



**Environment
Agency**

CONTRACT

**30172 Embedding Change – NGSA Behavioural
Survey / Diagnostic**

BETWEEN

Environment Agency

AND

Zircon Management Consulting Ltd

DATED:

PARTIES

1. Environment Agency, whose registered office is at Foss House, 1-2 Peaseholme Green York, YO17PX (the "Agency"); and
2. Zircon Management Consulting Ltd, (the "Contractor") whose registered office is at [REDACTED]. (each a "Party" and together the "Parties")

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. Agency

The Environment Agency, its successors and assigns.

1.1.2. Agency Property

All property issued or made available for use by the Agency to the Contractor in connection with the Contract.

1.1.3. The Appendix

The Appendix to these Conditions.

1.1.4. The Contract

These Conditions including the Appendix, any Special Conditions, 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.

1.1.5. The Contractor

The person, firm company or body who undertakes to supply the Services to the Agency as defined in the Contract.

1.1.6. Contract Period

The time period stated in the Appendix or otherwise provided in the Contract, for the performance of the Services.

1.1.7. 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

1.1.8. Contract Price

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

1.1.9. 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 instruction given by or made to the Contract Supervisor, shall be taken as given by or made to the Agency.

1.1.10.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).

1.1.11.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

1.1.12.Data Protection Schedule

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

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.Results

All things produced in performing the Services including maps, plans, photographs, drawings, tapes, statistical data, experimental results, field data, analysis of results,

published and unpublished results and reports, inventions, computer programmes and user documentation.

1.1.17.The Resulting Rights

All Intellectual Property Rights in the Results that are originated, conceived, written or made by the Contractor, whether alone or with others in the performance of the Services or otherwise resulting from the Contract.

1.1.18.Permission

Express permission given in writing before the act being permitted.

1.1.19.Services

All Services detailed in the Specification including any additions or substitutions as may be requested by the Contract Supervisor.

1.1.20.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.

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. THE SERVICES

4.1. The Contractor shall provide all staff, equipment, materials and any other requirements necessary for the performance of the Contract using reasonable skill, care and diligence, and to the reasonable satisfaction of the Contract Supervisor.

4.2. The Contractor shall only employ in the execution and superintendence of the Contract persons who are suitable and appropriately skilled and experienced. The Contract Supervisor shall be at liberty to object to and require the Contractor to remove any person employed in or about the Contract who is unsuitable, misconducts themselves, is incompetent or negligent in the performance of his duties or persists in conduct which could endanger the health or safety of others. Such persons shall not be employed again on the Contract without the Permission 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 their 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

6.1. The Contractor shall perform the Services within the time stated in the Specification of Requirement subject to any changes arising from Condition 10 (Variations,) and/or Condition 11 (Extensions of time.).

6.2. The Contract Period may, at the Agency's sole option and by giving 8 weeks' notice in writing, be extended by the further period(s) or part(s) thereof stated in the Appendix.

7. PROPERTY

7.1. All property issued by the Agency to the Contractor in connection with the Contract shall remain the property of the Agency, and shall be used in the execution

of the Contract, and for no other purpose whatsoever without the prior approval of the Contract Supervisor.

7.2. The Contractor shall keep all Agency Property in safe custody and good condition, set aside and clearly marked as the property of the Agency.

7.3. On expiry or earlier termination of the Contract the Contractor shall, if so required, either surrender such property to the Agency or otherwise dispose of it as instructed by the Contract Supervisor.

8. MATERIALS

8.1. The Contractor shall be responsible for establishing his own sources of supply for goods and materials and will be responsible for ensuring the reasonable and proper conduct by his suppliers and staff whilst on the Agency's premises.

8.2. 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.

9. SECURITY

9.1. The Contractor shall be responsible for the security of all goods and equipment belonging to the Agency and used by the Contractor in the provision of the Services, belonging to the Contractor, or Contractors staff, or sub-contractors whilst on Agency premises.

9.2. This Condition shall not prejudice the Agency's rights under Condition 15.

10. VARIATIONS

10.1. The Contract Supervisor may vary the Contract by adding to, deleting or otherwise modifying the Services 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.

