

Our Ref: F_2122_0721
Your Ref: QVR20210630-01 V4

Date: 19th November 2021

[REDACTED]
CytoBuoy b.v.
Johan de Wittlaan 11,
3445 AG,
Woerden,
The Netherlands
Phone: +31 348 688101
Email: [REDACTED]

Dear [REDACTED],

Contract ID: F_2122_0721

Contract Title: Project_34407 - Project to purchase and set up a flow cytometer for use on Coastal survey vessel

Thank you for your revised submission of quote QVR20210630-01 V4, from your colleague [REDACTED] on 3rd November 2021.

I am pleased to offer you the above contract in accordance with your specification (Schedule 1), the Pricing (Schedule 2) & our standard terms and conditions – good as attached (Schedule 3).

The contract documents have been prepared but do require some further information regarding the guarantee supply of spare parts and consumables availability and pricing in Schedule 1.

The Contract shall be performed in full accordance with the Environment Agency Conditions of Contract for Goods.

Please review, sign and return this letter to indicate your acceptance of this offer of Contract.

Yours faithfully

[REDACTED]

Name: [REDACTED]
Job title: Higher Executive Officer
E-mail: [REDACTED]
Address: Manley House, Kestrel Way, Exeter, EX2 7LQ

I, [REDACTED] representing CytoBuoy BV., accept the offer of Contract described above.

[REDACTED]
Signed

Designation: CEO

Date 19 November 2021

Schedule 1 Specification

This schedule details the goods and the location, and delivery, installation, and commissioning requirements.

Goods to be provided					
CytoBuoy b.v. – Purchase and set up of a CytoSense Flow Cytometer for use on Coastal survey vessel: as per quote reference: QVR20210630-01 V4					
Provision	Description	Item	Unit Price	Qty	Total Price
EQUIPEMENT					
CYTOSENSE PARTICLE ANALYZER - BASIS VERSION					
INSTRUMENT HARDWARE & SOFTWARE	Flow cytometer for single cell analysis of full particle size spectrum E.g. pico-nano-micro up to Ø800/L2500 µm (filaments & aggregates) 1 Laser, 2xFWS + 1xSWS + 1xFluorescence detector Full digital operation with pulse recording (scanning) CytoUSB (control software) and CytoClus (analysis software)	1		1	
SELECT HOUSING (submersible version: items 20-24)	Cylinder housing & aluminium frame for mobile application and on ship	3		1	
COMPUTERS	Internal computer	5		1	
	External laptop or PC, including installation of all relevant softwares	6		1	
AUTOMATION SOFTWARE	EasyClus software for automatic data clustering. Note: MatLab license is required	7		1	
	EasyClus LIVE software for online results	8		0	
CYTOSENSE OPTICS OPTIONS: LASERS, DETECTORS, CAMERAS					
LASER 1	Upgrade Coherent OBIS 488nm 60mW +2018	10		1	
LASER 2	Upgrade for second laser is optional (405,445, 473, 552, 561, 594, 637)	11		0	
EXTRA DETECTOR	Fluorescence detector (PMT) for detecting extra fluorescence bands viz. blue, green, yellow, orange	12		2	
IMAGING-IN-FLOW (IIF)	Camera module for targeted imaging of individual particles	13		1	
	Super large area sensor upgrade	14		0	
	Higer pixel density sensor upgrade	15		0	
CYTOSENSE/CYTOSUB AUTONOMY ACCESSORIES					
FLUID SYSTEM CONDITIONING	Dosing unit for autonomous calibration	29		1	
	Prolong time between support actions - external system	30		0	

	Prolong time between support actions - internal system	31		0	
	In/off line switched activated carbon filter	32		0	
INJECTOR	Remotely adjustable injector positioning system	33		1	
CYTOSENSE/CYTOSUB SAMPLING ACCESSORIES: FIXED POINT, MULTI POINT, DEPTH PROFILING, FLUORESCENT CONDITIONING					
SAMPLING FROM SUPPLY HOSE (SHIP, PLATFORM)	Transparent chamber for aseleective sampling from (sea) water line	40		0	
	Ferrybox mounting unit with fluidics valve & control (includes item 40)	41		1	
	External priming pump with tubing and control	42		1	
SPARES					
SPARE SHEATH-FILTER SET	1 set of 2 filters	70		0	
CALLIBRATION BEADS KIT	3 um beads	71		0	
BIOCIDE KIT	20 syringes filled with biocide	72		0	
SAMPLE PUMP PART	Extra cartridge	73		0	
EQUIPMENT TOTAL	EXCL. VAT / TAXES				
SERVICES					
SHIPPING					
DELIVERY EXW	FCA Woerden, The Netherlands			0	
DELIVERY CIF	DAP (paid by the client)(shipping to United Kingdom)	100		1	
	Buoy/ Sub transportation extra weight		TBD	0	
	Transport insurance Europe	101		1	
	Transport insurance World	102		0	
TRAINING AND COMMISSIONING					
COMMISSIONING & TRAINING	At CytoBuoy BV works location: (free of cost for maximum 2 participants for maximum 3 days)	103		1	
	Onsite location: 3 days training visit of CytoBuoy staff to the customers' location (2 specialists)	104	TBD	0	
MAINTENANCE: (WARRANTY EXTENSION AFTER THE 1 ST YEAR IS INCLUSIVE OF MAINTENENCE					
MAINTENANCE CALL WORK (EXCL. LOGISTICS)	Maintenance of the instrument	110		0	
	Logistics costs for on-site maintenance (time, costs and subsistence)	111	TBD	0	
	Logistics costs for shipping the instrument to our works and vice versa	112		0	
WARRANTY					
STANDARD WARRANTY	One (1) year included, starting at delivery	0		1	
WARRANTY EXTENSION	1 year warranty extension inclusive 1 annual maintenance (per year) of the equipment	120		3	

