

## RHS Terms and Conditions

### Provision of Services and Deliverables

#### Dated

- (1) **[INSERT SUPPLIER NAME]** incorporated and registered in England and Wales with company number [INSERT] whose registered office is at **[INSERT ADDRESS]** ("**Supplier**");
- (2) **THE ROYAL HORTICULTURAL SOCIETY** registered charity number 222879/SC038262 of 80 Vincent Square, London, SW1P 2PE ("**RHS**").

#### AGREED TERMS

##### 1 Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**"Deliverables"**: any deliverables to be provided by the Supplier in connection with the Services as described in the Schedule;

**"Event"** means the RHS Flower Show(s) at which the Supplier has been engaged to provide the Services, as set out in the Schedule.

**"RHS Regulations"**: the RHS Flower Show Manual applicable to the Event, including the RHS Regulations and the Health and Safety Guides for RHS Shows, and any other RHS policies, procedures, requirements and all directions provided by RHS personnel in relation to the Event.

**"Schedule"** means the schedule to this Agreement;

**"Service Dates"**: the dates and times that the Supplier shall provide the Services and any Equipment as specified in the Schedule.

**"Services"**: the services described in the Schedule, including the provision of any Deliverables.

**"Service Fees"**: the Service Fees set out in the Schedule.

**"Site"**: the location at which the Event will be held and the Services will be provided, as set out in the schedule.

- 1.2 The Schedule forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedule.
- 1.3 References to clauses and schedules are to the clauses and schedules of this Agreement. References to paragraphs are to paragraphs of the relevant schedule.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to **writing** or **written** includes e-mail, provided it is sent by the authorised representative of one party to the authorised representative of the other party.
- 1.8 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2 Provision of Services**

- 2.1 The Supplier shall provide the Services and any Deliverables at the Site during the Service Dates in accordance with the terms and conditions of this Agreement, the RHS Regulations and any additional requirements set out in the Schedule.
- 2.2 The Services shall be provided by the Supplier and any Deliverables shall be delivered and installed by the Supplier at the Site on the dates agreed with RHS at or by the specified time. Time is of the essence with respect to the provision of the Services and delivery and installation of Deliverables.

## **3 Service Fees and Payment**

- 3.1 In consideration of the provision of the Services by the Supplier to the RHS, the RHS shall pay the Supplier the Service Fees in accordance with the payment terms set out in the Schedule.
- 3.2 The Service Fees shall be payable within thirty (30) days of receipt of an invoice from the Supplier, and shall be paid by RHS in pounds sterling by BACS payment.
- 3 The Service Fees are exclusive of VAT, which shall be payable by the Supplier if applicable at the rate and in the manner from time to time prescribed by law. The Service Fees are inclusive of all other charges, including cost of Deliverables, delivery, installation, maintenance, cleaning, de-rig, personnel and insurance.

## **4 Supplier's Obligations**

- 4.1 The Supplier shall ensure that:
- 4.1.1 it uses suitably skilled, trained and experienced staff to perform the Services;
  - 4.1.2 all Deliverables (if applicable) conform to the description and any specification made available by the Service Provider, are of satisfactory quality and fit for any purpose held out by the Service Provider;
  - 4.1.3 it repairs and replaces any faulty Deliverables immediately on receiving notification from the RHS of any fault or defect in the Deliverables;
  - 4.1.4 it performs its obligations under this Agreement in accordance with all laws and regulations (including health and safety laws and regulations), guidelines and industry codes, practices and standards applicable to the provision of the Services and the Deliverables;

- 4.1.5 it obtains and maintains at all times during the term of this Agreement at its own expense the minimum insurance requirements specified in the Schedule, or if not specified, such insurance as is prudent to cover any third party or public liability risks of whatever nature and howsoever arising in connection with the Services;
- 4.1.6 it holds all licences, permits and certificates necessary to provide the Services in accordance with this Agreement; and
- 4.1.7 it provides to the RHS accurate and complete information requested by RHS personnel from time to time in connection with the Services, including personnel lists, policies, procedures, insurance details, certificates, licences and permits.