10.2. The value of any such variation, other than any variation arising out of Condition 10.3, shall be determined by reference to the rates contained in the Pricing Schedule. Where the Services 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.

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

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

10.5. 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. 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.

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

10.6.1. any Contracting Authority; or

10.6.2. 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

10.6.3. 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.

10.7. 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.

11. EXTENSIONS OF TIME

11.1. 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:

11.1.1. 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.

11.1.2. 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.

11.2. 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.

11.3. Any extension of time granted under this Condition shall not affect the Agency's rights to terminate or determine the Contract under Conditions 13 and 14.

12. DEFAULT

12.1. The Contractor shall be in default if he:

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

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

12.1.3. is in breach of the Contract.

12.2. 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.

12.3. 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, take over for as such a period as is necessary the performance of the relevant part of the Contract and make other arrangements for its completion. Any extra costs arising from this action, will be paid by the Contractor or deducted from any monies owing to him.

13. TERMINATION

13.1. 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:

13.1.1. fails in the opinion of the Contract Supervisor to comply with (or take reasonable steps to comply with) a Notice under Condition 12.2.

13.1.2. 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.

'Termination under the Regulations'

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

13.2.1. the contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;

13.2.2. 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

13.2.3. 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.

14. DETERMINATION

14.1. 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).

14.2. 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.

14.3. 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.

15. INDEMNITY

15.1. 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:

15.1.1. death or injury to any person;

15.1.2. loss or damage to any property excluding indirect and consequential loss;

15.1.3. 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.

15.2. 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.

16. LIMIT OF CONTRACTOR'S LIABILITY

16.1. 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:

16.1.1. the sum stated in the Appendix;

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

17. INSURANCE

17.1. The Contractor shall insure and maintain insurance against liabilities under Condition 15 (Indemnity) in the manner and to the values listed in the Appendix to these Conditions. If no sum is stated, the value insured shall be £5M (five million pounds.)

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

17.3. 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.

18. PREVENTION OF FRAUD AND CORRUPTION

18.1. 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.

18.2. 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.

18.3. If the Contractor or the Contractor's staff engages in conduct prohibited by this clause 18 or commits fraud in relation to the Contract or any other contract with the Crown (including the Agency) the Agency may:

18.3.1. 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

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

18.4. 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.

19. MONITORING AND AUDIT

19.1. The Contract Supervisor may inspect and examine the Services being carried out on the Agency's premises, or elsewhere at any reasonable time. Where the Services are being performed on other than the Agency's premises, reasonable notice to inspect shall be given to the Contractor. The Contractor shall give all such facilities as the Contract Supervisor may reasonably require for such inspection and examination.

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 10 (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 work already satisfactorily completed, and 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. The Parties shall be entitled to review the Price in March of each year after the date of this Contract. The Parties may amend the Pricing Schedule with reasonable changes by written confirmation from both Contractor and Agency.

21.3. 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.

21.4. 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.

21.5. The Contractor shall on its own forms render invoices to the Agency at the following address:

Environment Agency
SSCL
PO Box 797
Newport, Gwent
NP10 8FZ

22. INTELLECTUAL PROPERTY RIGHTS

22.1. All Prior Rights used in connection with the Services shall remain the property of the party introducing them. Details of each party's Prior Rights are set out in the Prior Right Schedule to this contract.

22.2. All Results shall be the property of the Agency.

22.3. The Resulting Rights in any Results, and any interim results shall, from the time they arise, be the property of the Agency and the Agency shall be free, should it so wish, to apply at its own expense for patent or other protection in respect of the Results or any interim results. The Agency's intention to apply for such patent or other protection shall be notified to the Contractor. Such applications for patents or other registered intellectual property rights shall be filed in the name of the Agency.

Unless otherwise agreed in writing between the Contractor and the Agency, the Contractor hereby:

22.3.1. assigns to the Agency all Resulting Rights

22.3.2. grants the Agency a non-exclusive, non-transferable (save for the purposes of sub-licensing, reorganisation or transfer to a successor body, for the purposes of all the successor body's normal business use), irrevocable, royalty free perpetual licence to the Agency in respect of all the Contractor's Prior Rights necessary in order for the Agency to use or exploit the Resulting Rights.

