

CONTRACT PR150096 FOR THE PURCHASE OF GOODS

SECTION A

This Contract is dated 14th March 2016.

Parties

- (1) **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) **QCM Research**, a company incorporated and registered in the USA of 41831 McAlby Ct, Suite C, Murrieta, CA, 92562, USA (**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 Services, as set out in the Customer's completed purchase order form (including any Specification) which is in the format of the 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'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 services 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, C1-1 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, C2, C3, 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.

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 formal acceptance of the hardware by the Customer;
- 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 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 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 or before 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 Not Used.

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.

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 £5 million per claim (unlimited claims);

B7-1-2 employer liability insurance for not less than £5 million per claim (unlimited claims); and

B7-1-3 product liability insurance for not less than £5 million for claims arising from any single event and not less than £10 million 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 If the Supplier fails or is unable to maintain insurance in accordance with clause B7-1, UK SBS or the Customer may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.

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 £1,000,000.

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.

C1 Force majeure

C1-1 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.

C2 Confidential information

C2-1 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 **C2**. Neither party shall, without the prior written consent of the other party, disclose to any third party any Confidential Information, unless the information:

C2-1-1 was public knowledge or already known to that party at the time of disclosure; or

C2-1-2 subsequently becomes public knowledge other than by breach of the Contract; or

C2-1-3 subsequently comes lawfully into the possession of that party from a third party; or

C2-1-4 is agreed by the parties not to be confidential or to be disclosable.

C2-2 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.

C2-3 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.

C3 Transparency

C3-1 The Supplier acknowledges that the United Kingdom Government's transparency agenda requires that contracts, such as the Contract, and any sourcing document, such as the invitation to sourcing, are published on a designated, publicly searchable website.

- C3-2 The Supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of the Contract is not Confidential Information. UK SBS and the Customer shall be responsible for determining in their absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of FOIA.
- C3-3 Notwithstanding any other term of the Contract, the Supplier hereby consents to the Customer and / or UK SBS publishing the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

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 it's 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 Further assurance.

C7-4-1 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.

C7-5 **Publicity**

C7-5-1 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.

C7-5-2 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.

C7-5-3 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.

C7-6 **Notices.**

C7-6-1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to:

C7-6-1-a in the case of the Customer: Jonathan Smith; Address: **North Star House, North Star Avenue, Swindon, Wiltshire SN2 1FF**; (and a copy of such notice or communication shall be sent to: Chief Procurement Officer, North Star House, North Star Avenue, Swindon, Wiltshire SN2 1FF);

C7-6-1-b in the case of the Supplier: the address and fax number set out in the Order,

or any other address or fax number which that party may have specified to the other party in writing in accordance with this clause C7-6, and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery, commercial courier or fax.

C7-6-2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause C7-6-1; 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 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 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).

C7-6-3 This clause C7-6-3 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.

C7-6-4 Except for clause C7-6-5, the provisions of this clause C7-6 shall not apply to the service of any proceedings or other documents in any legal action.

C7-6-5 Not Used

C7-7 **Severance**

C7-7-1 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.

C7-7-2 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.

C7-8 **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.

C7-9 **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.

C7-10 **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.

C7-11 **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.

C7-12 **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.

C7-13 Governing law and jurisdiction.

C7-13-1 Subject to clause C7-13-2, 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.

C7-13-2 The Customer shall be free to enforce its intellectual property rights in any jurisdiction.

This Contract has been entered into on the date stated at the beginning of it.

Schedule 1 Special Conditions

SC-01:

[Redacted]

Schedule 2 Purchase order form

See separate Purchase Order 4070141393 attachment.

Schedule 3 – Specification Requirement & Project Deliverables

This Contract is for the supply of the SPICE TQCM System in accordance with the following documents (in order of priority):

SPICE-RAL-RS-9001v3.0 TQCM System Procurement Requirements specification.pdf

TQCM System Requirements – QCMR Response.xlsx (Supplier Response)

Contract Price

The Contract Price – including all delivery, EMC Testing and any other associated costs – is **£752,310.00 ex-VAT**.

Additional Contract Options

[Redacted]

Delivery

Final delivery and acceptance will be no later than **Friday 23rd December 2016**.

Reporting

The Supplier and the Customer will agree a progress reporting schedule for the duration of the Contract.

Payment Schedule

[Redacted]

All 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
Wilts
SN2 1UH

Contract Duration

Completion of the contract, including full delivery will occur no later than 23rd December 2016 unless otherwise agreed by the Customer.

Contract PR150096 – Acceptance of Contract

Signed by

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

Signed by

for and on behalf of **THE
SUPPLIER, QCM Research**

THIS IS THE LAST PAGE OF THESE TERMS & CONDITIONS