	Logistics costs for on-site maintenance (time, costs and subsistence)	121	TBD	0	
	Logistics costs for shipping the instrument to our works and vice versa	122		0	
HELPEDESK AND SOFTWARE SUPPORT ANNUALLY					
	Annual helpdesk for operation, analysis advice, updates & updated versions of CytoUSB and CytoClus (first year free)	150		3	
	Annual support & updates/versions of EasyClus & LIVE (first year free)	151		0	
SERVICES TOTAL	EXCL. VAT / TAXES				
TOTALS					
EQUIPMENT					
SERVICES					
DISCOUNTS (free 3 years of annual helpdesk for operation, analysis advice, updates & updated versions of CytoUSB and CytoClus starting from the 2 nd year till the 4 th year)					
GRAND TOTAL	EXCL. VAT / TAXES				€ 136,063.87

CONDITIONS AND DETAILS

LEAD TIME	The estimated delivery time is 4 months after receiving the order and advance payment				
WARRANTY	The standard warranty with selected additional warranty ordered (item 120) amounts to 4 year(s) total				
SALES TERMS	The CytoBuoy b.v. sales terms will apply (attached)				
DELIVERY	EXW: Transfer of goods and invoicing on the day of shipment. In case of requested shipment as sea freight the delivery is EXW				
	CIF: Shipment by air freight and insurance by CytoBuoy. Transfer of goods and invoicing on the day of delivery				
SHIPPING	Customs Code TARIC: 9027 50 0000 instrument for physical analysis using optical radiation (visible)				
COUNTRY OF ORIGIN	The Netherlands / European Union				
PAYMENT TERMS	Advance payment invoice: 40% - production starts immediately after receiving this Advance Payment: XXXXXXXXXX				
	All other invoices: payment 30 days net.				
	For overdue payments we charge 0.2% per week (Netherlands legal interest on payments exceeding 30 days net)				
	Commissioning: if on site commissioning is chosen 10% of payment is postponed until completed commissioning				
CURRENCY	Currency: EURO (€); Excluding VAT, sales/import tax and customs duties.				

COMPANY DETAILS

Company:	CytoBuoy b.v.	Address:	Johan de Wittlaan 11, 3445 AG, Woerden, The Netherlands
Issued by:	XXXXXXXXXX	Phone:	+31 348 688101
Function:	CEO	Tax, VAT, EORI:	XXXXXXXXXX
Email:	XXXXXXXXXX	Chamber of Commerce:	XXXXXXXXXX
Signature:	XXXXXXXXXX	BIC:	XXXXXXXXXX
		Bank:	XXXXXXXXXX
		IBAN:	XXXXXXXXXX

Note 1: The costs shown as TBD are not relevant to this instrument.

Note 2: The Environment Agency Terms and Conditions will apply as the overarching conditions to this contract (Schedule 3). The following exceptions to these terms will apply:

Lead Time – The instruments must be supplied prior to the 30th March 2022, or have been sent in transit to enable delivery by this date to be achieved subject to customs clearance. Should this delivery date not be met, or evidence the equipment is not in transit and awaiting customs clearance, then the Agency maintain the right to cancel the order, if they do not have the funding to continue with the purchase from next year's budget, which commences the 1st April 2022.

Courier Arrangements and Value Added Tax – The quote includes airfreight and transport insurance from the Netherlands as standard, this reduces shipping time to 2-3 working days. This instrument would be imported from the Netherlands under commodity code 9027500000, it is subject to value added tax (VAT 20%), and is subject to 0% import duty into the UK. VAT should be paid on the imported instrument and the Environment Agency can claim it back. The instrument is to be delivered by the supplier using a courier that arranges to invoice the Agency for VAT taxes referencing commodity code for importing. The courier shall arrange/pay the import VAT and then invoices the Environment Agency, showing the VAT so that we can reclaim it. During courier transfer

we would expect the instrument to be insured to its full value, and therefore the responsibility to insure the instrument and ensure it is securely packaged is with the supplier and its chosen courier firm. The Contractor /Courier shall follow the UK's guidance currently on: <https://www.gov.uk/goods-sent-from-abroad> and will liaise regarding any required customs forms required when sending the goods via courier with the named contact: [REDACTED]

Specification Details

Health and Safety: Documentation on compliance with all applicable UK Health and Safety Legislation and any other applicable Environmental Legislation, and document such applicable legislation.

Logbooks and manuals: These should be supplied with each instrument.
An operational service manual will be supplied to enable the equipment to be serviced and maintained by a third party or in house by the Agency if necessary.

Electrical Safety: The equipment should be able to be PAT tested in the UK and come with a UK compatible power supply, or one that can meet UK legislation. Kings College London will be performing the PAT test when the instrument arrives in the UK

Lifespan: The confirmed lifespan is a minimum of 10 years, though the annual maintenance would help significantly in increasing the lifespan to 15-20 years. The associated whole life costs are detailed under the 'Warranty and Whole Life Costs' section below. Some costs have been estimated to the best of our knowledge, these are highlighted as such, and need to be confirmed by the supplier.

Warranty and Whole Life Costs: The equipment is to be supplied with a standard 1-year standard warranty from delivery which includes maintenance and parts; an extended 3 Year Warranty will also be supplied as per quotation.

The quotation also includes annual helpdesk and software support for the full 4-year warranty term. Each warranty year includes 1 maintenance call and support including software and logistics for on-site maintenance (time, costs, subsistence) and shipping.

The warranty period includes priority support with first response within 24hrs, operating Monday – Friday 8am-5pm. Support is provided via telephone, email, and remote connection software for diagnosis of instrumental malfunctions and operational issues.

Under the 4-year warranty term the supplier will repair or replace defective components of the product at the supplier's cost.

The basic parts are covered in the 4-year warranty term as mentioned above. Post warranty parts should cost in the region of [REDACTED] per year, depending on usage and wear. These costs are broken down below. For the purpose of maintaining costs these have been tabulated in table 1.

There is one expensive part to consider, the Coherent Orbis Laser which has been quoted at a cost of [REDACTED]. This laser can last 10 years, however a heavily used laser could fail after 6 years. For the avoidance of any doubt this cost has been included in the whole life costing at year 6. If this were to fail post warranty this would be costed for as an upgrade and has been budgeted for.

