



## 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, LLC (“Earth”). The accompanying quote, proposal, statement of work, 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 applicable Service Period(s) (as defined below), Earth shall perform the services described in the Order, which generally consist of snow clearing, snow relocation, 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 any Order identified as a “Seasonal Contract” may not be changed once the first invoice of the season is sent to Customer. Any Earth-approved change in the Services will be documented in a written amendment to the Order, which will identify the agreed-upon 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). 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) **Parking Lot Snow Clearing Specifications**: Services will commence upon the occurrence of certain weather conditions or reaching the trigger amount of accumulation during a snow/ice storm event (which unless otherwise specifically agreed upon and documented in the Customer’s Order, will be one (1) inch of accumulation), unless Earth deems it necessary to begin providing Services prior to reaching such trigger amount. Services 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 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. Seasonal contracts will be billed on a time and materials basis for any additional snow clearing required more than 24 hours after the end of the snow event (i.e., snow clearing required due to subsequent drifting).

(ii) Sidewalk Snow Clearing 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. Seasonal contracts will be billed on a time and materials basis for any additional snow clearing required more than 24 hours after the end of the snow event (i.e., snow clearing required due to subsequent drifting).

(iii) De-icing Services: De-icing materials will be applied in a manner consistent with the service level classification designated by Customer and identified on the Order. For contracts that are billed on a time and materials basis, Customer will be charged for Earth's use of de-icing materials as follows: (i) when "spot salting" or "refreeze" salting at 350 pounds per acre, (ii) when "full salt" salting at 500 pounds per acre, and (iii) when "heavy" salting (or use of de-icing materials in response to freezing rain) at 650 pounds per acre.

(iv) Timing of Services: The Services specified in an Order will commence in a reasonable manner and in a reasonable time frame based on industry standards. For purposes of this paragraph, "reasonable" is not defined as immediately upon reaching the "trigger depth" of accumulation. Customer acknowledges that Contractor must balance the different and varying needs of its customers and Contractor has a method in which it begins snow operations.

(v) Snow Relocation: 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.

(b) Equipment and Materials. Earth shall provide, in its sole discretion, 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 shall not have any right to dictate the type of equipment used in connection with 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 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 determine seasonal snowfall totals based upon independent weather-service measurements and reports (i.e. Weatherworks, NOAA, or similar service). The information from such reports will be compared with on-site inspection of conditions 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.

(e) Site Conditions. Express conditions to Earth's performance of Services is that the underlying Service Location(s) shall at all times be (1) adequately maintained by Customer without defects and (2) clear of materials/obstructions and fully accessible to Earth's equipment and materials.

(i) Customer shall be solely responsible for any damage, injury, or accident that is the result of or to damaged or worn parking lots or sidewalks or defects in them. Customer shall also 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.

(ii) Earth will not clear snow, salt or de-ice, or otherwise perform Services, within three (3) feet of any parked vehicles, equipment or other obstructions in parking lots, drives or other portions of the Services Location(s) to be cleared. Customer must move obstructions from the Service Location(s) prior to Services being completed. Earth shall not be liable for any delay in the completion of or inability to complete the Services as a result of certain areas of the Service Location being blocked by parked vehicles, equipment or otherwise inaccessible or obstructed. Earth shall not be liable for any damages to any equipment, materials and/or other property (whether owned by Customer or any third party) that is located in, on or about any portion of the Service Location(s) in violation of this Section 1(e), or any other damages or liability that arises from Customer's failure to provide a safe and clear working environment.

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 determined as set forth in the Order, with hourly Services rounded up to the nearest hour and charges for de-icing materials as set forth in Section 1(a)(iii), above. Earth may, in its sole discretion, increase Fees by up to five percent (5%) at the beginning of each winter season 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 offset 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. This term of this Agreement shall commence effective as of July 1<sup>st</sup> of the current calendar year, and shall continue for the winter contract season(s) identified in the Order (the "Initial Term"). If agreed upon by Customer in the Order, upon expiration of the Initial Term, the Agreement shall automatically renew for successive one (1) year terms (being successive annual periods beginning July 1<sup>st</sup> and continuing through June 30<sup>th</sup>) unless Customer provides written notice of nonrenewal at least sixty (60) days prior to the end of the then-current term (each, a "Renewal Term" and together with the Initial Term, the "Term"). If the Term is renewed for one or more Renewal Term, the terms and conditions of this Agreement during each Renewal Term shall be the same as the terms and conditions in effect immediately prior to such renewal, subject to any change in fees in accordance with Section 2. If Customer provides timely notice of nonrenewal, then this Agreement shall terminate on the expiration of the then-current Term, unless sooner terminated as provided in this Section 3.