22.4. The Contractor undertakes to the Agency not to use, exploit or deal with any of the Agency's Prior Rights, other than in the performance of the Contract unless the Contractor has first obtained a written licence from the Agency, in specific terms to do so.

22.5. The Agency undertakes to the Contractor not to use or exploit the Contractor's Prior Rights, save as provided in Condition 22.3.2.

22.6. The Contractor warrants to the Agency that the performance of the Services, the Contractor's Prior Rights and the Results shall not in any way infringe any intellectual property rights of any third party.

22.7. 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 13 and 14, Termination and Determination respectively.

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

22.9. The Contractor waives in favour of the Agency its rights to object to derogatory treatment of the Results of the Work and the Contractor also agrees that he will not assert or seek to enforce against the Agency and/or any other person, firm or company any of its moral rights as defined in the Copyright Designs and Patents Act 1988 (as amended) without the prior agreement of the Agency.

22.10. The Contractor shall not be liable for any consequential losses, damage or injuries arising from third party misuse of the Results, of which the Contractor is not aware.

23. WARRANTY

The Contractor warrants that the Services supplied by him will be discharged with reasonable skill, care and diligence.

24. 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.

25. ENVIRONMENT, SUSTAINABILITY AND DIVERSITY

25.1. 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.

25.2. 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:

25.2.1. comply with the provisions of the Modern Slavery Act 2015;

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

25.2.3. 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.

25.3. 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:

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

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

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

26. PUBLICITY

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

27. LAW

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

28. WAIVER

28.1. 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.

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

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

29. ENFORCEABILITY AND SURVIVORSHIP

29.1. 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.

29.2. The following clauses shall survive termination of the Contract, howsoever caused: 13, 14, 15, 22, 23, 24, 27, 29, 30, 31, 32 and 33.

30. DISPUTE RESOLUTION

30.1. 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.

30.2. 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).

30.3. 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.

30.4. 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.

30.5. 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.

30.6. 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.

30.7. Any of the time limits in Conditions 30 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.

31. GENERAL

31.1. 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.

31.2. 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.

32. FREEDOM OF INFORMATION ACT

32.1. 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').

32.2. The Contractor agrees that:

32.2.1. 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

32.2.2. 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.

32.3. 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 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.

33. DATA PROTECTION

33.1. 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.

33.2. All data transferred between the Agency and the Contractor remains confidential between the Parties. The Contractor shall not transfer this data to any third parties nor use it for other purposes not included in the Services.

34. PRICING

34.1. The prices to be paid for the Services supplied in accordance with the Contract are shown in the Pricing Schedule.

34.2 All prices and rates shall be held fixed for the duration of the Contract Period.

34.3 The prices payable by the Agency are inclusive of all licence fees and all other charges associated with the Services.

34.4 All prices shown in the Contract are exclusive of Value Added Tax.

35. HEALTH AND SAFETY

35.1 The Contractor shall ensure that his staff, agents and suppliers act in full accordance with the provisions of the Health and Safety at Work etc. Act 1974, Management of Health and Safety at Work Regulations 1992, Control of Substances Hazardous to Health Regulations 2002 (COSHH) and any other Acts, Regulations or Orders pertaining to Health and Safety.

36. QUALITY ASSURANCE

36.1 The Contractor shall ensure that its Quality Assurance System meets the requirements of ISO 9001:2015 (or equivalent).

37. CONFIDENTIAL INFORMATION

37.1 Confidential Information shall comprise any information disclosed to, or made available to the Contractor and his agents and staff in connection with the Contract and the provision of the Services. This will include, but not be limited to the Agency's procedures, the Contract, the Results, any Intellectual Property Rights of the Agency, or any other information which could reasonably be regarded as confidential.

37.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information as in paragraph 1 of this Condition is:

37.2.1 given only to the minimum number of staff and then only to the extent necessary for each member of staff's activities in the provision of the Services;

37.2.2 treated as confidential and not disclosed, without the prior approval of the Contract Supervisor, to any other person.

