

**The Contractor:** Plan & Plant Limited, a company registered in England & Wales with company number 13998177, whose registered office address is Barton Cottage, Rainton, Thirsk, YO7 3PX

**The Client:**

**The Gardens:**

The Client and the Contractor agree that the Contractor will provide the services set out in the order form attached to these terms (“the Services”) in respect of the Gardens on the following terms:

## **1 Commencement**

This Agreement is to commence on ( ) and is to continue until terminated by [3 months’] notice in writing given by either party to the other, and we the Contractor and you the Client agree as follows.

## **2 Timing**

The Contractor shall use reasonable endeavours to complete the Services on the dates agreed by the Parties. However, the provision of the Services shall subject to weather conditions and other matters outside of the reasonable control of the Contractor, which may affect the Contractor’s ability to meet any deadlines. Accordingly, time shall not be of the essence for:

- 2.1 any dates or times when Services are due to be performed;
- 2.2 the length of time that any Service will take to perform;
- 2.3 any date or time by which any of the Services will be completed.

## **3 Obligations of the Contractor**

### **3.1 Advice and labour**

During the continuance of this Agreement and as part of the Services the Contractor will supply advice and labour in connection with the management, maintenance and improvement of the Gardens upon the terms set out below. The Contractor shall provide the Services for no less than the number [and frequency of visits] OR [of hours a week and on the days] set out in the order form or as otherwise agreed in writing with the Client.

### **3.2 Contractor’ tasks**

The Contractor will keep the Gardens cultivated and as far as possible in as good order and condition as at the commencement of this Agreement [as evidenced by the schedule of condition and photographs annexed to this Agreement] in accordance with and to the extent of the Services requested by the Client as set out in the order form,

and in accordance with best horticultural practice current from time to time. Without prejudice to the foregoing, the Contractor will:

- 3.2.1 employ only professionally-qualified gardeners to do the work, or employees working under the supervision and control of such gardeners; and
- 3.2.2 not, without the Client's prior consent, fell, cut or lop any timber trees, or remove any shrubs, bushes or hedges now on the Gardens except if decayed, dead or dangerous, and must not alter the design, style or layout of the Gardens, grass over existing beds or create new beds.

### **3.3 Manpower and machinery**

The Contractor will provide the manpower and machinery and tools, including fuel, necessary for the provision of and maintain the Gardens, except for any such items listed on the order form as to be provided by the Client.

### **3.4 Meetings**

The Contractor will meet with the Client in accordance with the schedule set out in the order form, or as otherwise required, to report on the Services and the Gardens generally.

### **3.5 Statutory provisions**

The Contractor must ensure that all statutory provisions and requirements affecting the work to be carried on under this Agreement and the conduct of their employees or agents while on or in the vicinity of the Gardens are complied with.

### **3.6 Assignment & Sub-contractors**

The Contractor is permitted to use sub-contractors to provide some or all of the Services. However, the Contractor must not assign any of their rights or duties under this Agreement without the consent in writing of the Client.

## **4 Obligations of the Client**

### **4.1 Facilities & Assistance**

During performance of the services the Client shall:

- 4.1.1 co-operate with the Contractor as the Contractor reasonably requires;
- 4.1.2 provide any information that the Contractor reasonably requires;
- 4.1.3 prior to each visit by the Contractor, ensure that the Gardens are free and clear of any pet excrement;
- 4.1.4 make available to the Contractor such of the following facilities ("Facilities") as the Contractor reasonably requires;

- (a) access to electricity from normal 220/240 volt 3-pin sockets,
- (b) access to a water supply,
- (c) the right to leave the Contractor's tools and materials at the Premises at times when the Contractor is not performing the services in a safe, dry storage area,
- (d) use of the Client's toilet and washing facilities,
- (e) use of a parking permit (for a visitor) throughout the time the Contractor is providing the services, and
- (f) sufficient work space.

4.1.5 ensure that the Client's staff and agents co-operate with and assist the Contractor.

The Client shall make the Facilities available to the Contractor at all times when the Contractor is performing the services (whether or not the Client is present). The Client shall not charge the Contractor for use of the Facilities. If the Client does not provide any Facilities that the Contractor reasonably requires to perform any of the services, then the Contractor, at its option, may:

- (a) suspend the performance of the services; or
- (b) obtain (where possible) those Facilities which the Client has not provided, and then require that any additional costs and expenses which are reasonably incurred by the Contractor in performing the services shall be paid by the Client.

