



## Landscape and Snow Contractors

### **TERMS & CONDITIONS FOR PROVISION OF SNOW SERVICES**

These Terms and Conditions for Provision of Snow Services (“Terms”) are the only terms that govern the sale and provision of Services (as defined below) by Earth Development, Inc. (“Earth”). The accompanying quote, proposal, order acknowledgement or invoice (“Order”) and these Terms (together, the “Agreement”) comprise the entire agreement between Earth and the customer (“Customer”), and supersede all prior or contemporaneous communications, understandings or agreements (whether verbal or written). Earth and Customer are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

These Terms prevail over any of Customer’s general terms or conditions of purchase regardless of whether or when Customer submitted its order or alternate terms. Neither the failure of Earth to object to Customer’s terms and conditions nor the fulfillment of Customer’s order will (i) constitute acceptance of Customer’s terms and conditions or (ii) serve to modify or amend these Terms. If there is any conflict or inconsistency between these Terms and those set forth in the Order, then the specific modification(s) noted in the Order will govern and control.

THESE TERMS ARE SUBJECT TO CHANGE BY EARTH WITHOUT PRIOR WRITTEN NOTICE AT ANY TIME, IN ITS SOLE DISCRETION. ANY CHANGES TO THESE TERMS WILL BE IN EFFECT AS OF THE “LAST UPDATED DATE” REFERENCED ON THE EARTH WEBSITE LOCATED AT [EARTHDEVELOPMENTINC.COM](http://EARTHDEVELOPMENTINC.COM) (THE “SITE”). CUSTOMER SHOULD REVIEW THESE TERMS PRIOR TO PURCHASING ANY PRODUCT OR SERVICES THAT ARE AVAILABLE, AND CUSTOMER’S PURCHASE OF ANY PRODUCT OR SERVICES AFTER THE “LAST UPDATED DATE” WILL CONSTITUTE CUSTOMER’S ACCEPTANCE OF AND AGREEMENT TO SUCH CHANGES.

#### 1. **Services**.

(a) **Services**. During the Term (as defined below), Earth shall perform the services described in the Order, which generally consist of snow plowing, snow removal, de-icing, and ice control services (collectively, the “Services”) for Customer, at the location(s) identified in the Order (the “Service Location(s)”). Customer may request changes to the Services at any time upon written request to Earth, provided that the Parties shall enter into a written amendment to the Order documenting any adjustments to the Services and resulting changes to the Fees, Service Location(s) and/or other terms prior to implementation of any such change(s) and Customer shall be responsible to pay Earth an administrative fee of up to \$250 per change transaction. Unless otherwise specified in an Order, Earth shall perform the Services as follows:

(i) **Snow Plow Specifications**: Services will commence upon one (1) inch of accumulation during a snow/ice storm event, and will continue to take place on a reasonable basis throughout each snow/ice storm event. Plowing during snow/ice events will include main lanes in such parking lots, entrances and loading docks as are designated in the Order. Snow will be pushed to designated areas at the Service Location as agreed upon by Earth and Customer in the Order. Final clean-up plowing will be completed at the end of each snow/ice event. De-icing materials will be applied in a manner consistent with the service level classification designated by Customer and identified on the Order.

(ii) **Snow Shoveling Specifications**: Services will take place on a reasonable basis throughout each snow event of such portions of the Service Location as are designated in the Order, and continue until the snow event is complete. De-icing materials will be applied in a

manner consistent with the service level classification designated by Customer and identified on the Order.

(b) Equipment and Materials. Earth shall provide all necessary and adequate personnel, materials (including, without limitation, all salt and de-icing materials), tools, equipment and vehicles (including, without limitation, snow plows, skid loaders, trucks and shovels) necessary to perform the Services at the Service Location(s). Customer acknowledges that product and material shortages or other circumstances beyond Earth's reasonable control may require Earth to make material/substance substitutions and/or modifications, including without limitation the addition or separate use of grit and sand during icing conditions. Unless otherwise specified in an Order, the Services do not include clean-up of sand or de-icing material (which may be contracted for separately). Earth reserves the right to add or pass-through any surcharges that it incurs on de-icing materials due to shortage or shipment from other markets. Site limitations or use, topography and/or lack of natural surface at Service Location(s) may require Earth to recommend loader services on a storm-by-storm basis, which services would be performed at an extra charge.

