

1. Definitions

For the purposes of these Award Terms and Conditions and the accompanying Award Offer Email and Award Agreement the following expressions shall have the meanings respectively ascribed to them:

'Agreement'	means the contractual arrangements set out in the Award Offer Email, the Award Agreement and these Standard Terms and Conditions of Award;
'Annual Review'	means that review described in Condition 3.3;
'Authorised Signatory'	means an officer/member of the Organisation possessing the necessary power and authority to sign and enter the Agreement on behalf of the Organisation;
'Award'	means the total amount of funding awarded referred to in the first paragraph of the Award Offer Email awarded to assist the Organisation to finance the EAMP and which consists of Revenue Funding;
'Award Agreement'	means the basic contractual provisions relating to the EAMP for which the Award is made and as set out in the document entitled Award Agreement and sent with the Award Offer Email;
'Award Offer Email'	means the award email sent to the Organisation confirming the Award and enclosing the Award Agreement and Standard Terms and Conditions of Award;
'Claw back Period'	means the period of five (5) years from the Date of Acceptance;
'Commencement Date'	means the start date for the EAMP which is no longer than six (6) months after the Award Offer Email and which needs to be agreed with Groundwork;
'Date of Acceptance'	means the date upon which the Authorised Officer signed the Grant Acceptance form;
'Invoices'	means those invoices submitted to Groundwork with Claim Forms by the Organisation costs incurred to produce the EAMP;
'Material Change'	means a substantive improvement in the financial position of the organisation; a change in ownership of the Organisation or a change to the development or production of the EAMP, any of the foregoing of which may reasonably lead Groundwork to conclude during the Annual Review that is, or is likely to be, a material increase or diminution in the organisation's level of financial need;
'Other Funding'	means those sums described as such in Section 1 of the Award Agreement under the heading "Award" and which constitute other funding secured by the Organisation (and properly evidenced to Groundwork) to make up the total cost of the EAMP together with the Award;
'Organisation'	means the organisation to which the Award is made (sometimes referred to as "you" or "your", as the context requires, throughout this Agreement);
'Parties'	means Groundwork and the Organisation (each a "Party");
'EAMP'	means the Ecological Assessment and Management Plan to which the Award relates and as described in Section 2 of the Award Agreement;

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'EAMP Specifications'	means those specifications for the EAMP as set out in Section 2 of the Award Agreement;
'Funding'	means the Award (or Part of Award) as referred to in Section 1 of the Award Agreement relating to Funding and which funding is to be used for management or development of EAMPs;
'Groundwork'	means Groundwork UK (Charity Registration No:291558. Registered Office: The Walker Building, 58 Oxford Street, Birmingham, B5 5NR) and sometimes referred to as "we", "us" or "our" (as the context requires) throughout this Agreement;

### 2. Operation and Implementation

- 2.1 The Award will be used solely towards financing the EAMP in accordance with the details set out in Section 2 of the Award Agreement or as may be otherwise agreed in writing with Groundwork. Without prejudice to the generality of the foregoing, the Organisation acknowledges and agrees that the Award may not in any circumstances be used (in whole or in part) towards redundancy payments or the like.
- 2.2 The Organisation will co-operate fully with Groundwork at all times in the development of the EAMP and comply with the specification in the EAMP guidance <https://42k4c82m9w9730jlap39w62c-wpengine.netdna-ssl.com/wp-content/uploads/2021/05/HS2-EAMP-Guidance-1.pdf>.
- 2.3 The Organisation will not deposit any part of the Award outside ordinary business accounts within the clearing bank system without prior written authorisation from Groundwork.
- 2.4 The provisions of this Agreement will apply throughout the Claw back Period.
- 2.5 The Organisation will comply with all statutory requirements and other laws and regulations relating to the development and production of the EAMP (including recruitment and participation), including without limitation, all relevant equal opportunities, anti-racism, child protection, human rights and health, safety and employment related laws and regulations (including but not limited to Safeguarding, Data Protection and Freedom of Information) and with such guidelines and/or codes of practice which Groundwork may notify to the Organisation from time to time.