The other parts that are likely to be required are microbeads for calibration, shift fluid, deionised water, biocide (prolin-950), and will be covered by the Monitoring Team (operations team). These are low costs and is manageable; this is similar to the current arrangement for other existing pieces of equipment.

The warranty does not include consumables, this is covered by the Monitoring Team (operations team). More specifically, during the 4-year warranty period the supplier will replace the filters, tubes, cartridge and clean the flowcell, and make sure the dichroics function properly. These costs are broken down below. For the purpose of maintaining costs these have been tabulated in table 2.

The tubing and beads would have been considered as consumables in this procurement, however CytoBuoy b.v. classifies these as parts. In which case the only consumables would be the sheath fluid which would cost in the region of █████ annually depending on usage.

This is why the maintenance and servicing are so relevant because this annual maintenance cost includes all the parts above and any realignment. Annual maintenance post warranty would cost █████ annually, and we have included the associated transport cost to Holland circa █████.

Spare Parts Availability - 10 Year consumable and spare parts guarantee. CytoBuoy b.v. as the original supplier as part of this purchase shall ensure spare parts and consumables are available for a period of 10 years. Price wise these spare parts and consumable are expected to be at the prices in Table 1 and 2, although these can be subject to increases for inflation as measured in the EU by a recognised measure such as calculated by the Harmonised Index of Consumer Prices (HICP).

Table 1 – Spare parts pricing from supplier:

Item	Cost (€) Excl. VAT	unit
Tubing	████	3.5m
Sample pump cartridge	████	1xSet
Set of filters	████	1xSet
calibration beads	████	packet
Syringes with biocide	████	x20
Sub-Total	████	
Coherent Orbis Laser	████	1
Total	████	

Table 2 – Consumables pricing from supplier:

Item	Cost (€) Excl. VAT	unit
Sheath Fluid	████	x20 L
Total	████	

Licenses: Annual software licences are required as below:

The software called CytoUSB (used to run the machine), and CytoClus (used to do the analysis) is supported by the CytoBuoy b.v. company and is under the 4-year warranty. The total cost thereafter would be █████ annually, applicable from year 5.

The software called EasyClus is used for online analysis and automatic analysis is provided by the Tomas Rutten company. This will be provided for one year because it needs to update by the provider every year. (The cost thereafter would be █████ annually, applicable from year 2).

Matlab is not covered by CytoBuoy b.v. as this is a separate system. The cost would be around █████ annually, applicable from year 1) and will be covered by the Environment Agency.

There are no installation, disposal, or data management costs to consider.

There are no other foreseen costs to consider.

Below is the whole life cost breakdown and summary:

Values have been rounded off to the next euro/pound and exclude VAT.

	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Total
Capital Equipment Purchase	€136,064										€136,064
Consumables											
Parts Min	Incl.	Incl.	Incl.	Incl.							
Parts Max	Incl.	Incl.	Incl.	Incl.							
Coherent Orbis Laser											
Maintenance	Incl.	Incl.	Incl.	Incl.							
Transport	Incl.	Incl.	Incl.	Incl.							
Licence – CytoUSB and CytoClus	Incl.	Incl.	Incl.	Incl.							
Licence - Easyclus	Incl.										
Licence - Matlab											

1) Delivery Address

The Goods shall be delivered to the **Kingfisher House Peterborough** address at:

[REDACTED],
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Environment Agency,
 Kingfisher House,
 Orton Goldhay,
 Peterborough,
 United Kingdom
 PE2 5ZR

Before payment is made:

- A commissioning check or visual check ensure the instrument is functional in accordance with the service manual is required. It is reasonable to assume that this check will be undertaken within 10 days of the delivery date, or it will be assumed the instrument is in working order, subject to any warranty failures.
- The equipment will need to be suitably packaged, and if damaged in transit so as to make the equipment non-operational, payment will not be made and the delivered items, or the whole instrument, will need to be returned to the supplier for repair.
- The supply of the instrument must be in accordance with the Agency's Terms and Conditions attached.

2) Payment of Delivery:

Advance payment invoice of 40% has been accepted for this quotation only, balance payment invoice will be paid in 30 days from receipt by the Agency and is subject to the completion of the delivery prior to 30th March 2022.

Alongside delivery, an invoice for the goods will need to be provided prior to the 30th March 2022, and potentially assistance with the need to 'accrue' the Agency budget if the instrument is delayed at Customs.

3) Date of Delivery & Installation

As soon as possible and prior to 30th March 2022.

4) Instructions:

The instrument will be required to include VAT. Please send the instruments to the UK via a courier that "arranges/pays the import VAT and then invoices us showing the VAT so that we can reclaim it."

The address for the Import VAT Invoice to be sent by the courier is:

SSCL (Environment Agency)
Po Box 797
Newport, Gwent
UNITED KINGDOM
NP10 8FZ

By Email to :

i) APinvoices-ENV-U@gov.sscl.com

ii) [REDACTED]

iii) [REDACTED]

Please send a copy of any invoices for reference to

[REDACTED],

[REDACTED]

[REDACTED]

[REDACTED]

National Monitoring: Fish and Ecology
Environment Agency,
Kingfisher House,
Orton Goldhay,
Peterborough,
United Kingdom
PE2 5ZR

5) The charges for the Goods: shall be as set out in Schedule 2.

6) The specification of the Goods: is as set out in Schedule 1.

7) The Goods contract terms: as set out in Schedule 3.

