procurement and contracts the Supplier agrees that the Contract and the sourcing documents issued by UK SBS which led to its creation will be published by UK SBS on a designated web site.
- C2-2 The entire Supplier and all the sourcing documents issued by UK SBS will be published on the designated web site save where to do so would disclose information the disclosure of which would:
- C2-3 contravene a binding confidentiality undertaking that protects information which the UK SBS, at the time when it considers disclosure, reasonably considers to be confidential to Supplier;
- C2-4 be contrary to regulation 21 of the Public Contracts Regulations 2015; or
- C2-5 if the reasonable opinion of UK SBS is prevented by virtue of one or more of the exemptions in the Freedom of Information Act (FOIA) or one or more of the exceptions in the Environmental Information Regulation (EIR).

If any of the situations in C2-3,C2-4,C2-5 apply the Supplier consents to the Contract or sourcing documents being redacted by UK SBS to the extent necessary to remove or obscure the relevant material and being published on the designated website subject to those redactions

In this entire clause the expression "sourcing documents" means the advertisement issued by UK SBS seeking expressions of interest, any pre-qualification questionnaire stage and the invitation to tender.

C3 Force majeure

- C3-1 If any event or circumstance that is beyond the reasonable control of the Supplier, and which by its nature could not have been foreseen by the Supplier or, if it could have been foreseen, was unavoidable, (provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract) prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 10 Business Days, UK SBS or the Customer may terminate this Contract immediately by giving written notice to the Supplier.

C4 Corruption

- C4-1 UK SBS or the Customer shall be entitled to terminate the Contract immediately and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier or a Supplier's Associate:

C4-1-1 offers or agrees to give any person working for or engaged by UK SBS, the Customer or any Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Supplier and UK SBS or the Customer or any Public Body, including its award to the Supplier or a Supplier's Associate and any of the rights and obligations contained within it;

C4-1-2 has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by UK SBS, the Customer or any Public Body by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to UK SBS or the Customer before the Contract is entered into;

C4-1-3 breaches the provisions of the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010; or

C4-1-4 gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

- C4-2 For the purposes of clause C4-1, "loss" shall include, but shall not be limited to:

C4-2-1 UK SBS's or the Customer's costs in finding a replacement supplier;

C4-2-2 direct, indirect and consequential losses; and

C4-2-3 any loss suffered by UK SBS or the Customer as a result of a delay in its receipt of the Goods.

C5 Data protection

- C5-1 The Supplier shall comply at all times with all data protection legislation applicable in the UK from time to time.

C6 Freedom of information

- C6-1 The Supplier acknowledges that UK SBS and the Customer may be subject to the requirements of FOIA and EIR and shall assist and co-operate with UK SBS or the Customer to enable them to comply with its obligations under FOIA and EIR.
- C6-2 The Supplier shall and shall procure that its employees, agents, sub-contractors and any other representatives shall provide all necessary assistance as reasonably requested by UK SBS or the Customer to enable UK SBS or the Customer to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.
- C6-2-1 provide all necessary assistance as reasonably requested by UK SBS or the Customer to enable UK SBS or the Customer to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.
- C6-3 UK SBS or the Customer shall be responsible for determining (in its absolute discretion) whether any Information:
- C6-3-1 is exempt from disclosure in accordance with the provisions of FOIA or EIR;
- C6-3-2 is to be disclosed in response to a Request for Information,
- and in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so in writing by UK SBS or the Customer.
- C6-4 The Supplier acknowledges that UK SBS or the Customer may be obliged under the FOIA or EIR to disclose Information, in some cases even where that Information is commercially sensitive:
- C6-4-1 without consulting with the Supplier, or
- C6-4-2 following consultation with the Supplier and having taken its views into account.
- C6-5 Where clause C6-4-2 applies UK SBS or the Customer shall, in accordance with any recommendations issued under any code of practice issued under section 45 of FOIA, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention as soon as practicable after any such disclosure.
- C6-6 Where the Supplier organisation is subject to the requirements of the FOIA and EIR, C6-7 will supersede C6-2 – C6-5. Where the Supplier organisation is not subject to the requirements of the FOIA and EIR, C6-7 will not apply.
- C6-7 UK SBS and the Customer acknowledge that the Supplier may be subject to the requirements of the FOIA and EIR and shall assist and co-operate with the Supplier to enable them to comply with its obligations under the FOIA and EIR.

C7 General

C7-1 Entire agreement.