(c) Determination of Accumulation. Customer understands that snow/ice accumulations may vary throughout a region and that drifting snow may necessitate Services for a particular Service Location, regardless of the total snowfall totals. Earth will monitor weather conditions and the need to perform Services at any Service Location(s) based upon site inspections and independent weather-service measurements (i.e. Trueweather or similar service). The report and on-site inspection will be compared and the deepest depth will be used to determine total accumulation. In any event, Earth shall make the final determination of when Services are necessary at any Service Location.

(d) Extreme Weather Conditions. Customer acknowledges that Services may be delayed or unavailable in the event of extreme weather conditions (such as blizzard type conditions or temperatures or wind chill factors below -20°F). Earth reserves the right to delay or stop work during such extreme conditions so as not to create unsafe working conditions for its employees and contractors. Customer further acknowledges that excessive snow accumulation may result in the loss of parking spaces and/or reduce driving areas in, on and about the Service Location. Any requests for snow relocation within the Service Location or removal of snow from the Service Location will result in additional charges.

2. **Fees and Payment.** Subject to the terms and conditions of this Section 2, and as the sole consideration for the performance of the Services under this Agreement, Customer shall pay Earth all properly invoiced fees in accordance with and as set forth in the Order and/or this Agreement (the "Fees"). The Fees shall be based on hours of service (rounded up to the nearest hour) and on snow depth, as measured by the official reading of the National Weather Service and/or on-site measurement by Earth or its representatives, and the cost of loading and hauling snow shall be billed on a time and materials basis. Earth may, in its sole discretion, increase Fees by up to five percent (5%) at the beginning of each contract year upon written notice to Customer (which notice may be contained in the first invoice of the season).

(a) Invoices and Payment. Earth will invoice Customer on a monthly basis, and Customer will incur a ten percent (10%) administrative fee if it requires billing on any other schedule. Unless otherwise agreed by Earth in writing, Customer agrees to make full payment of all Fees within thirty (30) days of the date of Earth's invoice, in U.S. Dollars. A DELINQUENCY CHARGE OF ONE AND ONE-HALF PERCENT (1-1/2%) PER MONTH OR EIGHTEEN PERCENT (18%) PER ANNUM OF ANY OUTSTANDING BALANCE NOT PAID WHEN DUE WILL BE ADDED UNTIL PAYMENT IS MADE IN FULL; provided, however, that the delinquency charge shall not exceed the maximum interest rate allowable by applicable law. Earth's receipt and acceptance of any payment less than the full amount due shall not waive any rights of Earth. Earth may set off any amount due from Customer, whether or not under this

Agreement, against any amount due Customer hereunder. All costs and expenses, including but not limited to collection fees and reasonable attorney's fees for the collection of any overdue amount due Earth, shall be paid by Customer.

(b) Record Requests. Subject to the terms and conditions of this Section 2(b), Customer may request copies of Earth's records and documentation related to any Services (and resulting Fees) for a period of thirty (30) days following the date such Services and Fees are invoiced to Customer. Earth has no obligation to respond to or comply with any Customer requests for records or documentation that are received at any time following this thirty (30) day request period. Customer will be charged a reasonable administrative fee at the time it submits any records request, and Earth will have a reasonable period of time (not less than seven (7) calendar days) to retrieve and deliver the requested documentation to Customer.

### 3. Term and Termination

(a) Term. The Services under this Agreement shall commence upon the later of (a) the Effective Date set forth in the Order, (b) the date that Customer signs and delivers the fully executed Order to Earth or (c) the date that is thirty (30) days after Customer completes Services On-Boarding Meeting with Earth personnel, and shall continue for the period of time set forth in the Order (the "Term").

(b) Termination. If Customer defaults in any payment when due, fails to perform any of its other obligations under this Agreement, becomes the subject of any bankruptcy or insolvency proceeding, or whenever, in Earth's discretion, there is doubt as to Customer's financial stability, Earth may, in its sole discretion and without prejudice as to its other lawful remedies, cancel or defer performance and/or demand immediate payment of all of Customer's outstanding invoices or account balances (plus any additional costs, expenses, losses or damages, including without limitation, lost profits, incurred by it as a result of such cancellation, delay, default or bankruptcy), condition future performance against payment of cash in advance and/or terminate any Order or this Agreement.