Schedule 2: Pricing

The Contractor agrees to provide the following items at the agreed fixed prices below:

Provision	Description	Item	Unit Price	Qty	Total Price
EQUIPEMENT					
CYTOSENSE PARTICLE ANALYZER - BASIS VERSION					
INSTRUMENT HARDWARE & SOFTWARE	Flow cytometer for single cell analysis of full particle size spectrum E.g. pico-nano-micro up to Ø800/L2500 µm (filaments & aggregates) 1 Laser, 2xFWS + 1xSWS + 1xFluorescence detector Full digital operation with pulse recording (scanning) CytoUSB (control software) and CytoClus (analysis software)	1		1	
SELECT HOUSING (submersible version: items 20-24)	Cylinder housing & aluminium frame for mobile application and on ship	3		1	
COMPUTERS	Internal computer	5		1	
	External laptop or PC, including installation of all relevant softwares	6		1	
AUTOMATION SOFTWARE	EasyClus software for automatic data clustering. Note: MatLab license is required	7		1	
	EasyClus LIVE software for online results	8		0	
CYTOSENSE OPTICS OPTIONS: LASERS, DETECTORS, CAMERAS					
LASER 1	Upgrade Coherent OBIS 488nm 60mW +2018	10		1	
LASER 2	Upgrade for second laser is optional (405,445, 473, 552, 561, 594, 637)	11		0	
EXTRA DETECTOR	Fluorescence detector (PMT) for detecting extra fluorescence bands viz. blue, green, yellow, orange	12		2	
IMAGING-IN-FLOW (IIF)	Camera module for targeted imaging of individual particles	13		1	
	Super large area sensor upgrade	14		0	
	Higer pixel density sensor upgrade	15		0	
CYTOSENSE/CYTOSUB AUTONOMY ACCESSORIES					
FLUID SYSTEM CONDITIONING	Dosing unit for autonomous calibration	29		1	
	Prolong time between support actions - external system	30		0	
	Prolong time between support actions - internal system	31		0	
	In/off line switched activated carbon filter	32		0	
INJECTOR	Remotely adjustable injector positioning system	33		1	
CYTOSENSE/CYTOSUB SAMPLING ACCESSORIES: FIXED POINT, MULTI POINT, DEPTH PROFILING, FLUORESCENT CONDITIONING					

SAMPLING FROM SUPPLY HOSE (SHIP, PLATFORM)	Transparent chamber for aseleactive sampling from (sea) water line	40	██████	0	
	Ferrybox mounting unit with fluidics valve & control (includes item 40)	41	██████	1	██████
	External priming pump with tubing and control	42	██████	1	██████
SPARES					
SPARE SHEATH-FILTER SET	1 set of 2 filters	70	██████	0	
CALLIBRATION BEADS KIT	3 um beads	71	██████	0	
BIOCIDE KIT	20 syringes filled with biocide	72	██████	0	
SAMPLE PUMP PART	Extra cartridge	73	██████	0	
EQUIPMENT TOTAL	EXCL. VAT / TAXES				██████
SERVICES					
SHIPPING					
DELIVERY EXW	FCA Woerden, The Netherlands			0	
DELIVERY CIF	DAP (paid by the client)(shipping to United Kingdom)	100	██████	1	██████
	Buoy/ Sub transportation extra weight		TBD	0	
	Transport insurance Europe	101	██████	1	██████
	Transport insurance World	102	██████	0	
TRAINING AND COMMISSIONING					
COMMISSIONING & TRAINING	At CytoBuoy BV works location: (free of cost for maximum 2 participants for maximum 3 days)	103	██████	1	██████
	Onsite location: 3 days training visit of CytoBuoy staff to the customers' location (2 specialists)	104	TBD	0	
MAINTENANCE: (WARRANTY EXTENSION AFTER THE 1ST YEAR IS INCLUSIVE OF MAINTENANCE					
MAINTENANCE CALL WORK (EXCL. LOGISTICS)	Maintenance of the instrument	110	██████	0	
	Logistics costs for on-site maintenance (time, costs and subsistence)	111	TBD	0	
	Logistics costs for shipping the instrument to our works and vice versa	112	██████	0	
WARRANTY					
STANDARD WARRANTY	One (1) year included, starting at delivery	0	██	1	
WARRANTY EXTENSION	1 year warranty extension inclusive 1 annual maintenance (per year) of the equipment	120	██████	3	██████
	Logistics costs for on-site maintenance (time, costs and subsistence)	121	TBD	0	
	Logistics costs for shipping the instrument to our works and vice versa	122	██████	0	
HELPDESK AND SOFTWARE SUPPORT ANNUALLY					
	Annual helpdesk for operation, analysis advice, updates & updated versions of CytoUSB and CytoClus (first year free)	150	██████	3	██████
	Annual support & updates/versions of EasyClus & LIVE (first year free)	151	██████	0	
SERVICES TOTAL	EXCL. VAT / TAXES				██████
TOTALS					

EQUIPMENT		
SERVICES		
DISCOUNTS (free 3 years of annual helpdesk for operation, analysis advice, updates & updated versions of CytoUSB and CytoClus starting from the 2 nd year till the 4 th year)		
GRAND TOTAL	EXCL. VAT / TAXES	€ 136,063.87

- **Prices:** Excluding VAT
- Prices: includes the Specification in Schedule 1 and Terms and Conditions in Schedule 3.
- **Information:** Payment for both courier VAT and CytoBuoy b.v. to be by Agency 'SOP5 International Payment Request' from for payment of invoices in EU €' Information required to complete the payment below must be provided to complete payment.

For complex multiple banking transactions for international transactions, please provide as much detail as possible on the wiring information required for the Receiving Bank, Beneficiary Bank and Ultimate Beneficiary Bank for us to include for our payments team.

