

OFFICIAL

Appendix 2

DATED

RIGHT TO GROW LICENCE

relating to the area known as

[INSERT NAME OF RIGHT TO GROW PLOT]

between

Kingston Upon Hull City Council

and

[Party 2]



OFFICIAL

CONTENTS

CLAUSE

1. Interpretation.....	2
2. Licence to occupy	5
3. Licensee's obligations.....	6
4. Termination	8
5. Notices.....	9
6. No warranties for use or condition	10
7. Limitation of Council's liability	10
8. Third party rights.....	10
9. Governing law.....	11
10. Jurisdiction	11

This licence is dated [DATE]

Parties

- (1) KINGSTON UPON HULL CITY COUNCIL of The Guildhall, Alfred Gelder Street, Hull, HU1 2AA (**Council**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **OR** [FULL NAME OF CIO] [(also known as [WORKING NAME OR ACRONYM OF CIO])], a charitable incorporated organisation, a registered charity in England and Wales (number [NUMBER]) whose principal office is at [PRINCIPAL OFFICE ADDRESS OF CIO] **OR** [INDIVIDUAL NAME] of [INDIVIDUAL ADDRESS] (**Licensee**)

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this licence.

1.1 Definitions:

Council's Holding: all that land and buildings known as [ADDRESS] and shown edged [COLOUR] on the Plan]or such reduced or extended area as the Council may from time to time designate as comprising the Council's Holding.

Accessways: such roads, paths, and other means of access within the Council's Holding the use of which is necessary for obtaining access to and egress from the Right to Grow Plot as designated from time to time by the Council.

Competent Authority: any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers.

Designated Hours: the hours between sunset and sunrise each day but no later than 9.00pm or any other period as the Council in its absolute discretion may determine on reasonable notice to the Licensee.

Insolvency Event: subject to clause 1.15 , any one or more of the following:

- a) the Licensee suspending, or threatening to suspend, payment of its debts or being or becoming unable to pay its debts as they fall due or admitting inability to pay its debts or (being a company) being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986
- b) the Licensee, or any person on its behalf, proposing or taking any step with a view to proposing a voluntary arrangement, scheme of arrangement, restructuring plan or any other compromise or arrangement with the Licensee's creditors or any class of them;
- c) the making of an application for an administration order or the making of an administration order in relation to the Licensee;
- d) the giving of any notice of intention to appoint an administrator, or the filing at court of any notice of appointment of, or notice of intention to appoint, an administrator in relation to the Licensee;
- e) the appointment of a receiver or manager or an administrative receiver in relation to any Right to Grow Plot or income of the Licensee;
- f) the commencement of a voluntary winding-up in respect of the Licensee, except a voluntary winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies;
- g) the presentation of a petition for a winding-up order or the making of a winding-up order in respect of the Licensee;
- h) the striking-off of the Licensee from the Register of Companies or the making of an application for the Licensee to be struck-off;
- i) the Licensee otherwise ceasing to exist (or, if a natural person, dying);
- j) the making of an application for a bankruptcy order, the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Licensee;
- k) the making of an application to court for, or obtaining, a moratorium under Part A1 of the Insolvency Act 1986 in relation to the Licensee.

Licence Fee: the amount of One Pound (£1.00) if demanded or such other amount as the Council in its absolute discretion may from time to time determine on giving three months' notice.

Licence Period: the period from and including [DATE] until the date on which this licence is determined in accordance with clause 4.

Necessary Consents: all planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the Permitted Use.

Permitted Use: to use and maintain the Right to Grow Plot for the purpose of:

- a) conserving, protecting and restoring biodiversity for the benefit of the community and the natural environment, and
- b) horticultural production for personal use and consumption only.

Plan: the plan attached to this licence marked "Plan".

Right to Grow Plot: the land [shown edged [COLOUR] on the Plan] being [measurement] square meters forming part of the Council's Holding or such other space as allocated to the Licensee from time to time under clause 2.2(d).

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this licence.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedule forms part of this licence and shall have effect as if set out in full in the body of this licence. Any reference to this licence includes the Schedule.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.9 A reference to **writing** or **written** excludes fax and e-mail.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.