(b) Service Period. Notwithstanding the foregoing, Customer acknowledges and agrees that the service period(s) during which Earth is obligated to perform the Services (the "Service Period") starts November 15<sup>th</sup> and ends April 15<sup>th</sup> during each year of the Term. If Earth agrees to perform Services outside of the Service Period, Customer will be invoice for such Services on a time and materials basis.

(c) 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.

(d) 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. If Customer cancels or terminates an Order prior to the expiration of the Term, Customer will be responsible for an early termination fee in the amount equal to the greater of (i) \$500 or (ii) ten percent (10%) of the remaining value of the Order through the end of the current season (which amount will be determined by Earth based upon the documented seasonal snowfall at the Service Location(s)) (the "Early Termination Fee"). 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)).

THE PARTIES INTEND THAT THE EARLY TERMINATION FEE CONSTITUTES COMPENSATION TO EARTH FOR THE ADMINISTRATIVE WORK, CHANGES TO SERVICE SCHEDULES AND CANCELLATION OF THIRD PARTY CONTRACTS THAT WILL OCCUR AS A RESULT OF THE CANCELLATION AND/OR EARLY TERMINATION OF ANY ORDER, AND NOT A PENALTY. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE HARM AND DAMAGE TO EARTH'S BUSINESS OPERATIONS CAUSED BY CUSTOMER'S EARLY TERMINATION AND BREACH OF THIS AGREEMENT WOULD BE IMPOSSIBLE OR VERY DIFFICULT TO ACCURATELY ESTIMATE, AND THAT THE EARLY TERMINATION FEE IS A REASONABLE ESTIMATE OF THE ANTICIPATED OR ACTUAL HARM AND DAMAGE THAT MIGHT ARISE FROM A CUSTOMER BREACH, AND THAT CUSTOMER'S PAYMENT OF THIS EARLY TERMINATION FEE WILL BE CUSTOMER'S SOLE LIABILITY AND ENTIRE OBLIGATION TO EARTH IN THE EVENT OF CUSTOMER'S EARLY TERMINATION OF AN ORDER.

4. **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. All Services are deemed to be satisfactory unless Customer notifies Earth by phone at 1-833-SNOW-911 (1-833-799-9911) or writing at [customerservice@earthdevelopmentinc.com](mailto:customerservice@earthdevelopmentinc.com) within twenty-four (24) hours of the performance of such Services.

5. **Limitation of Liability.**

(a) Nothing in this Agreement shall constitute an agreement, commitment or guarantee 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 will not be liable for any "slip and fall" claims that occur during a "storm in progress" and assumes no liability with respect to naturally occurring hazardous conditions, including without limitation, those that result from melting and refreezing conditions, and Customer will indemnify, defend and hold harmless Earth for any and all Losses (as defined below) arising from third party claims that relate to or result from these naturally occurring conditions. It is Customer's responsibility to immediately contact Earth at 1-833-SNOW-911 (1-833-766-9911) 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 ordinary course damage to plant material or turf/grass caused by de-icing products or clean-up of debris required following melting of snow piles; (ii) any material damage to turf/grass caused by Earth's mechanical equipment, including without limitation snowplows and shovels (and provided that Earth shall be required to repair any material damage with topsoil and seed only); (iii) any turf and/or rut repair due to location of snow piles located on any non-paved portion of the Service Location; (iv) 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); (v) 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); (vi) lack of storage space for snow, loss of parking spaces and/or reduced driving areas at the Service Location; (vii) 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 (viii) the negligent acts or omissions or more reckless conduct of any other third parties in, on or about the Service Location.

(c) Earth will not be responsible for, and Customer shall indemnify, defend and hold Earth harmless from, any losses, damages (including any property damage or bodily injury), 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) (collectively, "Losses") incurred by Earth relating to, arising out of or resulting from: (i) any limitations or restrictions Customer (or its duly appointed agent) has imposed upon the performance of the Services or Customer's (or its duly appointed agent's) refusal or rejection of Services offered by Earth to Customer (whether in the Order or other written communication); (ii) the site conditions at the Service Location(s) (excluding those caused by Earth); or (iii) the acts, omissions or negligence of any pedestrians, motorists or other third parties in, on or about the Service Location(s). Customer assumes all liability with respect to and for any period during which Services are or were limited, restricted, refused and/or rejected.