**SOP5 International
Payment Request**



Shared
Services
Connected
Limited

Environment Agency

Debit
Account

EA PAYMENTS - 10014446

Payment
Method

Existing Vendor Details if known:

Supplier Number:

Site:

Payee Type

Unique Payee Reference

Supplier Name

Address Line 1

Address Line 2

Town/City

Country

Zip / Postal Code

VAT Registration Number

PO Number (if applicable)

intl. Bank Account Number (IBAN)

Name of Bank

Account Name

Swift/BIC/Routing Code

Invoice/Tax/Claim Effective Date

Period Effective From

Period Effective To

Currency Required by Recipient

Unique Payment Reference

Description of Payment (max 200)

GL Accounting:

- A Purchase Order number will not be issued as our finance system does not require one for processing of foreign payments, but the Contract itself demonstrates our commitment to the purchase.
- Invoices upon delivery of the CytoSense Flow Cytometer should be sent to:

Environment Agency

[REDACTED],
[REDACTED]
[REDACTED]
[REDACTED]

National Monitoring: Fish and Ecology
Environment Agency,
Kingfisher House,
Orton Goldhay,
Peterborough,
United Kingdom
PE2 5ZR

By Email to :

i) APinvoices-ENV-U@gov.sscl.com

ii) [REDACTED]

iii) [REDACTED]

This contract will be managed on behalf of the Environment Agency by [REDACTED]
[REDACTED]. The contract reference and title given above should be
quoted on all correspondence.



**Environment
Agency**

Conditions of Contract Goods

October 2019

1. DEFINITIONS

1.1 In the Contract, unless the context otherwise requires the following words and expressions shall have the following meanings assigned to them.

1.1.1 The Agency

The Environment Agency, its successors and assigns.

1.1.2 The Appendix

The Appendix to these Conditions.

1.1.3 The Contract

These Conditions including the Appendix, any Special Conditions, the Specification, Pricing Schedule, Contractor's tender, acceptance letter and any relevant documents agreeing modifications exchanged before the Contract is awarded, and any subsequent amendments or variations agreed in writing.

1.1.4 The Contractor

The person, firm company or body who undertakes to supply the Goods to the Agency.

1.1.5 Contract

The time period stated in the Appendix or otherwise
Period provided in the Contract, for the delivery of the Goods.

1.1.6 Contract Price

The price exclusive of VAT set out in the Contract for which the Contractor has agreed to supply the Goods.

1.1.7 Contract Supervisor

Any duly authorised representative of the Agency notified in writing to the Contractor for all purposes connected with the Contract. Any Notice or other written communication given by or made to the Contract Supervisor, shall be taken as given by or made to the Agency.

1.1.8 Contracting Authority

Means any contracting authorities (other than the Environment Agency) as defined in regulation 2 of the Public Contract Regulations 2015 (SI 2015/102) (as amended).

1.1.9 Contractor Personnel

Means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor engaged in the performance of its obligations under this Contract.

1.1.10 Data Protection Legislation

Means: (i) the General Data Protection Regulation (Regulation (EU) 2016/679) or GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) ("LED") and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 1998 ("DPA 1998") and/or the Data Protection Act 2018 ("DPA 2018") to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

1.1.11 Data Protection Schedule

The Schedule attached to this Contract describing how the Parties will comply with the Data Protection Legislation.

1.1.12 Goods

All Goods detailed in the Specification including any additions or substitutions as may be requested by the Contract Supervisor Where the Contract is for the provision of Goods and Services, the words “the Goods” shall mean, where the context allows, to include the Services the Contractor has agreed to provide.

1.1.13 Intellectual Property Rights

All Intellectual Property Rights including without limitation, patents, patent applications, design rights, registered designs, utility models, trade and service marks and applications for same, copyright know-how, rights in semi-conductor chip topography, and in each case whether protectable at law or not, and if protectable, whether an application has been made for such protection or not, and all similar industrial, commercial, monopoly or other intellectual property rights whether present or future, vested or contingent wherever protected.

1.1.14 Law

Means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply.

1.1.15 Notice

Any written instruction or notice given to the Contractor by the Contract Supervisor, delivered by:

- i. fax, or hand delivery to the Contractor's registered office or other address notified for the purposes of the Contract and deemed to have been served at the date and time of delivery.
- ii. First class post to the Contractor's registered office. Such Notices are deemed to have been served 48 hours after posting.

1.1.16 Permission

Express permission given in writing before the act being permitted.

1.1.17 Regulations

means the Public Contract Regulations 2015 (SI 2015/102) as amended.

1.2 Except as set out above and in the Data Protection Schedule, the Contract shall be interpreted in accordance with the Interpretation Act 1988.

1.3 All headings in these Conditions are for ease of reference only, and shall not affect the construction of the Contract.

1.4 Any reference in these Conditions to a statutory provision will include all subsequent modifications.

1.5 All undefined words and expressions are to be given their normal English meaning within the context of this Contract. Any dispute as to the interpretation of such undefined words and expressions shall be settled by reference to the definition in the Shorter Oxford English Dictionary.

2. PRECEDENCE

To the extent that the following documents form the Contract, in the case of conflict of content, they shall have the following order of precedence:

- Conditions of Contract including Appendix, Data Protection Schedule and any Special Conditions;
- Specification;
- Pricing Schedule;
- Drawings, maps or other diagrams.

If these Conditions are used in the production of an order under pre-existing arrangements, then the Conditions of Contract of the pre-existing arrangements shall prevail.

3. CONTRACT SUPERVISOR

The Contractor shall strictly comply with any instruction given by the Contract Supervisor concerning or about the Contract provided such instructions are reasonable and consistent with the nature, scope and value of the Contract. All such instructions shall be in writing. The Contractor is not obliged to comply with any verbal instruction from the Contract Supervisor that is not confirmed in writing within 7 working days.

4. GOODS

The Contractor shall provide all staff, equipment, materials and any other requirements necessary for the performance of the Contract to the standard in the Specification, within the time period specified in the **Schedule 1**, using reasonable skill, care and diligence, and to the reasonable satisfaction of the Contract Supervisor.

5. ASSIGNMENT

5.1 The Contractor shall not assign, transfer or sub-contract the Contract, or any part of it, without the Permission of the Contract Supervisor.

5.2 Any assignment, transfer or sub-contract entered into, shall not relieve the Contractor of any of his obligations or duties under the Contract.

5.3 Nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of the Contract.

6. CONTRACT PERIOD

The Contractor shall deliver the Goods within the time stated in the Appendix **Schedule 1**, subject to any changes arising from Condition 9 (Variations), and/or Condition 10 (Extensions of time).

