

Terms and Conditions for Services

1. Definitions.

- (a) The definitions set out in this Section 1 shall apply to these Terms and Conditions for Services (these "Terms").
 - (i) Service Provider: refers to Select Ground Maintenance Inc., including its principals, directors, officers, employees, volunteers, business operators, and agents.
 - (ii) Customer(s): refers to the party/parties whom the Service Provider has agreed to provide Snow Clearing Services.
 - (iii) Serviced Area: refers to the Customer(s) driveway or any other area located at the Subject Property for which the Services Provider has agreed to provide the Customer(s) with Snow Clearing Services.
 - (iv) Snow Clearing Services: refers to the blowing or removal of snow from the Serviced Area to a nearby location, including but not limited to the Customer(s) lawn.
 - (v) Subject Property: refers to the lands owned or occupied by the Customer(s) for which permission has been granted by the Customer(s) to the Service Provider to attend and for which the Service Provider has agreed to provide Snow Clearing Services.

2. Applicability.

- (a) These Terms are the only terms that govern the provision of services by the Service Provider to Customer(s).
- (b) The associated service proposal provided to the Customer(s) by the Service Provider (the "Service Proposal") and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and the Service Proposal, these Terms shall govern, unless the Service Proposal expressly states that the terms and conditions of the Service Proposal shall control.

3. Term.

- (a) The Service Provider will provide Snow Clearing Services to the Customer(s) for a period determined by the earlier occurrence of one of the following two options (the "Term"):

- (i) The Term will begin on November 1 of the contracted year and end on April 1 of the following year; or
- (ii) The Term will end once the Service Provider has accumulated and removed a total of 300 centimeters of snow from the Subject Property, as calculated by Environment Canada for Fergus, Ontario.

4. Subject Property.

- (a) The Customer(s) represent that they are the owners of the Subject Property; or
- (b) If the Customer(s) are not the owner(s) of the Subject Property, the Customer(s) represent that they have the authority to contract on behalf of the owner(s).

5. License to Provide Services.

- (a) The Customer(s) hereby grant the Service Provider a license to enter and attend upon the Subject Property during the term to provide Snow Clearing Services.

6. Delivery of Snow Clearing Services.

- (a) The Service Provider shall provide Snow Clearing Services following the accumulation of approximately five centimeters (5 cm) of snowfall, as calculated by Environment Canada for Fergus, Ontario.
- (b) Any snowfall less than five centimeters (5 cm) is the responsibility of the Customer(s).
- (c) The timing of Snow Clearing Service visits from the Service Provider will vary depending on the nature of each snowfall.
- (d) The Snow Clearing Service shall include any follow-up visits after City snowplows and any repeat Snow Clearing Services during heavy and prolonged snowfalls.
- (e) If the forecast is calling for five to ten centimeters (5 cm – 10 cm) of snow, the Service Provider may wait to dispatch operators until the snow has finished falling. There will be no overnight Snow Clearing Services under most circumstances.
- (f) The Service Provider will not provide Snow Clearing Services to the Customer(s) on December 25th (Christmas Day). December 25th is a blackout day for the Service Provider, regardless of any accumulated snowfall, which will be the responsibility of the Customer(s).

7. Markers.

(a) The Customer(s) permit the Service Provider to install two border markers on the street side of the Customer(s) driveway on the Subject Property prior to the commencement of the Term.

(b) The Customer(s) shall be responsible for the cost and installation of any additional border markers requested by the Service Provider to be placed around immovable objects, including but not limited to; retaining walls, steps, stairs, elevated patio stones, and wheelchair ramps, which may become invisible when covered by snow.

8. Snow Storage.

(a) In the event that there is inadequate space on the Subject Property for snow storage, the Customer(s) agree that the Service Provider may use either the space on the edges of the driveway or make alternate arrangements with a neighbour.