(d) Customer must notify Earth in writing at customerservice@earthdevelopmentinc.com (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 (iii) 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. To the extent Earth is responsible for the repair any damage in, on or about a Service Location under this Agreement, Earth shall have the sole right and obligation to coordinate the completion of such work promptly following receipt of notice thereof; provided, however, that Customer may, following immediate notice to Earth, complete, or contract for the performance of, any repair work if the damage creates an emergency situation (being a material threat to the health and safety of any invitees upon the Service Location or structural integrity of any building or structure at the Service Location). Earth shall not be liable to Customer for the cost of (i) any non-emergency repairs performed by or on behalf of Customer, or (ii) any repair work that is completed without Earth's prior review of a written quote and written approval thereof.

(e) 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'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 under this Agreement (whether for on-going

or completed Services) shall be limited to actual damages without regard to any punitive or exemplary damages provided by any applicable law.

6. **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. Customer will fully cooperate with Earth and its insurance company related to the investigation and pursuant of recovery with respect to any claims arising under this Agreement, including without limitation, providing prompt and complete access to and/or copies of Customer's video surveillance and accident reports.

7. **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 responsible for the performance of its obligations under this Agreement and for the performance of its subcontractors and such subcontractors compliance with this Agreement.

8. **Non-Solicitation Covenant.** During the Term and for a period of twelve (12) months thereafter, Customer shall not, without the prior written consent of Earth, directly or indirectly, for itself or on behalf of any third party, (i) solicit for employment or engagement as an independent contractor any Earth's employees, independent contractors or subcontractors that is (or in the past 24 months, was) involved in the provision of Services to Customer (or any of Customer's Service Locations) (collectively, the "Restricted Parties"), or (ii) otherwise induce, influence or encourage any of the Restricted Parties to alter, terminate or breach his/her/its contractual or other business relationship with Earth. Customer acknowledges and agrees that the duration and scope of the restrictions contained in this Section 8 are reasonable and necessary to protect Earth's business operations and enable Earth to provide the Services in accordance with the terms of this Agreement. If Customer violates the terms of this Section 8, Customer agrees to pay Earth, as liquidated damages (and not as a penalty), an amount equal to the greater of (i) \$[•] or (ii) the fees paid by Customer to Earth for the Services during the past twelve (12) months of the Term (the "Solicitation Damages"). The Solicitation Damages will be paid to Earth by Customer in recognition of the material adverse impact to Earth's business operations or Earth's inability to otherwise obtain an adequate remedy due to the difficulties of proof of Earth's loss as a result of such violation by Customer. Customer acknowledges that the Solicitation Damages are reasonable in light of the anticipated harm to Earth.

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.** Neither Party shall be liable or responsible to the other Party for damages (including without limitation, any liquidated damages), or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party hereunder), if and to the extent such failure or delay is caused by or results from an event of Force Majeure (as defined below).

(a) In such event, the party whose performance is impacted by the Force Majeure event (the "Impacted Party") shall promptly notify the other Party of the event of Force Majeure and its likely duration. During the continuation of the Force Majeure event, the Impacted Party shall: (i) use diligent efforts to end the failure or delay and exercise commercially reasonable efforts to mitigate or limit the effects of such Force Majeure event on the other Party; and (ii) resume the performance of its obligations as soon as reasonably practicable after the removal or end of the cause of the Force Majeure event.

(b) In the event that the Impacted Party's failure or delay in performance due to a Force Majeure event continues for a period of more than sixty (60) days following written notice given by it under this Section 10, the other Party may, at any time thereafter, terminate this Agreement.

(c) For purposes hereof, "Force Majeure" means any act, event, occurrence or condition beyond the Impacted Party's reasonable control (and not the result of the intentional, willful, reckless or negligent acts or omissions of such Party), including, without limitation, the following events: (i) an act of God; (ii) epidemic, pandemic, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (iii) an act of public enemy, war, invasion, embargoes or blockades (after the effective date of an Order under this Agreement), insurrection, riot, general civil unrest or restraint of government and people, civil disturbance or disobedience, sabotage, threats or act of terrorism or similar occurrence; (iv) an order or judgment (including without limitation a temporary restraining order, temporary injunction, preliminary injunction, permanent injunction, or cease and desist order) or other act of any federal, state, county or local court, administrative agency or governmental office or body which prevents a party from performing its obligations as contemplated by this Agreement; or (v) the adoption or change (including a change in interpretation or enforcement) of any federal, state or local law after the effective date of an Order under this Agreement, which prevents performance of or compliance with the obligations hereunder.

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. **Notices.** All notices and other communications under this Agreement shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the Customer at the addresses indicated in the Order and to Earth at 325 Reid St., Suite A, De Pere, WI 54115 or via email at [customerservice@earthdevelopmentinc.com](mailto:customerservice@earthdevelopmentinc.com) (or at such other address for a party as shall be specified in a notice given in accordance with this Section 13).

14. **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.

15. **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.



16. **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: June 1, 2023