## **5 Liability**

- 5.1 Without prejudice to clause 5.2, RHS' maximum aggregate liability for breach of this Agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the aggregate of the Service Fees due under this Agreement.
- 5.2 Nothing in this Agreement shall exclude or in any way limit:
  - 5.2.1 either party's liability for death or personal injury caused by its own negligence;
  - 5.2.2 either party's liability for fraud or fraudulent misrepresentation;
  - 5.2.3 liability for any breach of terms implied by the Supply of Goods and Services Act 1982; or
  - 5.2.4 any other liability which cannot be excluded by law.
- 5.3 The Supplier shall indemnify and keep the RHS indemnified from and against all losses, damages, costs, charges and expenses whatsoever suffered or sustained by it and arising out of or in connection with a breach of any of the obligations of the Supplier under this Agreement except to the extent that such losses, damages, costs, charges and expenses result from the negligence of the RHS.

## **6 Term and Termination**

- 6.1 This Agreement commences on the date on which it has been signed by both parties and shall continue until the last Service Date set out in the Schedule, unless this Agreement is terminated earlier in accordance with its terms.
- 6.2 Either party may terminate this Agreement immediately by written notice to the other party if:
  - 6.2.1 the other party commits a material breach of this Agreement which breach is irremediable, or which breach (if remediable) is not remedied immediately after the service of written notice from the non-breaching party requiring it to do so;
  - 6.2.2 the other party is unable to pay its debts, or ceases to pay its creditors in the ordinary course of business or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the

company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of the relevant party under this Agreement) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of the party giving notice means that the other may be unable to pay its debts; or

6.2.3 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

6.3 The RHS may terminate this Agreement, in whole or in part, without liability to the Supplier, on written notice to the Supplier if the Event is cancelled or the RHS decides not to stage the Event. If this Agreement is terminated by the RHS in part or only in respect of one Event, then the RHS and Supplier shall enter into a written variation to this Agreement to reflect any amendments that are agreed as a result of the partial termination.

6.4 Termination of this Agreement shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

## **7 Confidential Information**

7.1 Neither party shall, during and after termination of this Agreement, without the prior written consent of the other party, use or disclose to any other person any information of the other party which is identified as confidential or which is confidential by its nature.

7.2 Each party shall on demand and on termination of this Agreement surrender to the other party all materials relating to such confidential information in its or its personnel's, agents' or representatives' possession.

## **8 Assignment and Subcontracting**

8.1 Supplier shall not assign, transfer, subcontract or deal in any other manner with any of its rights under this Agreement without the prior written consent of the RHS. The Supplier shall remain responsible for the performance of the Services under this Agreement, regardless of the use of any authorised subcontractors.

## **9 General provisions**

9.1 This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

9.2 Notwithstanding the foregoing, the RHS' rights and remedies under this Agreement are in addition to the rights and remedies available to it at law, including in respect of the statutory conditions implied into this Agreement by the Supply of Goods and Services Act 1982.

9.3 The Supplier acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement.

9.4 Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

- 9.5 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 10.5 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 10.6 A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 10.7 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a party to this Agreement.
- 10.8 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **10 Governing Law and Jurisdiction**

- 10.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with English law.
- 10.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

This Agreement has been entered into on the date stated at the beginning of it.

