

## TERMS AND CONDITIONS –

**These terms and conditions are applicable to any quote provided by Vista Tree Management Inc. (Contractor) and agreed to by the client, whether that agreement occurs through electronic signature on Jobber, email, text or verbal confirmation of acceptance of the quote.**

### BACKGROUND

- A.** The Client is of the opinion that the Contractor has the necessary qualifications, experience and abilities to provide services to the Client.
- B.** The Contractor is agreeable to providing such services to the Client on the terms and conditions set out in this Agreement.

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**IN CONSIDERATION OF** the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Client and the Contractor (individually the "Party" and collectively the "Parties" to this Agreement) agree as follows:

### ONTARIO CONSUMER PROTECTION ACT, 2002

- 1.** Consumer rights as outlined in the Ontario *Consumer Protection Act, 2002* can be found at the end of this Agreement in Appendix A.

### SERVICES PROVIDED

- 2.** The Client hereby agrees to engage the Contractor to provide the Client with the following services (the "Services"):
  - Tree care, Tree Removal, Hedging, Arboricultural Consulting and all other tree health and maintenance services quoted
- 3.** The Services will also include any other tasks which the Parties may agree on in writing. The Contractor hereby agrees to provide such Services to the Client.

### TERM OF AGREEMENT

The term of this Agreement (the "Term") will begin on the date of this Agreement and will remain in full force and effect until the completion of the Services, subject to earlier termination as provided in this Agreement. The Term may be extended with the written consent of the Parties.

- 4.** In the event that either Party wishes to terminate this Agreement prior to the completion of the Services, that Party will be required to provide 30 days' written notice to the other Party. Any costs associated with the quote that have been incurred by the contractor, including but not limited to purchase or rental of equipment as specified in the quote, permit fees, reports, site visits or any other

reasonable costs will be the sole responsibility of the client and billable upon cancellation of the contract.

- 5.** Notwithstanding the above, Vista Tree Management Inc. reserves the right to cancel this agreement at any time with penalty of forfeiture of deposit for the following reasons: 1. Fraud or misrepresentation by the client, 2. Harassment, Discrimination or Abuse by the client or their representatives, 3. Failure to disclose material changes in site or tree condition including access, hazards, obstacles or improvements, 4. Outstanding invoices for other completed work, 5. Any criminal activity, violations of rules, regulations, by-laws or other legislation related to the quoted work or site, 6. Failure to produce permits or other required paperwork that are the responsibility of the client and not Vista Tree. 7. Failure to ensure the worksite is free from health and safety issues such as animal feces, human waste, garbage, open fires or other hazards that are not associated with the tree work.

## **PERFORMANCE**

- 6.** The Parties agree to do everything necessary to ensure that the terms of this Agreement take effect.

## **CURRENCY**

- 7.** Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in CAD (Canadian Dollars).

## **COMPENSATION**

- 8.** The Contractor will charge the Client a flat fee provided in a quote for the Services (the "Compensation").
- 9.** A retainer of 20-50% (the "Retainer") is payable by the Client upon acceptance of the quote and execution of this Agreement. The retainer will be specified in the quote based on the size and complexity of the job, the existing business relationship with the Contractor and the chosen method of payment.
- 10.** For the remaining amount, the Client will be invoiced as follows:
- Either at the completion of the job or,
  - In stages associated with the percentage completed as specified in the quote
- 11.** Invoices submitted by the Contractor to the Client are due immediately on receipt and regardless of the method of payment.
- 12.** The Compensation as stated in the quote does not include sales tax, or other applicable duties as may be required by law. Any sales tax and duties required by law will be charged to the Client in addition to the Compensation.
- 13.** The Contractor will not be reimbursed for any expenses incurred in connection with providing the Services of this Agreement except where specified in the quote, such as payment of permit fees on behalf of the client.

## **INTEREST ON LATE PAYMENTS**

- 14.** Interest payable on any overdue amounts under this Agreement is charged at a rate of 25.00% per

annum or at the maximum rate enforceable under applicable legislation, whichever is lower. Interest will begin accruing as of 7 days from the date of invoice.

## **TRADE SECRETS**

- 15.** Trade secrets (the "Trade Secrets") include but are not limited to any data or information, technique or process, tool or mechanism, formula or compound, pattern or test results relating to the business of the Client, which are secret and proprietary to the Client, and which give the business a competitive advantage where the release of that Trade Secret could be reasonably expected to cause harm to the Client.
- 16.** The Contractor agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any Trade Secrets which the Contractor has obtained, except as authorized by the Client or as required by law. The obligations of confidentiality will apply during the Term and will survive indefinitely upon termination of this Agreement.

## **OWNERSHIP OF INTELLECTUAL PROPERTY**

- 17.** All intellectual property and related material, including any Trade Secrets, moral rights, goodwill, relevant registrations or applications for registration, and rights in any patent, copyright, trademark, trade dress, industrial design and trade name (the "Intellectual Property") that is developed or produced under this Agreement, will be the sole property of the Client. The use of the Intellectual Property by the Client will not be restricted in any manner.
- 18.** The Contractor may not use the Intellectual Property for any purpose other than that contracted for in this Agreement except with the written consent of the Client. The Contractor will be responsible for any and all damages resulting from the unauthorized use of the Intellectual Property.

## **RETURN OF PROPERTY**

- 19.** Upon the expiry or termination of this Agreement, the Contractor will return to the Client any property, documentation, records, or confidential information which is the property of the Client.
- 20.** Any property that belongs to the contractor will be returned by the client in a timely manner.