37.3 Where, required by the Contract Supervisor, the Contractor will ensure his staff sign a confidentiality undertaking before commencing work on the provision of the Services and provide copies to the Contract Supervisor.

37.4 The Agency's remedies for breaches of paragraphs 1, 2 and 3 of this Condition shall not be limited to damages.

37.5 Nothing in this Condition shall prevent the Agency from disclosing such information relating to the outcome of the contract procurement process as may be required to be published in the Supplement to the Official Journal of the European Communities in accordance with EU Directives, or elsewhere in accordance with requirements of UK law on the disclosure of information.

Appendix 1 Charges

The initial stage contract award value is [REDACTED]. Further services [REDACTED] as agreed with the client.

Item	Price
Behavioural Diagnostic (Option 2) – Consultant’s Recommendation (if different to above)	
1. Behavioural Diagnostic design	[REDACTED]
2. Behavioural Diagnostic implementation	[REDACTED]
Analysis, Development and Evaluation	
3. Analysis of Diagnostic results, including production of reports and delivery of presentation of findings	[REDACTED]
4. Facilitation and development of Action Plans	[REDACTED]
5. Evaluation of Diagnostic	[REDACTED]
6. Provision of future-proof behavioural baseline	[REDACTED]
7. Additional services (as described in proposal)	To be confirmed

***The excel document titled “Zircon BeTalent Proposed project plan and financial breakdown” has the full breakdown of activities, the day rates and associated costs for full transparency.**

	Project Director/Consultant	Project Manager	Project Co-ordinator	Digital Media Designer	Technical Director	Total
Zircon BeTalent commercial rates	████	████	████	████	████	
Zircon BeTalent public sector rates	████	████	████	████	████	
Project launch	1	1	1	0	0	████
Design phase						
Design and develop communications	1	0	0	0	0	████
██████████ ██████████	█	█	█	█	█	████
██████████ ██████████ ██████████	█	█	█	█	█	████
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██████████ ██████████ ██████████ ██████████	█	█	█	█	█	████
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██████████ ██████████ ██████████	█	█	█	█	█	████
██████████ ██████████ ██████████	█	█	█	█	█	████
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██████████ ██████████ ██████████ ██████████ ██████████	█	█	3	0	0	████

assumes 10 per day per consultant @ 13 days and that days can be optimised with a full timetable)						
Quality control and calibration meetings	1	1	0	0	0	████
████████████████ ██████████████ ██████████████ ██████████████ ██████████	█	█	█	█	█	████
██████████████ ██████████████	█	█	█	█	█	████
██████████ ██████████						
██████████ ██████████	█	█	█	█	█	████
Project team validation workshop with select stakeholders	1	1	0	0	0	████
██████████████ ██████████████ ██████████████ ██████████████ ██████████████ ██████████████ ██████████████ ██████████████ ██████████████ ████	█	█	█	█	█	████
Local team workshops						
Presentation of diagnostic. Hub and national workshops to define action planning. Assumes 1/2 day workshops for 14 sessions @ 7 days consulting time with 2 facilitators so able to use whiteboard and breakout	9	7	2	0	0	████

rooms. Includes design time.						
Summary of conclusions, commitments and action plans (1/2 day per workshop)	1	7	2	0	0	████
████████████████ ██████████ ██████	█	█	█	█	█	████
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████████████████ ████████████████ ████████████████ ████████████████ ████████████████ ████████████████ ████████████████ ████████████████ ████████████████ ██████	█	█	█	█	█	████
Roll out mini diagnostic questionnaires and conduct maturity progress reporting	0	9	9	0	6	████
████████████████ ████████████████ ██████ ██████████ ████████████████ ████████████████	█	█	█	█	█	████

Summary of conclusions, commitments and action plans (1/2 day per workshop)	1	7	2	0	0	
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██████████	█	█	█	█	█	████
██████████						
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	[REDACTED]
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[illegible]

Roll out mini diagnostic questionnaires and conduct maturity progress reporting	0	9	9	0	6	
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[illegible]

Appendix 2 Specification

SECTION 3: SPECIFICATION OF REQUIREMENTS

This Section sets out the Authority's requirements.