## **4.2 Access & Security Arrangements**

Where there are security measures which prevent or restrict access to the Gardens, the Client shall:

- 4.2.1 ensure that the Client (or its agents) is available to provide access on the days and at the times when the Contractor requires access to the Gardens; or
- 4.2.2 provide keys or access codes so as to enable the Contractor, together with its vehicles, to enter the Premises.

Unless otherwise agreed by the Parties or set out in the order form, the Contractor will require access to the Premises at any time on the days on which the Gardening Services are to be performed between the hours of [8 am] and [4 pm].

## **4.3 Provision of Information**

Before the Contractor commences any of the Services, the Client shall inform the Contractor of:

- 4.3.1 any dangers or hazards, whether hidden or not, buried pipes, cables or other objects which the Contractor is likely to encounter during the performance of the Services; and
- 4.3.2 any plants, fixtures, fittings, equipment, furniture or other items which are fragile or vulnerable to damage and which the Contractor is likely to encounter during the performance of the Services.

The Client acknowledges and agrees that, while the Contractor will take the utmost care to avoid damage to such items, the Contractor cannot guarantee that such items will not be damaged and the Contractor shall have no liability to the Client for any damage or associated costs in respect of such items.

#### **4.4 Plants & Decorative / Practical Items**

- 4.4.1 If the Client wishes any new plants to be planted or decorative or practical items (such as pots, decorative gravel/bark, edging, fence panels, sheds etc.) to be placed in the Gardens:
  - (a) the Client shall discuss its requirements with the Contractor, which shall then provide to the Client a list of possible plants / items with their costs;
  - (b) the Client shall instruct the Contractor which plants / items to purchase and where they are to be planted / placed;
  - (c) the Contractor shall purchase the plants / items and plant / place them as instructed by the Client.
- 4.4.2 The risk in new plants / items supplied by the Contractor shall pass to the Client on the date the new plants / items are delivered to the Client. However, the property in new plants / items supplied by the Contractor shall not pass to the Client until the Contractor has received the payment of all sums owing concerning those new plants / items in full (and any other sums that are due or owing to the Contractor), whether or not delivery has made.
- 4.4.3 Following the planting of new plants / placing of new items the Client shall comply with all reasonable instructions given by the Contractor and /or the manufacturer for the care of such plants / items. In relation to plants, the Client shall water and feed them at the times and by the means specified by the Contractor.
- 4.4.4 Save where the same forms part of the Services, the Client shall be responsible for the care of all plants / items at all times after they have been planted / placed by the Contractor. The Contractor shall have no liability to the Client for any plant which dies or fails to flourish as a result of any act or omission of the Client or any inclement weather conditions, other unfavourable environmental condition or matter outside of the reasonable control of the Contractor

4.4.5 The Client acknowledges and agrees that any new plants / items supplied by the Contractor are ordered from third parties with which the Contractor has only a contractual relationship. Therefore time shall not be essence for:

- (a) the ordering of new plants / items by the Contractor; or
- (b) the delivery of new plants / items, including any dates for delivery provided by third parties or the Contractor.

#### **4.5 Alterations**

The Client shall not materially alter any part of the Gardens from the way they were when visited by the Contractor or described by the Client to the Contractor. The Client acknowledges and agrees that if any such alteration is made, then the amount and scope of the Services and/or the Fees may need to be changed if, in the reasonable opinion of the Contractor, the Services need to be increased. Furthermore, the Client shall not remove or change the type of soil in the areas where the Gardening Services are to be provided.

### **5 Insurance & Liability**

#### **5.1 Liability to employees**

The Contractor shall insure all persons employed or engaged in the provision of the Services against accident.

#### **5.2 Liability to others**

The Contractor shall at all times maintain with reputable insurers such insurances as may be necessary to cover all liability which the Contractor may incur in respect of any personal injury, death or damage to property whatsoever caused by or arising out of or in the course of the carrying out of the Contractor' duties under this Agreement, such insurance to be for at least [£1,000,000]. The Contractor shall following a request from the Client supply a copy or evidence of such insurance and of the receipt for the current premium.