9. Excluded Services.

(a) The following services are excluded from Snow Clearing Services and will not be provided by the Service Provider:

- (i) Removal/hauling of snow, otherwise described as removing snow from the Customer(s) Serviced Area when there is no more room to blow it onto their lawn;
- (ii) Sanding;
- (iii) Salting;
- (iv) De-icing;
- (v) Removal of snow humps at the bottom of the driveway;
- (vi) Scraping of the Serviced Area down to the asphalt; and
- (vii) Scraping snow slush and uneven driveways caused by warm weather.

10. Walkway Services.

(a) Walkway shoveling services are excluded from the Snow Clearing Services unless otherwise agreed to by the parties in writing.

(b) If the Service Provider and Customer(s) agree in writing to the inclusion of walkway services, the walkway services will be provided on the following terms:

- (i) Walkway shoveling will be performed separately from the Snow Clearing Services and will be provided at the end of each snowfall of five centimeters (5 cm) or more.

- (ii) Walkway services will not include the removal of snow accumulation resulting from roof cleaning, drifting snow, or the removal of ice from the walkway resulting from freezing rain, sleet or compaction.
- (iii) Shoveling of snow in front of garage doors as well as front steps/walkway are included with walkway services.
- (iv) Shovel crews may take a minimum of 24 hours following the end of a snowfall to complete the walkway services.
- (v) Should salting or sanding of walkways be specifically included in this Agreement such salting or sanding shall not create liability for the Service Provider under the *Occupier's Liability Act*.

11. Payment Terms.

- (a) In consideration of the Snow Clearing Services provided by Service Provider and the rights granted to Customer(s) under this Agreement, Customer(s) shall pay the fees set forth in the Service Proposal.
- (b) Customer(s) shall be responsible for all harmonized sales tax (HST) on any amounts payable by Customer(s) hereunder.
- (c) The Customer(s) agree to pay the Service Provider in accordance with one of the following payment schedules:
 - (i) One lump sum payment for the total balance owed under the Service Proposal on or before the commencement of the Term;
 - (ii) Four equivalent post-dated cheques of one fourth (1/4) of the balance owed under the Service Proposal inclusive of HST dated the first (1st) of the month, for each month, from November through to February.
- (d) All payments made by the Customer(s) under this Agreement are final and non-refundable, regardless of the circumstances, including but not limited to termination of this Agreement by the Customer(s). The Customer(s) hereby waives any right to claim or receive a refund of any amounts paid, whether such termination occurs prior to, during, or after the provision of services, except as otherwise expressly set forth in this Agreement.
- (e) The Customer(s) agree to pay any and all additional fees on or before April 31st of the contracted year.

12. Interest on Late Payments.

- (a) In the event payments are not received by Service Provider within 10 days after becoming due, Service Provider may:

- (i) charge interest on any such unpaid amounts at a rate of two percent (2%) per annum or, if lower, the maximum amount permitted under applicable law, from the date such payment was due until the date paid; and
- (ii) suspend performance for all Snow Clearing Services until payment by Customer(s) has been made in full.

13. Additional Fees.

(a) Excess Snow: In the event of an occurrence of snow accumulation in excess of 300 cm, the Customer(s) agree to pay the Service Provider additional fees on a per-centimeter basis, to be calculated as follows:

- (i) Total balance due under the Service Proposal for the term of the Agreement divided by 300 cm = [additional price per cm] times [amount of cm]

For example: (based on a contract value of \$500.00 and 100 extra centimeters) $\$500 / 300 \text{ cm} = \$1.66/\text{cm} \times 100 \text{ cm} = \166.00 in Additional Fees

(b) Fuel Surcharge: The Parties acknowledge at the time of executing this Agreement fuel prices are approximately \$1.30 per liter. In the event that fuel prices rise to \$2.00 per liter or more at any time during the Term, the Customer(s) agree to pay a one-time surcharge of \$25.00 to the Service Provider.