### 3. Accounting

- 3.1 The Organisation will keep full and proper accounts and records in respect of the production of the EAMP. Any representative(s) or nominee(s) authorised by Groundwork will be given access, at Groundwork's request, to these accounts and financial records. The Organisation shall provide such documentation and assistance as Groundwork may reasonably require in order to undertake periodic reviews.
- 3.2 Even though unlikely, if at any time within the Claw back Period the production of the EAMP realises a distributable profit, or contributes to the Organisation's overall distributable profit. The Organisation shall notify Groundwork in writing to that effect within 28 days of the date that the Organisation's accounts are published. An appropriate proportion (to be determined in its sole discretion by Groundwork) of this profit shall be paid to Groundwork within six months of the date of publishing of the accounts.
- 3.3 The Organisation will notify Groundwork during the financial assessment of any interest earned on the Award and Groundwork shall decide in its reasonable discretion whether such interest may be retained by the Organisation for specified use or whether it should be returned to Groundwork.
- 3.4 In the event that a Material Change occurs or within a reasonable period after its completion the Organisation shall submit the details to Groundwork in order that it can re-consider the Award in its reasonable discretion and decide whether the Award should be revised, suspended or terminated.

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### 4. Payment

- 4.1 Save as otherwise agreed in writing and subject to funds being received from HS2 Ltd, Groundwork shall pay the Award to the Organisation in accordance with the terms and conditions of the Agreement and without prejudice to the generality of the foregoing by reference in particular to Condition 2.1 and Sections 1 and 4 of the Award Agreement.
- 4.2 The Award will be paid using Bankers Automated Clearing Scheme (BACS), or similar method, directly into the Organisation's bank account.
- 4.3 If the Organisation fails to claim all or any part of the Award in accordance with the provisions of this Agreement Groundwork shall be entitled to retain the Award or reduce the amount accordingly.
- 4.4 Groundwork shall be entitled to suspend or cease payment of the Award in the following situations:
- 4.4.1 upon the occurrence of any of the events set out in Condition 10.1 and such event is continuing or is not capable of being remedied;
  - 4.4.2 whilst investigations are being carried out into any matter that might result in the Organisation being required to repay all or any part of the Award;
  - 4.4.3 where the Award has been terminated in accordance with Condition 10.1;
  - 4.4.4 where, after considering the purpose of the Award, in Groundwork's reasonable opinion, further payment of the Award would not constitute good value for money (provided that Groundwork will continue to pay the Award to the extent that the Organisation has contracted for goods and services and it is not practically possible to cancel such arrangements);
  - 4.4.5 where the conditions set out in 14.2 cease to prevail and Groundwork reasonably determines that it has insufficient funds available to it to continue with the payment of the Award to the Organisation.
- 4.5 The Organisation shall repay to Groundwork any part of the Award incorrectly paid to it as a result of an administrative error including (without limitation) where either an incorrect value of the Award has been released or where the Award has been released in error before all applicable terms and conditions of the Agreement have been complied with by the Organisation.
- 4.6 The Organisation agrees to the timely drawdown and cash flow of the grant as outlined in Section 5 of the Agreement.
- 4.7 The first drawdown of the grant must take place within six (6) months of the award acceptance. Subsequent drawdown of the grant must take place within a maximum period of six (6) months since the last payment date, unless otherwise agreed by Groundwork.
- 4.8 Where the Organisation fails to operate in accordance with the above draw down conditions, Groundwork will terminate the Award Agreement and de-commit the remaining funds from the EAMP.
- 4.9 If the outcome of the EAMP is that the project can be delivered within budget/scope and will result in satisfactory biodiversity units being realised, we would expect a Stage 2 BIF application to be submitted within 6 months of award notification.
- If the applicant uses Biodiversity Investment Funding to undertake their EAMP and then decides, based on the outcome or for any other reason, not to submit a Stage Two application Groundwork reserve the right to claw back funding or a proportion of the funding if Groundwork deems that justification for not doing so, is not reasonable.

