



Working in  
partnership with

HS2



CEF & BLEF Standard Terms and Conditions of Award

1. Definitions

For the purposes of these Award Terms and Conditions and the accompanying Award Offer Email or Letter 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 or Letter, the Award Agreement and these Standard Terms and Conditions of Award. In the event of any conflict between the Award Offer Email or Letter, Award Agreement and the Standard Terms and Conditions, the Award Offer Email or Letter and Award Agreement take precedence.
'Annual Review'	means that review described in Condition 3.3;
'Asset'	means any item whose acquisition, creation or improvement is funded in total or part by the Award;
'Asset Liability Period'	Asset Liability Period means the period from the Commencement Date in which we will monitor assets purchased with the Award. For awards between £10,001 and £250,000 this is ten (10) years. For awards over £250,000 this is twenty one (21) years;
'Authorised Signatory'	means an officer/member of the Organisation possessing the necessary power and authority to sign the Award Acceptance and enter into the Agreement on behalf of the Organisation;
'Award'	means the total amount of funding awarded referred to in Section 1 - Financial Breakdown of the Award Agreement to assist the Organisation to finance the Project and which may consist of both Capital and Revenue Funding;
'Award Agreement'	means the basic contractual provisions relating to the Project 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;
'Capital Funding'	means the Award (or Part of Award) as referred to in Section 1 of the Award Agreement relating to Capital Funding and which funding is to be used for capital infrastructure costs, including, refurbishment of existing facilities, the installation of fixed equipment, new buildings and structures, enhanced access and landscaping;
'Claw back Period'	means the period of five (5) years for projects of between £10K - £100K and the period of ten (10) years for projects over £100K, from the Date of Acceptance;
'Commencement Date'	means the start date for the Project 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 Award Acceptance form;

'Duration of the Project'	means the total number of months (rounded up) between the Commencement Date and the Long Stop Date;
'Grant Security'	means the requirement for Groundwork to request additional security (for example a legal charge) be put in place to protect the investment of public money. If this is not included as a condition in your Award Agreement then this is not a requirement for your project and will only be considered if there is a significant material change to your project.
'Invoices'	means those invoices submitted to Groundwork with Claim Forms by the Organisation for the duration of the Project for costs incurred;
'Long Stop Date'	means the date by which the Project must be completed which is no more than four (4) years for revenue projects and no more than three (3) years for capital projects, after the Date of the Award Agreement;
'Material Change'	means a change in ownership of the Organisation, or a change in the ownership/lease terms of the building/land if the award is for a capital project, or a change to delivery which could reasonably lead Groundwork to conclude that the project will not delivery the intended Project Objectives;
'Other Funding'	means those sums described as such in Section 1 of the Award Agreement under the heading "Partnership Funding" and which constitute other funding secured by the Organisation (and properly evidenced to Groundwork) to make up the total cost of the Project 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");
'Project'	means the project to which the Award relates and budget as described in Section 2 of the Award Agreement;
'Project Measures'	means those measures applicable to the Project Objectives as set out in Section 3 of the Award Agreement;
'Project Objectives'	means those objectives set out in Section 3 of the Award Agreement which the Parties have agreed shall be applicable to the Project;
'Project Specifications'	means those specifications for the Project as set out in Section 2 of the Award Agreement;
'Project Year'	means each financial period in respect of which the Funding is awarded;
'Revenue Funding'	means the Award (or part of Award) as referred to in Section 1 of the Award Agreement relating to Revenue Funding and which funding is to be used for the delivery and management of services/activities;
'Suitably Qualified Person'	means a person who has the necessary professional qualifications to oversee the project.. This person may be an architect, landscape architect, project manager etc
'Groundwork'	means Groundwork UK (Charity Registration No:291558. Registered Office: Suite B2, 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 Project 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 any costs which Groundwork does not recognise as Project costs.
- 2.2 The Organisation will co-operate fully with Groundwork at all times in the implementation of the Project and will use its best endeavours to meet the Project Objectives.
- 2.3 Delivery of the Project will comply fully with the Project Specifications, the contents of which shall not be altered materially without the prior written consent of Groundwork.
- 2.4 You must notify Groundwork if:
- The delivery of the approved project has to stop unexpectedly.
  - A key staff member being funded through the project leaves your organisation.
  - The primary contact for the project leaves your organisation or has to change to another member of your organisation.
- 2.5 If the primary contact changes, a full, detailed handover of the project must be undertaken so that the new main contact understands what delivery and costs are included in the approved project, understands claim and reporting deadlines and understands the terms and conditions of the award.
- 2.6 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.
- 2.7 The provisions of this Agreement will apply throughout the Claw back Period.
- 2.8 The Organisation will operate fair procedures in relation to any individuals who are either denied inclusion or who are removed for any reason from the Project. The Organisation will not exclude anyone from participating in the Project on the grounds of race, religion, colour, sex, age, occupation, disability or political persuasion other than in accordance with lawful justification or where positive discrimination is permitted.
- 2.9 The Organisation will comply with all statutory requirements and other laws and regulations relating to the implementation and development of the Project (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 implementation of the Project, including copies of all receipts/invoices for costs incurred. These should be kept for up to seven years after the project has ended. 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 If at any time within the Claw back Period the operation of the Project 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 Groundwork may undertake financial assessments of the Organisation (normally by annual review), to assess the ability of the Organisation to secure other funding or to provide cash partnership funding from either income directly related to the Award, or from the Organisation's own reserves, towards the Project. Groundwork reserves the right to reduce the Award as a result of any such assessment.
- 3.4 The Organisation will notify Groundwork 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.
- 3.5 In the event that a Material Change occurs in the Duration of the Project or within a reasonable period after its completion the Organisation shall submit the details to Groundwork in order that it can re-consider the Project in its reasonable discretion and decide whether the Award should be revised, suspended or terminated.