14. Termination.

(a) The Customer(s) shall be entitled to terminate this Agreement and receive a refund of all amounts paid to the Service Provider for the Term, conditional upon all of the following conditions being met:

- (i) The Customer(s) must have executed this Agreement on or before December 1st of the Term;
- (ii) The Customer(s) must have made payment to the Service Provider according to the payment options detailed in Section 11 of the Terms;
- (iii) The Customer(s) must notify the Service Provider in writing of their intention to terminate this Agreement within 24 hours of receiving the first Snow Clearing Service of the Term.

(b) In addition to any remedies that may be provided under this Agreement and/or which are available at law, Service Provider may terminate this Agreement with immediate effect upon written notice to Customer(s), if Customer(s):

- (i) fails to pay any amount when due under this Agreement [and such failure continues for thirty (30) days after Customer(s) receipt of written notice of non-payment; or
- (ii) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part.

15. Customer(s) Responsibilities.

- (a) Prior to the beginning of the Term, the Customer(s) agree to remove any moveable lamppost lights and/or associated portion of the lamppost (e.g., the lamppost tops).
- (b) The Service Provider shall not be responsible for the repair, replacement, or cost for any damaged lampposts or lamppost lights that have not been removed by the Customer(s) prior to the beginning of the Term.
- (c) The Customer(s) agree to provide the Service Provider with a minimum of 12 ft of clearance for any Serviced Areas (with the exception of walkways). In the event there is not at least 12 ft of clearance (under low-hanging tree branches, in carports, or under low-hanging eaves or any other area). The Customer(s) shall rotate and/or remove any basketball nets overhanging the Serviced Area so that there is at least 12 ft of clearance.
- (d) The Customer(s) shall be responsible for removing any and all chattels/items from the Serviced Area prior to each snowfall.
- (e) The Service Provider shall not be liable for any damage caused to removable chattels/items left in the Serviced Area, including but not limited to, basketball nets, garbage/recycling bins, plant pots, bikes, skis, toys, hockey nets/sticks, extension cords, and Christmas lights.
- (f) Prior to the beginning of the Term, the Customer(s) shall also:
 - (i) Remove any gutter downpipe extensions interfering with the Serviced Area; and
 - (ii) Hammer down or remove any elevated water main caps interfering with the Service Area.
- (g) In the event the Customer(s) fail to comply with any term in this section, the Service Provider will not be responsible for Snow Clearing the interfered area at the time of providing Snow Clearing Services.

16. Insurance.

- (a) During the Term of the Agreement and for a period of 2 years thereafter, the Customer(s) shall, at its own expense, maintain and carry a policy in full force and effect,

of General Home Insurance. The insurance policy must provide sufficient coverage to satisfy any potential claims under the *Occupier's Liability Act*.

(b) Upon Service Provider's request, Customer(s) shall provide Service Provider with a certificate of insurance from Customer(s) insurer evidencing the insurance coverage specified in these Terms.

(c) Customer(s) shall provide Service Provider with 30 days' advance written notice in the event of a cancellation or material change in Customer(s) insurance policy

(d) Except where prohibited by law, Customer(s) shall require its insurer to waive all rights of subrogation against Service Provider's insurers and Service Provider

17. Relocation.

(a) a. In the event the Customer(s) re-locate or sell the Subject Property, the Agreement shall not be canceled, refunded, or terminated.

(b) With the prior written consent of the Service Provider, the Customer(s) may assign the Agreement to the new owner or request the Agreement be transferred to a new property. Provided the property is within the Service Provider's service area and the new Serviced Area is the same size.

18. Vehicles.

(a) In the event vehicles are parked in the Serviced Area during Snow Clearing Services, the Service Provider shall only perform Snow Clearing Services from the accessible Service Areas which opens onto a public roadway.

(b) The Service Provider is not responsible for repeating Snow Clearing Services in the event that the Customer(s) fails to remove their vehicles.

19. City Services.

(a) The Customer(s) acknowledge the Service Provider is not associated in any way with the Corporation of the Township of Centre Wellington municipal snow services and do not guarantee in any way when or how municipal services shall be provided to the Customer(s).