3.1 Background

In 2019 the Environment Agency (EA) embarked on changing the way it delivers its asset infrastructure programme of work with its Delivery Partners and supply chain. A change to our delivery model underpinned by new set of commercial frameworks was introduced that focusses on programme delivery through integrated delivery teams with collaboration at its heart. These Next Generation Supplier Arrangements (NGSA) can be summarised below:

- Collaborative Delivery Framework (CDF)
Collaborative delivery framework for flood risk management and infrastructure asset works through regional single suppliers arrangements and a target cost setting process.
- Client Support Framework (CSF)
National framework delivering consultancy requirements through mini tendering competitions.
- Modelling & Mapping Framework (M&M)
National framework delivering consultancy requirements through mini tendering competitions.
- FCRM Operations Framework (FOF)
National framework with local lots delivering minor design, construction and maintenance works on flood risk management assets.

One year on from implementation the Environment Agency are reviewing how the new ways of working under NGSA are embedding within the organisation, with a specific focus on those practitioners and teams who are operating under the Collaborative Delivery Framework. As part of this, and in conjunction with their Delivery Partners, they have identified the need to gain a more in depth detailed understanding of how the approach is working with a particular focus on behaviours and barriers to collaborative working.

NGSA is one part of the EA's investment strategy to protect communities from risk of flooding through a collaborative approach to working with their supply chain to deliver their programmes of work and provide more innovative solutions to adapt to risk. The aim to shift from a more transactional approach to delivery to one that is more integrated, working more collaboratively to; develop integrated solutions, develop collaborative procurement strategies, improve the use of digital technology and develop a whole life asset approach to cost and carbon.

Through the new arrangements we have committed to longer term relationships with the EA's Delivery Partners (Supply Chain). In order to invest in these relationships, through targeted interventions, the EA ensure that they are able to leverage the benefits and opportunities that they have set out in their business case for change.

Facilitated by a behavioural specialist, initial scoping work with the commissioning leadership team has identified a proposed set of objectives that requires the support of specialist behavioural psychologists to deliver as outlined in the section below.

The EA envisage the initial diagnostic work will focus on practitioners within 6 geographical delivery hubs and a number of critical national teams who have been actively involved in the new ways of working. Initial estimates suggest approximately 20 roles per hub and a total of

130 individuals to be 'interviewed'. However, this is indicative and aimed at providing potential suppliers with likely scale. Submitted designs should not significantly exceed this scale of enquiry. Further information can be found in the Information Packs provided (Appendices F-G).

3.2 Aims and Objectives

The Environment Agency wishes to gain a detailed understanding of how NGS collaborative behaviours have embedded into the organisation. The Consultant will be required to design, implement, analyse and develop a series of outcomes outlined in the Scope to carry out such a behavioural diagnostic.

Initial scoping work has identified a set of objectives (described below in section 3.3) that proposes one way of delivering this diagnostic approach. It is the Environment Agency's intention that the Consultant will provide a proposal in line with this option to achieve the overarching Objectives and Scope that the Consultant believes is the optimum solution to the project's goals.

3.3 Scope

The Scope has been designed in a logical order that reflects the processes entailed in this project.

1. The Consultant will be expected to:

1.1. **Design and deliver an interview-based behavioural diagnostic** that gathers evidence on;

1.1.1. NGS users' understanding of the ways of working (i.e. how it is embedding)

1.1.2. Consistency of application of the ways of working across the Environment Agency's delivery teams

1.1.3. What is working and where in the Environment Agency through gathering stories, to help 'define a collaborative narrative'. This narrative will be able to be owned by the Environment Agency's local delivery teams, but it is the responsibility of the Consultant to define and develop this narrative

1.1.4. Barriers to collaborative behaviours and working. This will include (but is not limited to) gaps in knowledge, behavioural resistances and other blockers to collaborative working

1.2. **Analyse outputs from the diagnostic** that will include;

1.2.1. Verbal presentation of findings to relevant leadership teams within the Environment Agency, including a written overview report of the national themes identified

1.2.2. Written reports for each of the six local delivery hubs across the Environment Agency that outlines the local narrative and the findings gathered

1.2.3. All reports and findings must include an evaluation of the diagnostic against the overarching objectives and provide an understanding of the stage of behavioural maturity reached so far by the collaborative ways of working under the NGS change and the likely development milestones ahead.