#### 4. Payment & Quotes

##### 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 12 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 12;
  - 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 Condition 16 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 award as outlined in Conditions 5 and 6.
- 4.7 The first funding drawdown of the award must take place within six (6) months of the award acceptance. For revenue projects, subsequent drawdown of the award must take place every six (6) months, unless otherwise agreed by Groundwork. Capital projects will drawdown funds when invoices have been received by the contractor for work completed and inline with the schedule agreed with 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 Project.

#### **Quotes**

- 4.9 You will need to demonstrate value for money for the purchase of goods, for the purchase of a service and for building works:
- 4.9.1 For costs over £250 but not over £2,000, you will need to source 3 quotes. You do not need to send us copies of your quotes, but please ensure that you keep copies of both your successful quotes and the rejected quotes as we reserve the right to ask for these.
- 4.9.2 For costs over £2,000 but not over £10,000, you will need to source 3 quotes and complete Quotes/Tender Form telling us why you have chosen the successful quote. A copy of your successful quote will need to be provided with your Quotes/Tender Form. You do not need to send us copies of your unsuccessful quotes, but please ensure that you keep copies of the rejected quotes as we reserve the right to ask for these.
- 4.9.3 For costs over £10,000, you will need to source 3 quotes and complete Quotes/Tender Form telling us why you have chosen the successful quote. Copies of both your successful quotes and unsuccessful quotes will need to be provided with your Quotes/Tender Form.
- 4.9.4 Please ensure you do not place orders or begin to undertake any work until you have confirmation from Groundwork that we are content with the information provided.
- 4.9.5 If your work is capital work your chosen contractor will also need to complete the Contractors Statement.

#### **5. Revenue Funding**

- 5.1 Groundwork shall consult with the Organisation on a schedule of payments which will be made in advance in six (6) month periods. The final decision on the schedule and payment amounts shall be at Groundwork's discretion.
- 5.2 The requirement for quotes to demonstrate value for money described in 4.9 applies.
- 5.3 The payment of costs over £250 is subject to Groundwork receiving an invoice for the purchase to show the cost of each item, the number of items being purchased and the total purchase price and supporting information described in section 4 of the Award Agreement if relevant.
- 5.4 Invoices for costs below £250 do not need to be provided with your claims. A breakdown of these costs may be requested by Groundwork as part of each claim. Groundwork also reserves the right to request copies of invoices/receipts for costs under £250 if further clarification is needed on the costs being evidenced or if your project has a high amount of costs below £250.
- 5.5 If funds are being used to employ staff any new staff posts funded must follow an open and fair recruitment process to ensure the right candidate is selected for the role. This includes the employment of freelance staff.
- 5.6 Your Project must start on the date agreed with Groundwork which must be within 6 months of the date of your award offer.

#### **6. Capital Funding**

- 6.1 The Organisation cannot make a claim for payment for capital funding until we have been sent and approved the Quotes/Tender Form and Contractor Statement, and the Organisation has met the other Project Conditions detailed in the Award Agreement.
- 6.2 The requirement for quotes to demonstrate value for money described in 4.9 applies.
- 6.3 The payment of costs over £250 is subject to Groundwork receiving an invoice for the purchase to show the cost of each item, the number of items being purchased and the total purchase price and supporting information described in section 4 of the Award Agreement if relevant.

6.4 Invoices for costs below £250 do not need to be provided with your claims. A breakdown of these costs may be requested by Groundwork as part of each claim. Groundwork also reserves the right to request copies of invoices/receipts for costs under £250 if further clarification is needed on the costs being evidenced or if your project has a high amount of costs below £250.

6.5 Your Project must:

6.4.1 have started on site within 6 months of the date of your award offer; and

6.4.2 be completed (i.e. open for use by the public) within two years of the date of the Award Offer Letter (or such other date as may be agreed in writing by Groundwork).