(b) In the event the Corporation of the Township of Centre Wellington cuts the municipal streets of hard-pack snow, the Customer(s) may contact the Service Provider to request Snow Clearing Services to remove the same. Which the Service Provider may provide in their discretion.

20. Limitation of Liability.

(a) IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR

FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, AGGRAVATED, OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, REVENUE OR PROFIT, COST OF CAPITAL, LOSS OF BUSINESS OPPORTUNITY, LOSS OF GOODWILL WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

21. Specific Exclusions, Assumption of Risk, and Indemnity.

(a) In no event shall the Service Provider be liable to the Customer(s) or to any third party for:

- (i) Any damage to the Customer(s) lawn, flower beds, trees, or garden;
- (ii) Any rocks, sand, or debris that is blown onto the Customer(s) lawn as a result of Snow Clearing Services
- (iii) Scratches, marks, rust, chips, cracks, or any other damage of any kind to the Customer(s) driveway or Serviced Areas whether arising as a result of uneven asphalt or uneven interlock surfaces or otherwise.

(b) The Service Provider is not responsible in any way whatsoever for slippery or icy conditions and is excluded from any and all liability whatsoever under the *Occupier's Liability Act*.

(c) The Customer(s) agree to indemnify and hold harmless the Service Provider from any injuries or claims that may arise as a result of slippery, icy, dangerous, or defective conditions at the Subject Property or Serviced Areas.

(d) Notwithstanding any other term in this Agreement, including if the Service Provider has agreed in writing to provide sanding and/or salting services to the Customer(s), the sanding and salting of the driveway or any other Serviced Area to a safe condition shall be the sole responsibility of the Customer(s).

(e) In the event the Service Provider causes any property damage to the Customer(s), the Customer(s) must notify the Service Provider within 48 hours, failure of which the Service Provider is hereby relieved and released of any and all liability for such damage.

22. Maximum Liability.

(a) In the event the Service Provider is held liable for any reason related to this Agreement, the Service Provider's liability shall be limited to a maximum of \$1,000.00 per occurrence/claim.

23. Costs and Legal Fees.

(a) The Customer(s) covenant to pay the Service Provider's full costs of enforcement of the terms of this Agreement including the cost of lawyer fees, registration fees of Construction Liens, and disbursements.

(b) The Customer(s) further agree to pay any award of damages and all legal fees of the Service Provider for defending any claims made by the Customer(s) or any third party related to the terms of this Agreement.

24. Force Majeure.

(a) The Service Provider shall not be liable or responsible to Customer(s), nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Service Provider including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemics, pandemics, lock-outs, strikes, or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown, or power outage.

25. Governing Law.

(a) All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the Province of Ontario of and the federal laws of Canada applicable therein without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the Province of Ontario.

26. Notices.

(a) Each Party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement [(other than routine communications having no legal effect)] (each, a "Notice") in writing and addressed to the parties at the addresses set forth in the Service Proposal (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). Notices sent in accordance with this Section will be conclusively deemed validly and effectively given: (a) on the date of receipt, if delivered by personal delivery, or by a nationally recognized same day or overnight courier (with all fees prepaid); (b) upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "read receipt" function, as available, return email or other form of written acknowledgment), if delivered by email.

27. Severability.

(a) If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, 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.

28. Amendments and Modifications.

(a) The Service Provider reserves the right, in its sole discretion, to modify, amend, or update these Terms at any time.

(b) The Service Provider will provide notice to the Customer(s) of any such changes by:

(i) Posting the revised Terms on its website; and

(ii) Sending notice of the amendment or modification to the Customer(s) registered email address or through another direct communication method provided by the Customer(s).

(c) Unless otherwise specified in the notice, the amended Terms will become effective thirty (30) days after the notice is provided.

(d) Continued use of the Snow Clearing Services after the effective date of any changes constitutes acceptance of the amended Terms by the Customer(s). It is the Customer(s) responsibility to ensure that their contact information is current and to review any notices regarding changes to the Terms.