7. MATERIALS

7.1 The Contractor shall be responsible for establishing his own sources of supply for any goods and materials needed in connection with the performance of the Contract.

7.2 The Contractor shall not place, or cause to be placed, any orders with suppliers or otherwise incur liabilities in the name of the Agency or any representative of the Agency.

8. SECURITY

8.1 The Contractor shall be responsible for the security of all goods and equipment belonging to the Agency and used by the Contractor in the supply of the Goods, or belonging to the Contractor, or the Contractor's staff, or sub-contractors whilst on Agency premises.

8.2 This Condition shall not prejudice the Agency's rights under Condition 16.

9. VARIATIONS

9.1 The Contract Supervisor may vary the Contract by adding to, deleting or otherwise modifying the Goods to be supplied, by written order to the Contractor provided such variations are reasonable and consistent with the nature, scope and value of the Contract.

9.2 The value of any such variation, other than any variation arising out of Condition 9.3, shall be determined by reference to the rates contained in the Pricing Schedule. Where the Goods so ordered are not covered in the Pricing Schedule, they shall be valued at a fair and reasonable rate agreed between the Contract Supervisor and the Contractor.

9.3 Where a variation is the result of some default or breach of the Contract by the Contractor or for some other cause for which he is solely responsible, any additional cost attributable to the variation shall be borne by the Contractor.

9.4 The Contractor may also propose a variation to the Goods to be supplied but no such variation shall take effect unless agreed and confirmed in writing by the Contract Supervisor.

9.5 No variation shall have the effect of invalidating the Contract, or placing the Contract at large, if that variation is reasonably consistent with the nature, scope and value of the Contract.

9.6 The Agency may vary the Contract to comply with a change in English Law. Such a change will be effected by the Contract Supervisor notifying the Contractor in writing.

9.7 The Agency may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

9.7.1 any Contracting Authority; or

9.7.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Agency; or

9.7.3 any private sector body which substantially performs the functions of the Agency, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

9.8 Any change in the legal status of the Agency such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances the Contract shall bind and inure to the benefit of any successor body to the Agency.

10. EXTENSIONS OF TIME

10.1 Should the performance of the Contract be directly delayed by any cause beyond the reasonable control of the Contractor, and provided that the Contractor shall first have given the Contract Supervisor written notice within five working days after becoming aware that such delay was likely to occur, then the Contract Supervisor, if satisfied that this Condition applies:

10.1.1 in the case of any delay of which the Agency is not the cause, may grant the Contractor such extension of time, as in his opinion is reasonable, having regard, without limitation, to any other delays or extensions of time that may have occurred or been granted under the Contract. The Contract Price shall not increase as a result of such an extension of time.

10.1.2 in the case of any delay of which the Agency is the cause, shall grant the Contractor a reasonable extension of time to take account of the delay.

10.1.3 No extension of time shall be granted where in the opinion of the Agency the Contractor has failed to use reasonable endeavours to avoid or reduce the cause and/or effects of the delay.

10.1.4 Any extension of time granted under this Condition shall not affect the Agency's rights to terminate or determine the Contract under Conditions 12 and 13.

11. PROPERTY AND RISK

The property and risk in the Goods shall pass to the Agency when the Goods have been delivered to the Agency's nominated address or addresses as stated in the Appendix and unloaded.

12. REJECTION OF GOODS

12.1 Without prejudice to the operation of Condition 12.5 the Goods shall be inspected on behalf of the Agency within a reasonable period of time after delivery and may be rejected if the Goods:

12.1.1 are found to be defective, inferior in quality to or differing in form or material from the requirements of the Contract, or

12.1.2 do not comply with any term (express or implied) of the Contract.

12.2 Without prejudice to the operation of Condition 12.5, the Agency shall notify the Contractor of the discovery of any defect within fourteen days and shall give the Contractor all reasonable opportunities to investigate such defect.

12.3 The whole of any consignment may be rejected if a reasonable random sample of the Goods taken from the consignment is found not to conform in every respect with the requirements of the Contract.

12.4 Goods so rejected after delivery shall be removed by the Contractor within 14 days of receipt of the Agency's notification of rejection. If the Contractor fails to remove the rejected Goods within this time period, the Agency may return the rejected Goods at the Contractors risk and expense.

12.5 The Agency's right of rejection shall continue irrespective of whether the Agency has accepted the Goods. In particular, taking delivery, inspection, use or payment for the Goods, or part of them shall not constitute acceptance, waiver or approval and shall be without prejudice to any right or remedy the Agency may have against the Contractor.

13. DEFAULT

13.1 The Contractor shall be in default if he:

13.1.1 fails to perform the Contract with due skill, care diligence and timeliness;

13.1.2 refuses or neglects to comply with any reasonable written instruction given by the Contract Supervisor;

13.1.3 is in breach of the Contract.

13.2 Where in the opinion of the Contract Supervisor, the Contractor is in default, the Contract Supervisor may serve a Notice giving at least five working days in which to remedy the default.

13.3 If the Contractor fails to comply with such a Notice the Contract Supervisor may, without prejudice to any other rights or remedies under the Contract, purchase other goods of the same or equivalent description. Any extra costs arising from this action, will be paid by the Contractor or deducted from any monies owing to him.

14. TERMINATION

14.1 The Agency may immediately, without prejudice to any other rights and remedies under the Contract, terminate all or any part of the Contract by Notice in

writing to the Contractor, Receiver, Liquidator or to any other person in whom the Contract may become vested, if the Contractor:

14.1.1 fails in the opinion of the Contract Supervisor to comply with (or take reasonable steps to comply with) a Notice under Condition 13.2.

14.1.2 becomes bankrupt or insolvent, or has a receiving order made against him, or makes an arrangement with his creditors or (being a corporation) commences to be wound up, not being a voluntary winding up for the purpose of reconstruction or amalgamation, or has a receiver, administrator, or administrative receiver appointed by a Court.