### 5. Funding

- 5.1 Groundwork shall consult with the Organisation as to the timing and amount of payments in respect of the funding provided that:
- 5.1.1 the final decision shall be within Groundwork's discretion; and
  - 5.1.2 Groundwork anticipates that Funding will normally be released in one or two instalments.

### 6. Monitoring

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- 6.1 The Organisation agrees to establish clear lines of communication with Groundwork representatives to carry out this monitoring and to respond promptly to any questions raised during the monitoring process.

### Progress monitoring

- 6.2 All Awards from Groundwork will be closely monitored to ensure that:
- 6.2.1 the EAMP specification is being met;
  - 6.2.2 the Organisation continues to comply with the terms and conditions of the Agreement;
- 6.3 During EAMP development and the delivery phase the Organisation must be prepared to receive site visits and permit access to authorised representative(s) and nominee(s) of Groundwork, upon reasonable notice (minimum two working days), to the Organisation's premises and facilities, equipment, documents, contracts and records and to permit Groundwork to discuss any aspect of the EAMP with key members of its staff;
- 6.4 The Organisation agrees to actively monitor the delivery of the EAMP, collecting and reporting data for the agreed outcomes and outputs together with feedback on progress to Groundwork in the required format.

### EAMP reporting

- 6.5 The Organisation shall report to Groundwork (in such format and at such times as Groundwork may reasonably require). Such reports shall include a review of the delivery of the EAMP against the EAMP Specifications.

Groundwork shall use progress reports to assess whether:

- 6.5.1 the Organisation is in breach of any term or condition of the Agreement and/or is failing to satisfactorily deliver the EAMP;
  - 6.5.2 the financial controls and management of the Award by the Organisation are adequate;
  - 6.5.3 there is some other material default or deficiency by the Organisation in implementing the EAMP.
- 6.6 Groundwork will notify the Organisation of any concern(s) arising from the progress reports referred to in Condition 6.5. The Organisation will respond promptly to any concerns raised and act to remedy the position to Groundwork's satisfaction within 30 days of the date of such notice or any other period as Groundwork may specify.
- 6.7 In the event that the Organisation fails to provide any requested evidence, information or undertakings in connection with Condition 6.5 or Groundwork is not satisfied that the Organisation will be in a position to remedy the default or breach in question or that the measures taken by the Organisation prove to be ineffective in remedying the position, Groundwork reserves the right:
- 6.7.1 not to make any further payments, and/or
  - 6.7.2 to suspend or reduce the Award for such period and on such terms as Groundwork may deem appropriate; and/or
  - 6.7.3 to claim back from the Organisation the whole or part of the Award which has already been paid and which Groundwork in its reasonable opinion considers to have been inappropriately allocated.
- 6.8 Groundwork shall notify the Organisation in writing of any such decision not to renew and/or to suspend and or reduce and/or claim back elements of the Award and such decision (s) shall be without prejudice to any other rights or remedies that Groundwork may have.
- 7. Compliance with procurement regulations**
- 7.1 'The organisation should aim to achieve value for money and avoid conflicts of interest in all purchases of goods and services through your Award. You must obtain 3 quotes or tender this work if over £10,000, complete a Quotes/Tender Form telling us why you have chosen the successful quote/tender and provide copies of all quotes received.

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- 7.2 The Parties acknowledge and agree that Groundwork is required to comply with the Public Services Contract Regulations (as amended from time to time) and the Public Works Contracts Regulations 1991 (as amended from time to time (hereinafter referred to as the "Regulations")).
- 7.3 In the event that the Organisation uses or may use the Award in connection with any contract for works or services to which the Regulations apply, the Organisation warrants that:
- 7.3.1 it has complied with and will comply with all relevant laws as to public procurement including without limitation the Regulations, as if the Organisation were a 'contracting authority' as defined in the Regulations;
- 7.3.2 it shall promptly supply Groundwork with such information as Groundwork may from time to time require evidencing the Organisation's compliance with the Regulations;
- 7.4 In the event that Groundwork has reasonable cause at any time to believe that the Organisation has not complied with the Regulations all Award monies already paid shall become repayable to Groundwork on demand and Groundwork may suspend its obligations or terminate the Agreement pursuant to Condition 10.1.8.