(c) No Early Termination. Customer may not cancel or defer its rights or obligations under this Agreement or any Order unless expressly agreed in advance in writing by Earth. Customer will be responsible for a \$500 early termination fee for each Order that is terminated prior to the expiration of the Term. If Customer fails to pay any amounts as and when due, Earth may, upon seven (7) days written notice and without prejudice as to its other legal rights or remedies, stop performing Services under any Order until all amounts due to Earth are paid in full (as confirmed in writing by Earth). If Services are stopped due to Customer non-payment for a period of more than thirty (30) days, this Agreement and all Orders will automatically terminate (and Customer shall be liable for the resulting early termination fee(s)).

4. Site Conditions. An express condition to Earth's performance of Services is that the underlying Service Location(s) shall at all times be adequately maintained by Customer without defects and accessible to Earth's equipment and materials. Customer shall be solely responsible for taking any and all measures necessary to provide Earth with a safe and suitable work environment, including, without limitation, any safety precautions reasonably requested by Earth prior to the provision of the Services. Customer acknowledges that a safe work environment is necessary for the performance of the Services and that Earth may not be able to complete, or may refuse to perform the Services in at a Service Location that it reasonably determines, in Earth's sole discretion, to be in otherwise adequately maintained, unsafe or unsuitable (including without limitation, poor site drainage, disrepair of cement or asphalt in walkways or parking surfaces, or melting or falling snow or ice from building overhangs, roof drains or awnings). Earth shall not be liable for any delay in the completion of or inability to complete the Services resulting from Customer's failure to provide a suitable work environment or legally compliant site.

5. **Warranties.** Earth represents and warrants that it shall perform the Services: (i) in accordance with the terms and conditions of this Agreement, (ii) using personnel of required skill, experience and qualifications, (iii) in a timely, workmanlike and professional manner, (iv) in accordance with the highest professional and generally acceptable industry standards in the snow-removal industry, and to the reasonable satisfaction of Customer.

6. **Limitation of Liability.**

(a) Nothing in this Agreement shall constitute an agreement, commitment or guaranty by Earth to obtain and/or maintain at any time a 100% snow-free or ice-free environment at the Service Location(s). Based on temperatures and type of precipitation, it will take varying amounts of time for de-icing and snow melt materials to have effect and mitigate conditions. The use of salt or other de-icing material is meant to expedite the process of melting ice and snow in target areas. Its application may not provide instant or complete attainment of these goals and will be affected by such variables such as air/ground temperature and moisture content of precipitation (among others). Customer acknowledges that snow plowing, snow removal and de-icing may not clear a particular area to "bare pavement" and that slippery or dangerous conditions may continue even after performance of the Services hereunder. Slip, trip and fall hazards or conditions may be present or remain before, during and after Earth has performed the Services required under this Agreement. Earth assumes no liability with respect to naturally occurring hazardous conditions, including without limitation, those that result from melting and refreezing conditions. It is Customer's responsibility to immediately contact Earth if it has concerns regarding the performance of the Services or the current conditions at any Service Location.

(b) Unless directly caused by the sole negligence or willful misconduct of Earth, its agents, subcontractors or representatives, Earth shall in no event be liable or responsible to Customer for: (i) any damage to plant material or turf/grass caused by de-icing products; (ii) any damage to turf/grass caused by Earth's mechanical equipment (including without limitation snowplows and shovels), except that Earth shall repair such damage with topsoil and seed only; (iii) any spalling or flaking of concrete surfaces or any scratches, scrapes, nicks or gouges (or other similar types of damage) to curbs, drive lanes, gutters, concrete protrusions or speed bumps or other unknown or unmarked objects or items at the Service Location(s); (iv) Customer's inadequate maintenance of, or the existence of unsafe or unsuitable conditions at, any Service Location (including without limitation, poor site drainage, disrepair of cement or asphalt, or unsafe conditions resulting from melting or falling snow or ice from building overhangs, roof drains or awnings); (v) lack of storage space for snow, loss of parking spaces and/or reduced driving areas at the Service Location; (vi) Customer's failure to notify tenants that their property, illegally parked vehicles and/or loose items located at the Service Location(s) may be damaged by Earth's performance of the Services hereunder; or (vii) the negligent acts or omissions or more reckless conduct of any other third parties in, on or about the Service Location.

(c) Customer shall indemnify and hold Earth harmless from any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest penalties, fines, fees, costs or expenses of any whatever kind (including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers) incurred by Earth relating to, arising out of or resulting from: (i) any limitations or restrictions Customer has imposed upon the performance of the Services or Customer's refusal or rejection of Services offered by Earth to Customer (whether in the Order or other written communication); or (ii) the site conditions at the Service Location(s) (excluding those caused by Earth).