- 1.11 References to clauses and Schedules are to the clauses and Schedules of this licence and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.12 Any words following the terms **including, include, in particular, for example** 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.
- 1.13 Unless expressly provided otherwise, the obligations and liabilities of the the Licensee under this licence are joint and several.
- 1.14 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England or the Tuesdays following the Whitsuntide and August bank holidays..
- 1.15 For the purposes of the definition of **Insolvency Event**:
- (a) where any of the paragraphs in that definition apply in relation to:
 - (i) a partnership or limited partnership (as defined in the Partnership Act 1890 and the Limited Partnerships Act 1907 respectively), that paragraph shall apply subject to the modifications referred to in the Insolvent Partnerships Order 1994 (SI 1994/2421) (as amended); and
 - (ii) a limited liability partnership (as defined in the Limited Liability Partnerships Act 2000), that paragraph shall apply subject to the modifications referred to in the Limited Liability Partnerships Regulations 2001 (SI 2001/1090) (as amended); and
 - (iii) a charitable incorporated organisation (as defined in the Charities Act 2011), that paragraph shall apply subject to the modifications referred to in the Charitable Incorporated Organisations (Dissolution and Insolvency) Regulations 2012 (SI 2012/3013) (as amended).
 - (b) **Insolvency Event** includes any analogous proceedings or events that may be taken pursuant to the legislation of another jurisdiction in relation to a licensee incorporated or domiciled in such relevant jurisdiction.

2. Licence to occupy

- 2.1 Subject to clause 3 and clause 4, the Council permits the Licensee to occupy the Right to Grow Plot for the Permitted Use for the Licence Period during the Designated Hours in common with the Council and all others authorised by the Council (so far as is not inconsistent with the rights given to the Licensee to use the Right to Grow Plot for the Permitted Use) together with the right for the

Licensee to use during the Designated Hours such parts of the Accessways for the purpose of access to and egress from the Right to Grow Plot as shall from time to time be designated by the Council for such purpose.

2.2 The Licensee acknowledges that:

- (a) the Licensee shall occupy the Right to Grow Plot as a licensee and that no relationship of landlord and tenant is created between the Council and the Licensee by this licence;
- (b) the Council retains control, possession and management of the Right to Grow Plot and the Licensee has no right to exclude the Council from the Right to Grow Plot;
- (c) the licence to occupy granted by this agreement is personal to the Licensee and is not assignable and the rights given in clause 2.1 may only be exercised by the Licensee and its employees; and
- (d) without prejudice to its rights under clause 4, the Council shall be entitled at any time on giving reasonable notice to require the Licensee to transfer to alternative space elsewhere within the Council's Holding or other land owned by the Council and the Licensee shall comply with such requirement.

3. Licensee's obligations

3.1 The Licensee agrees and undertakes:

- (a) to pay to the Council the Licence Fee payable without any deduction on the date of this agreement;
- (b) to keep the Right to Grow Plot clean, maintained and clear of rubbish;
- (c) to keep all the Council's Holding, Accessways and any neighbouring property free from gardening tools and equipment and to ensure that all tools and equipment are appropriately and safely stored and removed from the Right to Grow Plot outside of the Designated Hours.
- (d) to keep the Right to Grow Plot maintained in an appropriate state of cultivation and fertility to the satisfaction of the Council;
- (e) not to grow any plant species used in or associated with the production of any controlled substances and products including but not limited those specified in Schedule 2 to the Misuse of Drugs Act 1971 and Schedules 1 to 5 (inclusively) to The Misuse of Drugs Regulations 2001 (SI 2001/3998) or any other subsequent legislation.
- (f) Not to grow any invasive plant species including but not limited to those listed by the guidance 'Invasive non-native (alien) plant species: rules in England and Wales' published by the Department for Environment, Food & Rural Affairs and the Animal

and Plant Health Agency <www.gov.uk/guidance/invasive-non-native-alien-plant-species-rules-in-england-and-wales> and any future updates or successor documents.

- (g) not to use the Right to Grow Plot other than for the Permitted Use;
- (h) not to use the Right to Grow Plot for the purpose of any trade or business including the sale of produce grown on the Right to Grow Plot;
- (i) not to make any alteration or addition whatsoever to the Right to Grow Plot, except as permitted by the Permitted Use including:
 - (i) felling, cutting or pruning trees,
 - (ii) planting of trees, shrubs or bushes of any kind, save for food bearing plants not exceeding 2 meters in height,
 - (iii) erection of any buildings or structures, and
 - (iv) erection of fencing and boundary markers;
- (j) to ensure the Licensee's use of the land does not affect sight lines and highway safety,
- (k) not to display any advertisement, signboards, nameplate, inscription, flag, banner, placard, poster, signs or notices at the Right to Grow Plot or elsewhere in the Council's Holding;
- (l) not to do or permit to be done on the Right to Grow Plot anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the Council or to tenants or occupiers of the Council's Holding or any owner or occupier of neighbouring property;
- (m) not to cause or permit to be caused any damage to:
 - (i) the Right to Grow Plot, Council's Holding or any neighbouring property; or
 - (ii) any property of the owners or occupiers of the Council's Holding or any neighbouring property;
- (n) not to obstruct the Accessways, make them dirty or untidy or leave any rubbish on them;
- (o) not to apply for any planning permission in respect of the Right to Grow Plot;
- (p) not to do anything that will or might constitute a breach of any Necessary Consents affecting the Right to Grow Plot or which will or might vitiate in whole or in part any insurance effected by the Council in respect of the Right to Grow Plot and Council's Holding from time to time;