### 8. Miscellaneous Warranties

- 8.1 The Organisation warrants, undertakes and agrees that:
- 8.1.1 all financial and other information concerning the Organisation and the EAMP in any disclosure to Groundwork is to their best of its knowledge and belief, true and fair;
- 8.1.2 it is not under any contractual or other restriction within its own or any other organisation's rules, regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Award;
- 8.1.3 it is not aware of anything in its own affairs, which it has not disclosed to Groundwork or any of its advisers, which might reasonably have influenced the decision of Groundwork in making the Award on the terms contained in the Agreement;
- 8.1.4 since the date of the previously audited or published accounts there has been no material change in the financial position or prospects of the Organisation;
- 8.1.5 the Organisation has all permissions to produce the EAMP;
- 8.1.6 it is the sole beneficial owner of the Organisation's name and logo;
- 8.1.7 it will comply with all statutory requirements and other laws and regulations relating to the development and production of the EAMP, including without limitation, all relevant health, safety and employment related laws and regulations (including but not limited to Safeguarding, Data Protection and Freedom of Information);
- 8.1.8 it will not act or authorise or permit any person associated with the EAMP to act in any way which, in the reasonable opinion of Groundwork, could bring the Award and/or Groundwork/HS2 Ltd into disrepute. If the Organisation believes that any such act has taken place, it will notify Groundwork immediately and provide full details;
- 8.1.9 it will from time to time, on being required to do so by Groundwork, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to Groundwork as Groundwork may reasonably consider necessary for giving full effect to the Agreement and securing to it the full benefit of the rights, powers and remedies conferred upon it in the Agreement.

### 9. Suspension and Termination

- 9.1 Without prejudice to Groundwork's other rights and remedies, Groundwork shall have the right at any time during the Claw back Period to terminate this Agreement forthwith or suspend all or any of its obligations hereunder by notice in writing upon such terms and for such period as Groundwork may in its absolute discretion determine and (in either case) require the full amount of Award

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released to the Organisation (or such other sum as Groundwork may require) to be repaid to Groundwork on demand, and/or any future payments be stopped, if:

- 9.1.1 the Organisation ceases to operate for any reason or becomes insolvent, or is declared bankrupt, or is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or enters into any arrangement or composition for the benefit of its creditors;
  - 9.1.2 there is evidence of financial mismanagement, breakdown of budgetary control or any other irregularity, within the Organisation;
  - 9.1.3 if the Organisation fails to provide an acceptable explanation as to why the successful tender was accepted in accordance with Condition 7;
  - 9.1.4 in the reasonable opinion of Groundwork the Organisation fails to comply with its obligations under this Agreement as to delivery of the EAMP specification;
  - 9.1.5 where the Organisation fails to complete the EAMP at all (unless such failure was due to factors beyond the Organisation's control);
  - 9.1.6 within the Claw back Period, the Organisation fails to comply with or breaches any term or condition of the Award;
  - 9.1.7 in the reasonable opinion of Groundwork, any assurance given or information contained within the EAMP Specifications or other documents submitted by the Organisation to Groundwork were completed fraudulently, incorrectly or misleadingly in any material particular;
  - 9.1.8 the Organisation or any of its employees or persons acting under the control or authority of the Organisation has acted fraudulently or negligently so as to have a material effect on the development or production of the EAMP generally;
  - 9.1.9 the circumstances set out in Condition 4.5 apply.
- 9.2 If Groundwork chooses to suspend this Agreement pursuant to this clause and the Organisation remains in default of any of provisions 10.1.7-10.1.8 above, or indicates its intention to remain in default of any such provision, Groundwork may terminate this Agreement immediately upon notice in writing to the Organisation.
- 9.3 The Organisation shall repay to Groundwork any part of the Award incorrectly paid to it as a result of an administrative error including (without limitation) where an incorrect amount of the Award has been released or where the Award has been released in error before all applicable terms and conditions have been complied with by the Organisation.