(d) IN NO EVENT SHALL EARTH BE LIABLE TO CUSTOMER OR ANYONE CLAIMING BY, THROUGH OR UNDER CUSTOMER FOR ANY INDIRECT,

CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES OF ANY NATURE, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR STRICT LIABILITY, INCLUDING, WITHOUT LIMITATION, DELAY, LOST REVENUE, LOST PROFITS OR LOSS OF GOODWILL, EVEN IF EARTH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Customer must notify Earth (i) within 24 hours of Customer becoming aware of any alleged slip and fall or other personal injury that occurs in, on or about the Service Location (and provide reasonably detailed supporting documentation), (ii) within 72 hours of any obvious or visible alleged damage resulting from the Services, and (ii) no later than May 1<sup>st</sup> of each calendar of any alleged damage that resulted from the Services but was not reasonably apparent until after all snow and ice was melted from the Service Location. Failure to report such alleged injuries or damages in a timely manner shall constitute a waiver and release of claims relating thereto. Customer's aggregate recovery from Earth for any claim other than those excluded herein shall not exceed the Fees paid by Customer for the Services giving rise to such claim irrespective of the nature of the claim, whether in contract, tort, warranty or otherwise. If, for any reason, the foregoing limitations are found by a court to be invalid or inapplicable under any applicable state or federal law, Customer agrees that Earth's total liability for all Losses of any kind or nature shall be limited to actual damages without regard to any punitive or exemplary damages provided by any applicable law.

7. **Insurance.** During the Term, Earth shall, at its own expense, maintain and carry insurance in full force and effect which includes, without limitation, commercial general liability, umbrella and workers' compensation with financially sound and reputable insurers. Upon Customer's request, Earth shall provide Customer with a certificate of insurance from Earth's insurer evidence such insurance coverage.
8. **Subcontractors.** Earth shall have the right to hire, and delegate its obligations under this Agreement to, subcontractors to perform the Services under this Agreement, provided that Earth shall remain full responsible for the performance of all of its obligations under this Agreement and for the performance of its subcontractors and such subcontractors compliance with this Agreement.
9. **Relationship of Parties.** Earth is, and shall act in all respects as, an independent contractor and shall have exclusive control over the manner and method of performing the Services including the manner in which its subcontractors perform the Services. Nothing herein shall authorize or empower either party to assume or create any obligation or responsibility whatsoever, express or implied, on behalf or in the name of the other party, or to bind the other party in any manner, or make any representation, warranty, or commitment on behalf of the other party.
10. **Force Majeure.** Earth shall not be liable to Customer or third parties for any delay in, or failure of, performance caused by acts or circumstances beyond its direct control, including but not limited to acts of God, fire, flood, explosion, war, governmental action, terrorist threats or acts, civil unrest, pandemic, quarantine, major equipment failure, accident, labor disputes, strikes, non-performance by a third party, shortage or inability to obtain materials (including without limitation de-icing products and related materials), equipment, power or transportation. If delay is caused by any such circumstances, Earth shall have the option to cancel all or any portion of this Agreement and/or extend any date upon which performance hereunder is due, without liability to either party.
11. **Assignment.** Customer may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Earth.
12. **Survival.** All terms and provisions of this Agreement that should by their nature survive the termination of this Agreement shall so survive.

13. **Governing Law; Venue; Jurisdiction.** This Agreement and performance under it will be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to choice of law principles. Venue and jurisdiction for any action or claim arising out of or relating to this Agreement shall be in the state and federal courts located in Brown County, Wisconsin. The Parties consent to the venue and jurisdiction of such courts and waive any objections to such venue and jurisdiction. In the event of a dispute between the Parties, or if Earth is otherwise forced to engage attorneys regarding any matter arising out of this Agreement, Earth shall be entitled to recover from Customer all reasonable costs incurred including staff time, court costs, attorneys' fees and other related expenses incurred in Earth's engagement with such attorneys.
14. **Entire Agreement.** These Terms and the Order constitute the entire agreement between the Parties with respect to the subject matter contained herein and supersedes any and all previous agreements between the Parties, whether written or oral, with respect to such subject matter. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
15. **Execution.** This Agreement may be executed in multiple parts counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email of a portable document format (.pdf) copy, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.

Last Updated Date: August 14, 2019