14.2 Termination under the Regulations'

14.3 The Agency may terminate the Contract on written Notice to the Contractor if:

- (a) the contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
- (b) the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract; or
- (c) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

15. DETERMINATION

15.1 Without prejudice to any other rights or remedies under the Contract, the Agency reserves the right to determine the Contract at any time by giving not less than one month's Notice, (or such other time period as may be appropriate).

15.2 The Agency shall pay the Contractor such amounts as may be necessary to cover his reasonable costs and outstanding and unavoidable commitments necessarily and solely incurred in properly performing the Contract prior to determination.

15.3 The Agency will not pay for any costs or commitments that the Contractor is able to mitigate and shall only pay those costs that the Agency has validated to its satisfaction. The Agency's total liability under this Condition shall not in any circumstances exceed the Contract Price that would have been payable for the Services if the Contract had not been determined.

16. INDEMNITY

16.1 Without prejudice to the Agency's remedies for breach of Contract, the Contractor shall fully indemnify the Agency and its staff against any legally enforceable and reasonably mitigated liability, loss, costs, expenses, claims or proceedings in respect of:

16.1.1 death or injury to any person;

16.1.2 loss or damage to any property excluding indirect and consequential loss;
16.1.3 infringement of third party Intellectual Property Rights

which might arise as a direct consequence of the actions or negligence of the Contractor, his staff or agents in the execution of the Contract.

16.2 This Condition shall not apply where the damage, injury or death is a direct result of the actions, or negligence of the Agency or its staff.

17. LIMIT OF CONTRACTOR'S LIABILITY

17.1 The limit of the Contractor's liability for each and every claim by the Agency, other than for death or personal injury, whether by way of indemnity or by reason of breach of contract, or statutory duty, or by reason of any tort shall be:

17.1.1 the sum stated in the **Appendix to the conditions of contract as five million pounds**;

17.1.2 if no sum is stated, the Contract Price or five million pounds whichever is the greater.

18. INSURANCE

18.1 The Contractor shall insure and maintain insurance against liabilities under Condition 16 (Indemnity) in the manner and to the values listed in the **Appendix to the conditions of contract as five million pounds**. If no sum is stated, the value insured shall be five million pounds.

18.2 If specifically required by the Agency, nominated insurances shall be in the joint names of the Contractor and the Agency.

18.3 The Contractor shall, upon request, produce to the Contract Supervisor documentary evidence that the insurances required are fully paid up and valid for the duration of the Contract.

19. PREVENTION OF FRAUD AND CORRUPTION

19.1 The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract.

19.2 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Contractor's staff and the Contractor (including its shareholders, members and directors) in connection with the Contract and shall notify the Agency immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

19.3 If the Contractor or the Contractor's staff engages in conduct prohibited by this clause 19 or commits fraud in relation to the Contract or any other contract with the Crown (including the Agency) the Agency may:

19.3.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Agency resulting from the termination, including the cost reasonably incurred by the Agency of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Agency throughout the remainder of the Contract; or

19.3.2 recover in full from the Contractor any other loss sustained by the Agency in consequence of any breach of this clause.

19.4 The Contractor shall not, directly or indirectly through intermediaries commit any offence under the Bribery Act 2010 (as amended), in any of its dealings with the Agency.

20. CONTRACT PRICE

20.1 The Contract Price will be paid by the Agency to the Contractor as amended by any Variations ordered under Condition 9 (Variations).

20.2 In addition to the Contract Price, the Agency will pay to the Contractor such Value Added Tax (if any) as may properly be chargeable at rates ruling at the time of invoice.

21. INVOICING AND PAYMENT

21.1 Invoices shall only be submitted for those Goods already delivered accompanied by such information as the Contract Supervisor may reasonably require to verify the Contractor's entitlement to payment. Such invoices will be paid in 30 days from receipt by the Agency.

21.2 If any sum is payable under the Contract by the Contractor to the Agency, whether by deduction from the Contract or otherwise, it will be deducted from the next available invoice.

21.3 If the Contractor enters into a sub-contract with a supplier for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in the sub-contract which requires payment to be made of all sums due from it to the sub-contractor within 30 days from the receipt of a valid invoice.

22. INTELLECTUAL PROPERTY RIGHTS

22.1 The Contractor warrants to the Agency that the Goods, shall not in any way infringe any Intellectual Property Rights belonging to any third party and shall fully indemnify the Agency against all actions, claims, costs, charges, expenses and liabilities of whatsoever nature arising from or incurred by reason of any infringement, or alleged infringement.

22.2 The Contractor shall not be liable under this Condition if such infringement arises from the use of any design, technique or method of working provided by or specified by the Agency.

22.3 If the Contractor is prevented from carrying out his obligations under the Contract due to any infringement or alleged infringement of any Intellectual Property Rights, the Agency may without prejudice to any other rights and remedies under the Contract, exercise the powers and remedies available to it under Conditions 14 and 15.

23. WARRANTY

The Contractor warrants that the Goods supplied by him are of a satisfactory quality and are supplied with reasonable skill, care and diligence and fit for the Agency's intended purpose so far as this has been communicated to him, or which he would reasonably be expected to know.

24. GUARANTEES

The Contractor shall promptly remedy all defects in the Goods arising from faulty design, materials or workmanship and, without prejudice to the Agency's statutory rights, either repair or replace the Goods (as the Agency shall elect) at no cost to the Agency, for a period of 12 months from putting the Goods into intended service, or 18 months from delivery, whichever is the less, or as otherwise agreed in writing.

25. STATUTORY REQUIREMENTS

The Contractor shall fully comply with all relevant statutory requirements in the performance of the Contract, including, but not limited to the giving of all necessary notices and the paying of all fees.

26. ENVIRONMENT, SUSTAINABILITY AND DIVERSITY

26.1 The Contractor in the performance of this Contract should adopt a sound proactive environmental approach, designed to minimise harm to the environment, to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of single-use plastic, ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and/or the environment, and be able to provide proof of so doing to the Agency on demand.