### 10. Deficits/Surplus

- 10.1 Where the Organisation is carrying forward an on-going deficit on the EAMP at the end of any quarter, there will be no corresponding increase in the Award.
- 10.2 If at the end of any quarter or period the Organisation is carrying forward an on-going surplus on the EAMP, Groundwork reserves the right to adjust future payments.
- 10.3 Groundwork may review and reduce the amount of the Award if the final total allowable expenditure is less than the total EAMP cost or if the aggregate funding obtained for the EAMP, particularly from sources of public grants exceeds its cost. The Award may be reduced or a refund of part of the Award shall be repayable as determined by Groundwork in its absolute discretion but such reduction or refund shall not exceed the amount of the underspend.

### 11. Distributable Profit

If at any time within the Claw back Period the EAMP realises a distributable profit, or contributes to the Organisation's overall distributable profit, the Organisation shall notify Groundwork of that position notified within 28 days of the date that the Organisation's accounts are published. An appropriate proportion (to be determined in its sole discretion by Groundwork) of this

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profit shall be paid to Groundwork within six months of the date of publishing of the accounts. For the purposes of these Conditions "distributable profit" realised shall be ascertained in accordance with generally accepted accounting principles and standards in the United Kingdom.

### 12. Exclusion of Liability, Indemnity and Security

12.1 Groundwork, its employees, agents, officers or sub-contractors will not at any time be liable to any person for anything in connection with the development, planning, management and/or administration of the EAMP. In particular but without limitation, it will not be liable to the Organisation for any loss or damage arising directly or indirectly as a result of the compliance by the Organisation with the terms and conditions of this Award or with the EAMP Specifications.

12.2 The Organisation will indemnify and hold harmless Groundwork, its employees, agents, officers or sub-contractors with respect to all claims of, and liability to, third persons for injury, death, loss, or damage of any type arising out of or in connection with the EAMP and any activities carried out thereon except where such injury, death, loss or damage has resulted from the negligent act or omission of Groundwork. In this latter connection, the Organisation agrees to provide prompt notice to Groundwork of any such claim, and Groundwork shall have the sole right to control the defence of any such claim.

### 13. Groundwork Funding

13.1 The Organisation acknowledges and agrees that the Award is to be paid out of public money and that Groundwork is accountable for its distribution. Accordingly the Organisation acknowledges and agrees that Groundwork, in order to secure the obligations of the Organisation and/or the repayment of the Award in accordance with these terms and conditions, **may** require as a condition of Award, inter alia, that:

13.1.1 the organisation amends its constitution;

13.1.2 the organisation creates a charge over its assets; and/or

13.1.3 the organisation inserts a note into its accounts, in each case in order to secure the obligations of the Organisation and/or the repayment of the Award in accordance with these terms and conditions;

13.1.4 the Organisation makes those entries necessary within its accounts to recognize a contingent liability in respect of the Award,

13.2 The Organisation acknowledges and agrees that payment of the Award can only be guaranteed whilst Groundwork;

13.2.1 remains entitled to receive and distribute funds thus generated on the same or substantially the same terms as exist at the date of this Agreement; and

13.2.2 has access to sufficient funds to meet grant payments at the time of the Organisation requesting payment of the Award provided that Groundwork will notify the Organisation as soon as it becomes aware of the possibility of any of the above situations arising.

13.3 Groundwork reserves the right to amend the terms of the Award upon notice to the Organisation if such entitlement and/or the terms on which it is made available to Groundwork materially alter and/or if required to do so pursuant to or in order to comply with government legislation.

### 14. VAT

14.1 You acknowledge that the Grant is not consideration for any taxable supply for VAT purposes by Groundwork to you. You understand Groundwork UK's obligation does not extend to paying you any amounts in respect of VAT in addition to the Grant.