6.4.3 have taken due consideration to reasonable measures to allow participation and access for disabled people.

6.6 You will make sure that the construction/development of the facility is properly supervised throughout by the Suitably Qualified Person.

6.7 The Organisation shall construct and/or develop the facility in a good and workmanlike manner in accordance with the requirements and timescales set out in the Project Specifications.

6.8 The Organisation will use best endeavours to manage and operate the Facility in accordance with the Project Specifications throughout the Asset Liability Period. You will keep the Facility in good repair and maintain it properly.

6.9 The Organisation cannot sell, transfer, lease or otherwise dispose of land or buildings refurbished, altered or improved with the Award or change the purpose for which the capital assets are being used without our written permission during the Asset Liability Period.

## 7. Grant Security

7.1 For capital projects over the value of £200,001, HS2 Ltd may request additional security over any investment in the form of a legal charge or restriction on title being placed with the Land Registry. You will have been notified of this in your Award Agreement if this applies to your project.

7.2 If an additional condition is required, a condition will usually be added to the Award Agreement document. If a condition has not been added, Groundwork (or HS2 Ltd) reserve the right to request additional security be put in place during the Asset Liability Period.

7.3 If you are a public authority, local authority or parish council and are unable to add a charge, we may seek to place a restriction on the title at the Land Registry instead.

## 8. Monitoring and Evaluation

8.1 The Organisation agrees to establish clear lines of communication with Groundwork representatives to carry out this monitoring requirement and to respond promptly to any questions raised during the monitoring process. Failure to respond to queries in a timely manner may result in your project being paused by Groundwork for further review and until all queries have been satisfactorily resolved.

### Progress monitoring

8.2 All Projects which receive an Award from Groundwork will be closely monitored to ensure that:

8.2.1 the Project Objectives are being met;

8.2.2 the Organisation continues to comply with the terms and conditions of the Agreement;

8.2.3 the Project continues to represent good value for money.

8.3 During project initiation 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 Project with key members of its staff.

- 8.4 The Organisation agrees to actively monitor the Project, collecting and reporting data for the agreed outcomes and outputs together with feedback on progress to Groundwork in the required format. The period for which the targets will be monitored will be agreed with Groundwork and may extend beyond the period of funding if applicable.

#### **Project reporting**

- 8.5 The Organisation shall report to Groundwork (in such format and at such times as Groundwork may reasonably require). Such reports shall include a detailed review of the delivery of the Project against the Project Specifications. Once the Project is up and running the report should include a summary of achievement against the Project Objectives, and any other agreed measurement reports to measure and understand progress against delivery.

Groundwork shall use progress reports to assess whether:

- 8.5.1 the Organisation is in breach of any term or condition of the Agreement and/or is failing to satisfactorily deliver the Project;
- 8.5.2 the financial controls and management of the Award by the Organisation are adequate;
- 8.5.3 there is some other material default or deficiency by the Organisation in implementing the Project.

#### **Project evaluation and further actions**

- 8.6 Groundwork will notify the Organisation of any concern(s) arising from the progress reports referred to in Condition 8.5. 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.
- 8.7 In the event that the Organisation fails to provide any requested evidence, information or undertakings in connection with Condition 8.5 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:
- 8.7.1 not to make any further payments, and/or
- 8.7.2 to suspend or reduce the Award for such period and on such terms as Groundwork may deem appropriate; and/or
- 8.7.3 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.
- 8.8 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.

#### **9. Compliance with procurement regulations**

- 9.1 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 a minimum of three quotes for the provision of all goods and services with a cost of £250 or more.
- 9.2 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")).
- 9.3 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:

- 9.3.1 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;
- 9.3.2 it shall promptly supply Groundwork with such information as Groundwork may from time to time require evidencing the Organisation's compliance with the Regulations;
- 9.4 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 12.

## 10. Publicity

- 10.1 The Organisation agrees that during the Claw back Period it will officially recognise and promote the financial contribution provided by HS2 Ltd/Groundwork as set out in Section 5 of the Award Agreement. In doing so, the Organisation will give Groundwork reasonable advance notice of its planned activities.

## 11. Miscellaneous warranties

- 11.1 The Organisation warrants, undertakes and agrees that:
- 11.1.1 all financial and other information concerning the Organisation and the Project comprised in the Project Specifications or otherwise disclosed to Groundwork is to their best of its knowledge and belief, true and fair;
- 11.1.2 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;
- 11.1.3 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;
- 11.1.4 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;
- 11.1.5 everything identified in the Project is owned or controlled by the Organisation and the Organisation has access to it to fulfil the Project;
- 11.1.6 it is the sole beneficial owner of the Organisation's name and logo;
- 11.1.7 it will comply with all statutory requirements and other laws and regulations relating to the implementation and delivery of the Project, 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);
- 11.1.8 it will not act or authorise or permit any person associated with the Project to act in any way which, in the reasonable opinion of Groundwork, could bring the Project 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;
- 11.1.9 for Projects involving equipment purchase, it will not sell or dispose of Groundwork funded equipment without written authorisation from Groundwork, who will have the sole discretion to decide whether any proceeds may be retained by the Organisation for specified use within the Project or returned to Groundwork;
- 11.1.10 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.