**Execution page**

**Signed by** )  
duly authorised for and on behalf of )  
**THE ROYAL HORTICULTURAL SOCIETY** )  
)

sign here:

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date:

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**Signed by** )  
duly authorised for and on behalf of )  
**[INSERT]** )  
)

sign here:

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date:

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## SCHEDULE

<p><b>Services</b></p>	<p>To grow high quality plants (quantities to be recommended by the Supplier) guaranteed to be in flower from 2 – 8 July to produce a mass flowering effect at RHS Hampton Court Palace Flower Show and delivered to site on the 27 June 2018.</p> <p>The Supplier will:</p> <ul style="list-style-type: none"> <li>• Clearly identify on the nursery and during delivery that the plants are destined for the Royal Horticultural Society RHS Hampton Court Palace Flower Show.</li> <li>• Provide monthly reports and photographs of progress.</li> <li>• Allow for inspection of the plants with reasonable notice (48hrs).</li> <li>• Deliver the plants to the Site on time and attend upon the company or contractor delivering the plants to ensure a smooth handover.</li> <li>• Ensure that the quality of the plants is of utmost importance.</li> </ul>
<p><b>Deliverables</b></p>	<p>Plant Specification            Botanical name: <i>Verbena bonariensis</i> or suitable alternative.            Pot Size: [To be updated after recommendations from the preferred supplier are considered.]            Root protection: Container grown.            Height: 130-150cm or dependant on alternative plant choice.            Flowering: Must be in flower from 2 – 8 July 2018.            Quantity: [To be updated after recommendations from the preferred Supplier are considered.]</p> <p>Summary            The plants will be of excellent quality, guaranteed to be in flower from 2 -8 July 2018 and free of Pest and Disease.</p>
<p><b>Events</b></p>	<p>RHS Hampton Court Palace Flower Show 2018</p>
<p><b>Service Dates</b></p>	<p>Upon appointment until 28 June 2018</p> <p>Delivery date 27 June 2018</p>
<p><b>Site</b></p>	<p>RHS Hampton Court Palace Flower Show, Hampton Court Palace, Home Park, Kingston, Surrey, KT8 9AT</p>
<p><b>Service Fees (including timing for issuance of invoices)</b></p>	<p>[To be updated following appointment of preferred supplier.]</p>
<p><b>Minimum Insurance Requirements</b></p>	<p>as per clause 4.1.5</p>
<p><b>Additional Requirements</b></p>	<p>Ensure compliance with the RHS Environmental Responsibilities set out in Appendix A [Note – included in tender documents]</p>

**Transport and Delivery**

Consignments shall be clearly addressed, loaded in manageable units, securely crated, palletted or packaged to withstand mechanical damage. The RHS has provision to provide a telehandler and operator to unload at the delivery site if required.

The Supplier shall ensure that all plant material shall be loaded in such a way that breakage or crushing is avoided during loading, transit and unloading.

Provision shall also be made to ensure that the load remains cool and moist at all times.

Due to the nature of this contract the delivery date / time are not flexible and must be met.

Transit by Third Parties (e.g. Post, rail, road, etc). Where transport is entrusted to a third party, not under the control of the Supplier, the Supplier must ensure that the loading is done with adequate skill and care to protect the plants whilst in the third party's charge. The Supplier bears the risk of loss or damage to the plants during transit until delivery at the Site.

**Contract Management and Sub-contractors**

Supplier shall provide accurate and complete information to the RHS regarding the Supplier's company management structure and how the contract will be managed, details of the office from which the contract will be managed and the nursery where the plants will be grown.

[Note: Sub-contracting elements of the contract will be acceptable with the RHS's prior written consent, and provided the result of any sub-contracting is an increase in quality and performance of the plants by using specialists. The Supplier will be fully responsible for the management of all personnel and permitted sub-contractors. The Supplier will be accountable for the conduct and performance of any sub-contractors.

**Health & Safety Information**

The Supplier shall provide the following documentation to the RHS on request, and no later than six (6) weeks prior to the Service Dates:

- Site specific risk assessment
- A work method statement
- A copy of Supplier's Health & Safety Policy
- Form 1, of the RHS Flower Show Manual completed and signed by the Supplier;
- A copy of Supplier's insurance policies

***[Additional Requirements to be updated following appointment of preferred supplier]***