1.3. **Facilitate and support local and national teams** (as identified by the EA) to collectively develop action plans that will move forward key observations and outputs from the behavioural diagnostic. This will include;

1.3.1. Facilitation methods (eg. workshops) with the local and national delivery teams to develop and produce bespoke action plans

1.3.2. Communication of these action plans in collaboration with the local delivery hubs and national teams.

- 1.4. Use outputs from the above to **develop a behavioural baseline** for benchmarking and monitoring progress of behavioural change across the delivery teams on an ongoing basis. Provide recommendations for tools and approaches to improve collaborative behaviours in the future.
2. **Further services** that are a direct result of this behavioural diagnostic and its recommendations may be required. This will be limited to additional assessments, development of further action plans, training and the use of technology that promotes behavioural change and aims to embed the strategy within the Environment Agency. This work is not guaranteed and will be dependent on the outcomes of clauses 1.1-1.4. All additional work covered by this clause will be formally agreed by the Environment Agency and a Contract Change Note (CCN) will be issued before it can commence. The status of these additional works will be reviewed annually in March of each year of the Contract.
3. The Consultant must provide a proposed Programme of works to cover the Services. This must be formally agreed by the Environment Agency before any works can commence.
 - 3.1. Earliest start date: 07/09/2020
 - 3.2. Latest end date for activities 1.1-1.4: 31/12/2020
 - 3.3. Latest end date for further services (following contract variations): 31/03/2023
4. Under current COVID-19 restrictions, many of the Environment Agency's offices are currently closed. The Consultant will therefore be expected to work remotely. It is the Consultant's responsibility to ensure that suitable DSE assessments, internet connections and safety precautions are provided.
 - 4.1. All required working and travel arrangements are to be made in accordance with the latest Public Health England COVID-19 guidance.
 - 4.2. All behavioural diagnostic work and communications related to this Specification must be completed remotely in accordance with the latest Public Health England COVID-19 guidance.
5. The Consultant shall provide the Services in compliance with the Environment Agency's 'Operational Instructions' and policies.
 - 5.1. All data transferred to the supplier will be confidential information. It is paramount that appropriate information governance processes are in place to mitigate the risk of an information security breach in accordance with the Data Protection Act 2018 and General Data Protection Regulation (GDPR).
 - 5.2. All personal sensitive data must be anonymised and used for the sole purpose of this work in line with the GDPR.
6. The Environment Agency shall provide:
 - 6.1. Access to local delivery hub contacts as determined by the Programme
 - 6.2. Access to relevant Information Packs (Appendices F-G)

3.4 Contract Period

7. The Contract will cover the period 13/10/2020 to 31/12/2020 ("Expiry Date").
8. The Authority may extend the Contract for a period of up to twelve months by giving no less than ten Working Days' notice in writing to the Consultant prior to the Expiry Date by issuing a Contract Change Note (CCN) via the Authority's electronic contract management system (Bravo).
 - 8.1. The terms and conditions of the Contract shall apply throughout any such extended period.

8.2. The extension periods shall not exceed 31/03/2023.

I confirm that I am authorised to sign this contract.

Signed for and on behalf of the Environment Agency

Name:

— [REDACTED]

Operations Asset and Programme Delivery

Signature:

[REDACTED]

Date: 15 October 2020

We, Zircon, accept the terms set out in this Contract and confirm the appendixes are the true charges we submitted and we can deliver the services required in the specifications.

Signed for and on behalf of Zircon Management Consulting Ltd

Name:

Job title:

[REDACTED]
Director

Signature:

[REDACTED]

Date: 19th October 2020