C7-1-1 The Contract constitutes the entire agreement between the Customer and the Supplier in relation to the supply of the Goods and the Contract supersedes any earlier agreements, arrangements and understandings relating to that subject matter.

C7-2 Liability.

C7-2-1 Where the Customer is more than one person, the liability of each such person for their respective obligations and liabilities under the Contract shall be several and shall extend only to any loss or damage arising out of each such person's own breaches.

C7-2-2 Where the Customer is more than one person and more than one of such persons is liable for the same obligation or liability, liability for the total sum recoverable will be attributed to the relevant persons in proportion to the price payable by each of them under the Contract.

C7-3 Assignment and subcontracting.

C7-3-1 The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

C7-3-2 The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without UK SBS's or the Customer's prior written consent.

C7-4 Sub-Contractors

The Customer may (without cost to or liability of the Customer) require the Supplier to replace any subcontract or where in the reasonable opinion of the Customer any mandatory or discretionary grounds for exclusion referred to in Regulation 57 of the Public Contracts Regulations 2015 apply to the subcontractors.

C7-5 Further assurance.

C7-5-1 The Supplier will promptly at UK SBS or the Customer's request do (or procure to be done) all such further acts and things, including the execution of all such other documents, as UK SBS or the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including ensuring that all title in the Goods is transferred absolutely to the Customer.

C7-6 Publicity

C7-6-1 The Supplier shall not make any press announcements or publicise this Contract in any way without UK SBS or the Customer's prior written consent.

C7-6-2 UK SBS or the Customer shall be entitled to publicise this Contract in accordance with any legal obligation upon UK SBS or the Customer, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

C7-6-3 The Supplier shall not do anything or cause anything to be done, which may damage the reputation of UK SBS or the Customer or bring UK SBS or the Customer into disrepute.

C7-7 Notices.

C7-7-1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to:

C7-7-1-a in the case of the Customer: **Jonathan Smith**; Address: The Rutherford Appleton Laboratory, Harwell, Campus, Harwell, Oxfordshire, OX11 0QX e-mail: jonathan.smith@uksbs.co.uk (and a copy of such notice or communication shall be sent to: **Chief Procurement Officer**, Polaris House, North Star Avenue, Swindon, Wiltshire SN2 1ET);

C7-7-1-b in the case of the Supplier: the address, fax number and email address set out in the Order, or any other address, fax number or email address which that party may have specified to the other party in writing in accordance with this clause C7-7, and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.

or any other address or fax number which that party may have specified to the other party in writing in accordance with this clause C7-7, and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery, commercial courier or fax.

C7-7-2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause C7-7-1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail between the hours of 9.00am and 5.00pm on a Working Day, upon successful transmission (provided that the sender holds written confirmation automatically produced by the sender's fax machine of error free and complete transmission of that fax to the other party's fax number), or if sent by fax or e-mail outside the hours of 9.00am and 5.00pm on a Working Day, at 9.00am on the next Working Day following successful transmission (provided that the sender holds written confirmation automatically produced by the sender's fax machine of error free and complete transmission of that fax to the other party's fax number).

C7-7-3 This clause C7-7-3 shall only apply where UK SBS is not the Customer. In such cases, UK SBS may give or receive any notice under the Contract on behalf of the Customer and any notice given or received by UK SBS will be deemed to have been given or received by the Customer.

C7-7-4 Except for clause C7-7-5, The provisions of this clause C7-7 shall not apply to the service of any proceedings or other documents in any legal action.

C7-7-5 Upon any notified intention by either party to initiate legal proceedings, the Supplier agrees to notify UK SBS of its legal representation, resident in England or Wales, who will be appointed and authorised to accept service on behalf of the Supplier of all legal process, and service on such legal representation (or any such substitute) shall be deemed to be service on the Supplier.

C7-8 **Severance**

C7-8-1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

C7-8-2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

C7-9 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

C7-10 **No partnership, employment or agency.** Nothing in the Contract creates any partnership or joint venture, nor any relationship of employment, between the Supplier and either UK SBS or the Customer. Nothing in the Contract creates any agency between the Supplier and either UK SBS or the Customer.

C7-11 **Third party rights.** A person who is not a party to this Contract shall not have any rights under or in connection with it, except that UK SBS and any member of the UK SBS, Associated Bodies or Authorised Entities that derives benefit under this Contract may directly enforce or rely on any terms of this Contract.

C7-12 **Variation.** Any variation to the Contract, including any changes to the Goods, the Special Conditions or the Order, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing by or on behalf of the Customer and the Supplier.