14.2 You agree to repay Groundwork immediately any VAT you recover whether by set-off, credit or repayment to the extent that any such VAT cost is included in the Grant.

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- 14.3 You will notify Groundwork immediately if any irrecoverable VAT claimed under the Grant becomes recoverable.
- 14.4 You will keep proper and up to date records relating to VAT, and you will make such records available for Groundwork to look at and give Groundwork copies when requested.
- 14.5 If Groundwork has funded all of the VAT costs for your EAMP, you agree to refund immediately all of the VAT you recover to Groundwork. If Groundwork has funded a proportion of the VAT costs for the EAMP, you agree to refund immediately the same proportion of the VAT recovered to Groundwork.
- 15. General**
- 15.1 The Parties agree that this Agreement (including the Schedules) is the entire agreement between the Parties and supersedes all proposals all proposals or prior agreements and undertakings, whether oral or written, and all other communications between the Parties relating to the subject matter of this Agreement.
- 15.2 The Organisation shall not assign mortgage or charge or in any other way dispose of this Agreement or any of its rights (including the right to any sums payable) hereunder, nor shall the Organisation sub-contract any of its obligations under this Agreement (unless specifically provided for hereunder) without the prior written consent of Groundwork. Groundwork shall be entitled, on prior written notice, to assign the benefit and burden of this Agreement to any successor body of Groundwork.
- 15.3 The Organisation is an independent body and nothing in this Agreement shall be deemed to constitute a partnership, joint venture, relationship of agency or any employment relationship between the Parties nor shall anything in this Agreement be deemed to constitute or place the Parties in the relationship of partners, joint ventures, agent and principal or employer and employee.
- 15.4 This Agreement may only be modified by written agreement duly signed by both Parties.
- 15.5 If at any time one or more provisions of this Agreement become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 15.6 Any failure, relaxation, forbearance, delay or indulgence by Groundwork in enforcing any of the terms or conditions of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision, and nor shall the granting of any time by Groundwork prejudice or affect or restrict any of Groundwork's rights arising under this Agreement or be deemed a waiver by Groundwork of any breach or subsequent or continuing breach.
- 15.7 Any notices to be served under this Agreement shall be in writing and served at the addresses set out in this Agreement.
- 15.8 The Parties acknowledge and agree that Groundwork is acting on behalf of a public body and as such may be subject to certain statutory or other obligations to permit access to information held by it (or the Organisation on Groundwork's behalf) which may extend to the contents of this Agreement and other documents and information relating to it. The Organisation shall without charge, provide all such assistance as Groundwork may reasonably require in order that Groundwork may comply with lawful and proper requests for access to such documents and information.
- 15.9 The Parties undertake to use their best endeavours, wherever practicable, to resolve any dispute arising out of or in connection with this Agreement. If the dispute cannot be resolved amicably within a reasonable time at working level the Parties shall comply with the following procedure:
- 15.9.1 The dispute shall firstly be referred to the respective Chief Executives (or equivalent) of the Parties for discussion and resolution;
- 15.9.2 In the event that the Chief Executives fail to resolve the matter within 14 days of referral to them the Parties shall seek to resolve the matter in good faith by Alternative Dispute Resolution ("ADR") at the Centre for Dispute Resolution ("CEDR");



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- 15.9.3 If the Parties fail to agree terms of settlement within six (6) months of the commencement of the ADR procedure then the dispute may be dealt with by litigation in the courts of England. The commencement of the ADR procedure shall be the request to CEDR by the Parties for an ADR procedure.
- 15.10 Unless the right of enforcement is expressly provided, it is not intended that any third party should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999. The Parties may by agreement rescind or vary this Agreement without the consent of a third party to whom the right of enforcement of any of its terms has been expressly provided.
- 15.11 The construction, performance and validity of this Agreement shall be governed by and construed in all respects in accordance with the laws of England and the Parties submit to the non-exclusive jurisdiction of the English courts.