26.2 The Agency is committed to ensuring that workers employed within its supply chains are treated fairly, humanely and equitably. The Agency expects the Contractor to share this commitment and to understand any areas of risk associated with this and work to ensure they are meeting International Labour Standards. The Contractor ensures that it and its sub-contractors and its supply chain:

26.2.1 comply with the provisions of the Modern Slavery Act 2015;

26.2.2 pay staff fair wages (and pays its staff in the UK not less than the Foundation Living Wage Rate); and

26.2.3 implement fair shift arrangements, providing sufficient gaps between shifts, adequate rest breaks and reasonable shift length, and other best practices for staff welfare and performance.

26.3 The Contractor should support the Agency to achieve its Public Sector Equality Duty by complying with the Agency's policies (as amended from time to time) on Equality, Diversity and Inclusion (EDI). This includes ensuring that the Contractor (and their sub-contractors) in the delivery of its obligations under this Contract:

26.3.1 eliminates discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;

26.3.2 advances equality of opportunity between people who share a protected characteristic and those who do not; and

26.3.3 fosters good relations between people who share a protected characteristic and those who do not.

27. PUBLICITY

The Contractor shall not advertise or publicly announce that he is supplying Goods or undertaking work for the Agency without the Permission of the Contract Supervisor.

28. LAW

This Contract shall be governed and construed in accordance with the Law, and subject to the jurisdiction of the courts of England.

29. WAIVER

29.1 No delay, neglect or forbearance by the Agency in enforcing any provision of the Contract shall be deemed to be a waiver, or in any other way prejudice the rights of the Agency under the Contract.

29.2 No waiver by the Agency shall be effective unless made in writing.

29.3 No waiver by the Agency of a breach of the Contract shall constitute a waiver of any subsequent breach.

30. ENFORCEABILITY AND SURVIVORSHIP

30.1 If any part of the Contract is found by a court of competent jurisdiction or other competent authority to be invalid or legally unenforceable, that part will be severed from the remainder of the Contract which will continue to be valid and enforceable to the fullest extent permitted by law

30.2 The following clauses shall survive termination of the Contract, howsoever caused: 14, 15, 16, 22, 23, 25, 28, 30, 31, 32, 33 and 34.

31. DISPUTE RESOLUTION

31.1 All disputes under or in connection with this agreement shall be referred first to negotiators nominated at a suitable and appropriate working level by the Agency and the Contractor.

31.2 If the parties' negotiators are unable to resolve the dispute within a period of forty five days from its being referred to them, the dispute shall be referred at the instance of either party to the parties' respective senior managers or directors (supported as necessary by their advisers).

31.3 If the parties' respective senior managers or directors are unable to resolve the dispute within forty five days the dispute shall be referred to the Centre for Dispute Resolution who shall appoint a mediator and the parties shall then submit to the mediator's supervision of the resolution of the dispute.

31.4 Recourse to this dispute resolution procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until forty five days after the appointment of the mediator.

31.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be put in writing and, once signed by a duly authorised representative of each of the parties, shall remain binding on the parties.

31.6 The parties shall bear their own legal costs of this dispute resolution procedure, but the costs and expenses of mediation shall be borne by the parties equally.

31.7 Any of the time limits in Condition 31 may be extended by mutual agreement. Such agreed extension shall not prejudice the right of either party to proceed to the next stage of resolution.

32. GENERAL

32.1 Neither party to the Contract will be liable to the other for any delay in performing or failing to perform its obligations (other than a payment obligation) under the Contract because of any cause outside its reasonable control. Such delay or failure will not constitute a breach of the Contract and the time for performance of the affected obligation will be extended by a reasonable period.

32.2 The Contract contains the whole agreement between the parties and supersedes all previous communications, representations and arrangements, written or oral. It is accepted that the Contract has not been entered into on the basis of any representations that are not expressly contained in the Contract.

33. FREEDOM OF INFORMATION ACT

33.1 The Agency is committed to open government and to meeting its responsibilities under the Freedom of Information Act 2000 (as amended) ('Act') and the Environmental Information Regulations 2004 (as amended) (Regulations').

33.2 The Contractor agrees that:

33.2.1 All information submitted to the Agency may need to be disclosed by the Agency in response to a request under the Act or the Regulations; and

33.2.2 The Agency may include information submitted (in whole or in part) in the publication scheme which it maintains under the Act or publish the Contract, including from time to time agreed changes to the Contract, to the public.

33.3 If the Contractor considers that any of the information included in its tender, or that it has submitted to the Agency or that is otherwise contained in the Contract, is commercially sensitive, it shall identify and explain (in broad terms) what harm may result from disclosure if a request is received, and the time period applicable to that sensitivity. The Contractor acknowledges that if it has indicated that information is commercially sensitive, such information may still be required to be disclosed by the Agency under the Act or the Regulations. The receipt of any material stated to be or marked 'confidential' or equivalent by the Agency shall not be deemed to infer that the Agency agrees any duty of confidentiality by virtue of that marking.

34. DATA PROTECTION

34.1 In the event that the Contract requires data to be processed within the meaning of the Data Protection Legislation the Data Protection Schedule shall be completed by the Parties and provisions and definitions therein shall apply and bind the Parties as part of this Contract

Appendix to Conditions Goods

Ref: F_2122_072

Title: Contract for the Purchase and set up of a Flow Cytometer for use on Coastal survey vessel

Condition

1 Contract Supervisor

[REDACTED],
[REDACTED]
[REDACTED]
[REDACTED]

Environment Agency,
Kingfisher House,
Orton Goldhay,
Peterborough,
United Kingdom
PE2 5ZR

2 Contractor

[REDACTED],
CytoBuoy b.v.
Johan de Wittlaan 11
3445 AG
Woerden
The Netherlands

3 Completion

Contract Start Date	19 th November 2021
Contract End Date	30 th March 2022

4 Delivery

As above address (1 Contract Supervisor)

5 Insurance

Professional Indemnity Min. Cover	€5 million
Third Party Minimum Cover	€5 million
Public Liability Min. Cover	€5 million

6 Limit on Liability

Limit on Contractors Liability	€5 million
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