## **CAPACITY/INDEPENDENT CONTRACTOR**

- 21.** In providing the Services under this Agreement it is expressly agreed that the Contractor is acting as an independent contractor and not as an employee. The Contractor and the Client acknowledge that this Agreement does not create a partnership or joint venture between them, and is exclusively a contract for service.

## **RIGHT OF SUBSTITUTION**

- 22.** Except as otherwise provided in this Agreement, the Contractor may, at the Contractor's absolute discretion, engage a third party sub-contractor to perform some or all of the obligations of the Contractor under this Agreement and the Client will not hire or engage any third parties to assist with the provision of the Services.
- 23.** In the event that the Contractor hires a sub-contractor:

1. the Contractor will pay the sub-contractor for its services and the Compensation will remain payable by the Client to the Contractor.
2. for the purposes of the indemnification clause of this Agreement, the sub-contractor is an agent of the Contractor.

#### **AUTONOMY**

24. Except as otherwise provided in this Agreement, the Contractor will have full control over working time, methods, and decision making in relation to provision of the Services in accordance with the Agreement. The Contractor will work autonomously and not at the direction of the Client. However, the Contractor will be responsive to the reasonable needs and concerns of the Client.

#### **EQUIPMENT**

25. Except as otherwise provided in this Agreement, the Contractor will provide at the Contractor's own expense, any and all tools, machinery, equipment, raw materials, supplies, workwear and any other items or parts necessary to deliver the Services in accordance with the Agreement.

#### **NO EXCLUSIVITY**

26. The Parties acknowledge that this Agreement is non-exclusive and that either Party will be free, during and after the Term, to engage or contract with third parties for the provision of services similar to the Services.

#### **NOTICE**

27. All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties through email, text or mail.

#### **INDEMNIFICATION**

28. Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with this Agreement. This indemnification will survive the termination of this Agreement.

#### **ADDITIONAL CLAUSE**

29. Payment Authorization: If client has provided a credit card number to the contractor, the client authorizes the contractor to charge unpaid amounts to such credit card when due. Payment of any amount shall not be construed as acceptance by the client of defective Work, and the client agrees not to withhold any amount invoiced in accordance with this contract for any reason whatsoever.
30. Breach of Contract and Collections: Failure by the client to pay any amount within 7 days after the invoice date shall constitute a breach of this contract, and in addition to paying Vista Tree Management all amounts due here under, the client shall indemnify the contractor for all costs incurred in collecting

such unpaid amounts. The acceptable methods of payment are credit card, e-transfer or cheques.

- 31. Early Cancellation Fee:** Cancellation of the contract by the client without adequate written notice as stipulated in the cancellation clause above will result in an early cancellation fee equal to half the value of the work (50%) less the deposit.
- 32. Timeliness:** The contractor shall use reasonable efforts to meet all performance dates, but shall not be liable for delays due to inclement weather or other causes beyond their control. An estimate of the number of days to complete the Work and an expected start date are provided as a courtesy only. Any delay in beginning or completing the Work shall not alter or invalidate any part of this contract, nor will they entitle Customer to additional rights or remedies, including refunds or discounts. The maximum time the work shall be completed within is 6 months of acceptance of the quote and/or issuance of permits unless a different timeline is otherwise specified in the quote or agreed to in writing by the client and contractor.
- 33. Price Point Validity:** The price provided on the quote will be valid for 30 days following submission of the quote to the client, so long as there has not been any material change in any conditions of the worksite, access, condition of the tree or other circumstances that may significantly alter the length, complexity, difficulty, hazard or other aspect of the quoted work. Changes to any of the above will result in a re-quote, which may incur additional fees to accommodate changes in the job or conditions, or a cancellation of the job with associated penalty. It is the client's responsibility to make the contractor aware of any ongoing conditions or changes to the site, access to the site, complexity, danger/hazard or other issues that may arise prior to, during and following the quote process.
- 34. Permits:** All permit fees are the responsibility of the client. When contracted to do so, the contractor may provide arborist reports, manage the city permissions and permit process, and seek to obtain appropriate permits for tree work. Where the contractor undertakes to obtain permits and complete any work associated with the permit, the client acknowledges that the municipality or other bodies may nevertheless deny permits for work or require substantive changes to the scope or timeline of the job. The Contractor cannot be liable for any impact that a delay, denial or other response from a given government or governing body may have on the completion of any quoted tree work or any other projects or activities.
- 35. Access:** The client hereby guarantees that any property including but not limited to trees, land, sheds, garages, houses, gardens, pools, driveways and gazebos upon which Work is to be performed by the crew, belongs to the signer and is under their immediate control, or sufficient permission has been granted by the owner of that property. The signer undertakes to provide free and unrestricted access throughout the above-mentioned property at all times when the crew is scheduled to perform Work.

## **MODIFICATION OF AGREEMENT**

- 1.** Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

## **TIME OF THE ESSENCE**

- 2.** Time is of the essence in this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

## **ASSIGNMENT**

- 3.** The Contractor will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Client.

#### **ENTIRE AGREEMENT**

4. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

#### **ENUREMENT**

5. This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators and permitted successors and assigns.

#### **TITLES/HEADINGS**

6. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

#### **GENDER**

7. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

#### **GOVERNING LAW**

8. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario.

#### **SEVERABILITY**

9. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

#### **WAIVER**

The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.