- (q) to comply with all laws and with any recommendations of the Council and any Competent Authority;
- (r) to observe any rules and regulations the Council makes and notifies to the Licensee from time to time governing the Licensee's use of the Right to Grow Plot and the Accessways;
- (s) to leave the Right to Grow Plot in a clean and tidy condition and to remove the Licensee's furniture equipment and goods from the Right to Grow Plot at the end of the Licence Period;
- (t) to indemnify the Council and keep the Council indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from:
 - (i) this licence;
 - (ii) any breach of the Licensee's undertakings contained in clause 3; and/or
 - (iii) the exercise of any rights given in clause 2;
- (u) to pay to the Council interest on the Licence Fee or other payments at the rate of 4 per cent per annum above the base rate of Barclays Bank from time to time calculated on a daily basis from the due date until payment if the Licensee shall fail to pay the Licence Fee or any other payments due under this licence within 14 days of the due date (if demanded); and
- (v) [to maintain third party and public liability insurance cover in respect of the execution and use of the Licensee's rights and obligations under this Licence whether by the Licensee, its agents or persons under its control:
 - (i) with a reputable insurance company for not less than £5,000,000, and
 - (ii) against injury or death and loss caused to persons and damage or destruction caused to property,and to provide to the Council, upon reasonable request, details of the insurance and evidence that cover is in force but, in the absence of change of insurer, policy, conditions or cover, no more than once in any insurance year applicable to the policy.]

4. Termination

4.1 This licence shall end on the earliest of:

- (a) [[DATE ON WHICH LICENCE TO END];

- (b) the expiry of any notice given by the Council to the Licensee at any time on breach of any of the Licensee's obligations contained in clause 3;
- (c) the expiry of not less than three months' notice given by the Council to the Licensee or by the Licensee to the Council; and
- (d) the expiry of any notice given by the Council to the Licensee at any time following the occurrence of an Insolvency Event (if applicable) or bankruptcy.

4.2 Termination of this licence shall not affect the rights of either party in connection with any breach of any obligation under this licence which existed at or before the date of termination.

5. Notices

5.1 Any notice or other communication given to the Licensee under or in connection with this licence shall be in writing and shall be given by hand, or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or postal address (in any other case).

5.2 Any notice or other communication given to the Council under or in connection with this licence shall be in writing and shall be given by hand, email or by pre-paid first-class post or other next working day delivery service for the attention of the Open Space Strategic Manager at Parks & Open Spaces Development & Strategy, Kingston Upon Hull City Council, Brunswick House, Strand Close, Hull, HU2 9DB.

5.3 If a notice or other communication complies with the criteria in clause 5.1 and 5.2, it shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice or other communication is left at the proper address; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting or sending.

5.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

5.5 A notice or other communication given under this licence is not valid if sent by e-mail or fax.

6. No warranties for use or condition

- 6.1 The Council gives no warranty that the Right to Grow Plot possesses the Necessary Consents for the Permitted Use.
- 6.2 The Council gives no warranty that the Right to Grow Plot is physically fit for the purposes specified in clause 2.
- 6.3 The Licensee acknowledges that it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that may have been made by or on behalf of the Council before the date of this licence as to any of the matters mentioned in clause 6.1 or clause 6.2.
- 6.4 Nothing in this clause shall limit or exclude any liability for fraud.

7. Limitation of Council's liability

- 7.1 Subject to clause 7.2, the Council is not liable for:
- (a) the death of, or injury to the Licensee, its agents, or invitees to the Right to Grow Plot; or
 - (b) damage to any property of the Licensee or that of the Licensee's agents, or other invitees to the Right to Grow Plot; or
 - (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Licensee or the Licensee's agents or other invitees to the Right to Grow Plot in the exercise or purported exercise of the rights granted by clause 2.
- 7.2 Nothing in clause 7.1 shall limit or exclude the Council's liability for:
- (a) death or personal injury or damage to property caused by negligence on the part of the Council or its employees or agents; or
 - (b) any matter in respect of which it would be unlawful for the Council to exclude or restrict liability.

8. Third party rights

This licence does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this licence.

9. Governing law

This licence and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

10. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this licence or its subject matter or formation.

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

Signed by

.....

Authorised Signatory

for and on behalf of
Kingston Upon Hull City Council

Signed by

.....

[for and on behalf of [NAME OF Licensee]]