C7-13 **Counterparts.** The Contract may be signed in counterparts, each of which, when signed, shall be an original and both of which together evidence the same agreement.

C7-14 **Governing law and jurisdiction.**

C7-14-1 Subject to clause C7-14-2, the Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

C7-14-2 The Customer shall be free to enforce its intellectual property rights in any jurisdiction.

C7-15 Modern Slavery Act 2015

C7-15-1 During the Term or any extension of the Contract, the Customer is committed to ensuring that its supply chain complies with the above Act. The Supplier shall provide such assurances, on the anniversary of the commencement date or completion of the Contract, if less than 12 months.

C7-15-2 The Supplier shall provide a report covering the following but not limited to areas as relevant and proportionate to the Contract evidencing the actions taken, relevant to the Supplier and their supply chain associated with the Contract.

C7-15-2-a Impact assessments undertaken

C7-15-2-b Steps taken to address risk/actual instances of modern slavery and how actions have been prioritised

C7-15-2-c Evidence of stakeholder engagement

C7-15-2-d Evidence of ongoing awareness training

C7-15-2-e Business-level grievance mechanisms in place to address modern slavery

C7-15-2-f Actions taken to embed respect for human rights and zero tolerance of modern slavery throughout the organisation

C7-15-3 The Customer reserves the sole right to audit any and all reports submitted by the Supplier to an extent as deemed necessary and the Supplier shall unreservedly assist the Customer in doing so. Any financial burden incurred by the Supplier in doing so shall not be reimbursable.

C7-16 Changes in costs resulting from changes to Government Legislation, Levies or Statutory Payments

The Customer will reimburse during any term or extension (or, where such costs, awards or damages arise following termination/expiry) of this Agreement, any increases in the Supplier's cost of providing the Goods by reason of any modification or alteration to the Government legislation duties or levies or other statutory payments (including but not limited to National Insurance and/or VAT and/or introduction of or amendment to working time minimum wages). Subject always to open book access to the Supplier's records and always after a period of due diligence carried out by the Customer, relevant and proportionate to the value concerned.

C7-17 Taxation obligations of the Supplier

C7-17-1 The relationship between UK SBS or the Customer and the Supplier will be that of "independent contractor" which means that the Supplier is not an employee, worker, agent or partner of UK SBS or the Customer and the Supplier will not give the impression that they are.

C7-17-2 As this is not an employment Contract the Supplier will be fully responsible for all their own tax including any national insurance contributions arising from carrying out the Services. If UK SBS or the Customer has to pay any such tax then the Supplier will pay back to UK SBS or the Customer in full, any money that UK SBS or the Customer has to pay, and they will also pay back UK SBS or the Customer for any fine or other punishment imposed on UK SBS or the Customer because the tax or national insurance was not paid by the Supplier.

Schedule 1 Special Conditions.

Not Used.

Schedule 2 Purchase Order Form

Please see separate attachment “Contract PR17055 Schedule 2”

Schedule 3 Specification Requirement & Project Deliverables.**Scope of Supply**

This contract is for the supply of a complete adaptive optics system that will be used to correct the wave-front distortions produced in a 10Hz, 100J laser amplifier. The supplied goods will be a complete integrated adaptive optic system.

The following specification documents are incorporated into the Contract at the following:

[Redacted]

If there is any conflict or inconsistency between Schedule 4 and Schedule 5, Schedule 4 will prevail over Schedule 5 to the extent necessary to resolve that conflict or inconsistency

Contract Price (inc. all delivery and any other associated costs)	£101,000.00 ex-VAT
Delivery	Final Delivery will take place no later than 15 th February 2018 [Redacted]
Warranty	12 month warranty will apply from date of STFC Acceptance
Reporting Schedule	The Supplier and the customer will agree a progress reporting schedule for the duration of the contract
Contract Variation	This Contract may be varied – in specification or dates – by mutual agreement between both parties.

Payment Schedule.

[Redacted]

Invoices must reference the Purchase Order and be addressed to:

STFC – The Science & Technology Facilities Council
c/o UK SBS LTD
Polaris House
North Star Avenue
Swindon
Wiltshire
SN2 1UH.

Finance contact details :

finance@uksbs.co.uk

phone : 01793 867004.

Contract PR17055 – Acceptance & Signature

Signed by

for and on behalf of **The Science & Technology Facilities Council**

Name: Jonathan Smith

Position: Senior Category Manager, UK SBS

Date

Signed by

for and on behalf of **Imagine Optic SA**

Name:

Position:

Date

THIS IS THE LAST PAGE OF THESE TERMS & CONDITIONS