11.1.11 In the unlikely event that if, after the date of this Award Agreement, an announcement is made by HS2 Ltd which leads to a significant reduction to the impacts as detailed in the Environmental Statements (which are linked to the construction of HS2) in the area in which the Project is based, a review of the project and the level of funding may need to be undertaken by Groundwork. Groundwork will advise you of any significant changes and any impact on the Project/funding. Please be assured that Groundwork and HS2 Ltd will only make changes under reasonable circumstances.

## 12. Suspension and Termination

12.1 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 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:

12.1.1 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;

12.1.2 there is evidence of financial mismanagement, breakdown of budgetary control or any other irregularity, within the Organisation or Project;

12.1.3 if the Organisation fails to provide an acceptable explanation as to why the successful tender was accepted in accordance with Condition 6.1;

12.1.4 in the reasonable opinion of Groundwork the Organisation fails to comply with its obligations under this Agreement as to delivery of the Project objectives;

12.1.5 where the Organisation fails to complete the Project at all or fails to complete the Facility by the Long Stop Date (unless such failure was due to factors beyond the Organisation's control);

12.1.6 within the Claw back Period, the Organisation fails to comply with or breaches any term or condition of the Award;

12.1.7 in the reasonable opinion of Groundwork, any assurance given or information contained within the Project Specifications or other documents submitted by the Organisation to Groundwork were completed fraudulently, incorrectly or misleadingly in any material particular;

12.1.8 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 completion, development or management of the Facility or the Project generally;

12.1.9 the circumstances set out in Condition 4.5 apply.

12.2 If Groundwork chooses to suspend this Agreement pursuant to this clause and the Organisation remains in default of any of provisions 12.1.7 or 12.1.8 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.

12.3 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.

**13. Deficits/Surplus**

- 13.1 Where the Organisation is carrying forward an on-going deficit on the Project at the end of any quarter, there will be no corresponding increase in the Award.
- 13.2 If at the end of any quarter or period the Organisation is carrying forward an on-going surplus on the Project, Groundwork reserves the right to adjust future payments.
- 13.3 Groundwork may review and reduce the amount of the Award if the final total allowable expenditure is less than the total Project cost or if the aggregate funding obtained for the Facility, 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.

**14. Distributable Profit**

If at any time within the Claw back Period the Project realises a distributable profit, or contributes to the Organisation's overall distributable profit, the Organisation shall notify Groundwork of that position 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. 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.

**15. Exclusion of Liability, Indemnity and Security**

- 15.1 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, construction, operation, management and/or administration of the Project. 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 Project Specifications.
- 15.2 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 Project 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.

**16. Groundwork Funding**

- 16.1 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:
- 16.1.1 the organisation amends its constitution;
  - 16.1.2 the organisation creates a charge over its assets; and/or
  - 16.1.3 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;
  - 16.1.4 the Organisation makes those entries necessary within its accounts to recognize a contingent liability in respect of the Award,
- 16.2 The Organisation acknowledges and agrees that payment of the Award can only be guaranteed whilst Groundwork;

16.2.1 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

16.2.2 has access to sufficient funds to meet award payments at the time of the Organisation requesting payment of the Award.

Groundwork will notify the Organisation as soon as it becomes aware of the possibility of any of the above situations arising.

16.3 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.

## 17. VAT

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

17.2 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.

17.3 You will notify Groundwork immediately if any irrecoverable VAT claimed under the Grant becomes recoverable.

17.4 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.

17.5 If Groundwork has funded all of the VAT costs for your Project, 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 Project, you agree to refund immediately the same proportion of the VAT recovered to Groundwork.

## 18. General

18.1 The Parties agree that this Agreement (including the Schedules) is the entire agreement between the Parties and supersedes 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.

18.2 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.

18.3 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.

18.4 Groundwork reserves the right to update these terms and conditions where appropriate and reasonable. If changes are made you will be informed in a timely manner. This Agreement may only be modified by written agreement duly signed by both Parties.

18.5 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.

18.6 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.

18.7 Any notices to be served under this Agreement shall be in writing and served at the addresses set out in this Agreement.

- 18.8 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.
- 18.9 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:
- 18.9.1 The dispute shall firstly be referred to the respective Chief Executives (or equivalent) of the Parties for discussion and resolution;
- 18.9.2 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");
- 18.9.3 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.
- 18.10 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.
- 18.11 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.