

## SCHEDULE 1

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# ARBORICULTURE SERVICES AGREEMENT STANDARD TERMS

## 1. SERVICES

- 1.1. Unless otherwise agreed in writing, MIT and/or the Students will deliver the Services at the Client Address on the Confirmed Service Date.

## 2. CLIENT'S OBLIGATIONS

- 2.1. The Client agrees to:
- (a) provide MIT with a full and accurate description of the Services required by the Client;
  - (b) advise MIT of all relevant site details for the Client Address as outlined in the Client Checklist in the Arboriculture Request for Service Form, including, without limitation, all potential health and safety risks; and
  - (c) promptly notify the MIT Lecturer as soon as practicable if problems arise with the Services or any Student, to enable MIT to intervene and take steps to achieve resolution.
- 2.2. The Client shall meet all applicable health and safety obligations under the Health and Safety at Work Act 2015 and any applicable rules or regulations or MIT policies.

## 3. MIT'S OBLIGATIONS

- 3.1. MIT shall:
- (a) be responsible for the selection of Students for participating in the Services;
  - (b) use all reasonable endeavours to ensure that, while onsite at the Client's Address, the Students and any MIT employees comply with all applicable laws and regulations.
- 3.2. Students will be accompanied onsite at the Client's Address by the MIT Lecturer, who will provide additional support where necessary.
- 3.3. MIT will provide insurance cover for the Student and MIT employees within the limits of its insurance policies.

## 4. STUDENT'S OBLIGATIONS

- 4.1. Students shall, at all times while carrying out the Services, conduct themselves in a professional manner and strive to uphold the reputation and good name of MIT.

## 5. PAYMENT

- 5.1. Except as outlined in this clause, this agreement assumes that MIT and the Students do not receive any remuneration or payment from the Client. However, this agreement does not prevent the Client from providing a gratuity directly to the Student/s.
- 5.2. The Client shall pay MIT any agreed costs and expenses incurred by MIT in undertaking the Services, on an actual and reasonable basis.
- 5.3. Unless otherwise agreed, payment shall be made to MIT in full prior to delivery of the Services. Any invoices issues by MIT to the Client shall paid in full on or before the 20<sup>th</sup> of the month following the date of the invoice.

## **6. INTELLECTUAL PROPERTY**

- 6.1. The parties acknowledge that any intellectual property created by a Student as a result of performing the Services remains the property of that Student, unless otherwise agreed in writing between the Client and the Student.

## **7. CONFIDENTIALITY**

- 7.1. The Student and MIT acknowledge the need to respect the confidentiality of the Client. No written report by a Student will be made available to any person or company, other than MIT and its representatives, without the Client's written consent.

## **8. LIABILITY**

- 8.1. Nothing in this agreement will affect the rights of the Client under the Consumer Guarantees Act 1993.

- 8.2. Subject to clause 8.1:

- (a) the Client relies upon its own knowledge, skill and judgment in relation to the particular use or suitability of the Services for the Client's purpose;
- (b) the Client acknowledges that the Students' services under this agreement are provided free of charge and, accordingly, the Services are provided without any warranties;
- (c) MIT will accept no liability for any damages or losses arising from a consequences of any act, default or negligence on the part of MIT or of an employee, agent or contractor of MIT;
- (d) subject to the provisions of clause 8.2(e), MIT's liability under or in connection with the performance of this agreement, whether in tort (including negligence), contract, equity or on any other basis, shall be limited to the lesser of the price of the Services complained of, the cost of re-performing the Services, and the actual loss or damage suffered by the Client;
- (e) MIT shall not be liable to the Client or any third party in tort (including negligence), contract, equity or on any other basis for:
  - (i) any indirect or consequential loss or damage;
  - (ii) any loss of use, loss of profit or loss of anticipated savings; or
  - (iii) any third party claims,suffered or incurred by the Client; and
- (f) the limitation in clause 8.2(d) and exclusion in clause 8.2(e) applies whether or not MIT had, or ought to have had, any special or other knowledge that such losses, damages or claims would be suffered or incurred by the Client.

## **9. GENERAL PROVISIONS**

- 9.1. **No Waiver:** No failure or delay on the part of either party to exercise any of its rights in respect of any default by the other party will act as a waiver or otherwise prejudice the first party's rights in connection with that default or any subsequent default.
- 9.2. **Further Assurances:** Both parties agree to execute any further instruments and documents and take all further actions as the other party may reasonably require in order to give effect to the terms and purposes of this agreement.

9.3. **Force Majeure:** Neither party will be liable to the other for any delays or non-performance of contractual obligations under this agreement caused by any event beyond the party's reasonable control, provided that each party has taken all reasonable steps to minimise any loss, damage or delay resulting from such event.

## 10. DEFINITIONS

10.1. In this agreement, the following definitions apply:

<b>Client</b>	The client named in the Arboriculture Request for Service Form
<b>Client Address</b>	The client's address named in the Arboriculture Request for Service Form
<b>Confirmed Service Date</b>	The date nominated in the Arboriculture Request for Service Form
<b>MIT</b>	Manukau Institute of Technology
<b>MIT Lecturer</b>	The MIT lecturer named in the Student Acknowledgment attached as Schedule 2
<b>Services</b>	The services detailed in the Arboriculture Request for Service Form
<b>Student</b>	The MIT student(s) named in the Student Acknowledgment attached as Schedule 2