#### **5.3 Total liability**

Except in the case of death or personal injury caused by the Contractor's negligence, the liability of the Contractor under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever shall not exceed the Charge(s) paid by the Client to the Contractor under this Agreement. Neither party shall be liable to the other in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill.

### **6 Payment and invoices**

## **6.1 Payments**

In consideration of the Services to be rendered by the Contractor the Client shall pay to the Contractor [the amounts set out in the Order form.] (OR) [the following amounts:]

- 6.1.1 [a management fee of £... [per year (*or*) for each month during the first year of this Agreement and thereafter as increased by the Contractor may increase by giving not less than [3 months'] prior written notice to the Client]; and
- 6.1.2 [a sum equal to the cost of the gardeners providing the Services calculated at the rate of £... per person per hour during the first year of this Agreement and in each subsequent year at the rate per hour agreed between the Client and Contractor in writing before the commencement of the relevant year;] and
- 6.1.3 the cost charged to the Contractor for fertiliser, plants, shrubs and trees, and stakes and other consumables planted or used in accordance with clause 4.4 above.

These fees shall apply to the provision of the Services only. All additional services and supplies requested by the Client shall be subject to additional fees charged at the Contractor's standard rates from time to time. A list of such standard rates is available on request.

## **6.2 Invoicing**

The Contractor shall deliver to the Client in respect of each calendar month an invoice detailing all sums payable in accordance with these terms during that month, together with copies of all relevant time sheets, and invoices and vouchers for goods purchased and delivered.

## **6.3 Payment & Consequences of Non-Payment**

- 6.3.1 The Client shall pay all invoices within [30 days] of the date of the relevant invoice.
- 6.3.2 If the Client does not make a payment by the required date stated as provided for in this Agreement then the Contractor shall be entitled to:
  - (a) charge interest on the outstanding amount at the rate of 3% a year above the base lending rate of (name of bank) plc, accruing daily;
  - (b) require the Client to pay, in advance, for any Services (or any part of the Services) which have not yet been performed; and
  - (c) not perform any further Services (or any part of the Services) until all such outstanding or requested payments have been received without liability to the Client.

## **7 VAT**

- 7.1 All sums payable under this Agreement, unless otherwise stated, are exclusive of VAT, which the Contractor shall include in its monthly invoices as appropriate.

7.2 All VAT shall be paid by the Client at the same time as the payment on which it is chargeable.

## **8 Determination**

In addition to the right to give written notice in accordance with clause 1 above, the Contractor may determine this Agreement by immediate written notice in the event of the Client:

8.1 breaching any term of this Agreement; or

8.2 (*being an individual*) becoming subject to a bankruptcy order or having an interim receiver appointed to his property; or

8.3 (*being a company*) entering into liquidation or into administration, or having a receiver appointed over all or any part of its assets.

On determination of this Agreement for any reason, the Client shall pay for all Services provided up to the date of termination, and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by the Contractor for the performance of the Services prior to the date of termination.

## **9 General**

### **9.1 Force majeure**

Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate this Agreement by written notice to the other Party.

### **9.2 Amendments**

This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

### **9.3 Entire agreement**

This Agreement contains the whole agreement between the parties in respect of subject matter of agreement and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.

### **9.4 Waiver**

No failure or delay by the Contractor in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

#### **9.5 Agency, partnership etc.**

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

#### **9.6 Severance**

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

#### **9.7 Notices**

Any notice to be given under this Agreement shall be in writing and shall be sent by first class recorded mail to the address of the relevant Party set out in clause 1.

#### **9.8 Law and jurisdiction**

The validity, construction and performance of this Agreement shall be governed by English law and shall be subject to the [non-]exclusive jurisdiction of the English courts to which the Parties submit.

#### **9.9 Third parties**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of this Agreement this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

#### **9.10 The Gardeners Guild**

The Contractor is a member in good standing of The Gardeners Guild and shall comply with any code of practice, customer charter or similar code of that organisation. If there is any conflict between such a code and the provisions of this Agreement or any reasonable instruction of the Client, the provisions of this Agreement or the instruction of the Client, as applicable, shall prevail.



Signed for and on behalf of the Client.

Name and position of signatory:

Date:

Signed by For and on behalf of the Contractor: Plan & Plant Ltd.

Name and position of signatory:

Date: