

BE GREEN ORGANIC YARDS NY **SERVICE MARK AGREEMENT for BUSINESSES**

This agreement is between the New York State Department of Environmental Conservation (“NYSDEC”) and a Business* providing *Be Green Organic Yards NY* services and which may use the *Be Green Organic Yards NY* service mark pursuant to this agreement. *Under this agreement, “Be Green Business” and “Business” shall mean any person, individual, partnership, association, corporation, not-for-profit corporation, limited liability company, private or public authority, federal, state or local agency, government or political subdivision, or any other legal entity whatsoever.

Name _____
(Name of Business)

Street Address _____

Telephone Number _____

E-mail Address _____

Service Mark Agreement

By signing this agreement, the *Be Green* Business agrees to adhere to the terms and conditions set forth herein.

By: _____
Salvatore Ervolina, P.E.
Director, Division of Materials Management
New York State Department of Environmental Conservation¹

Date

For the Business:

Signature of Authorized Representative

Date

Printed Name of Authorized Representative

Title

¹Issuance of this agreement does not indicate that any Business signing this agreement is insured.

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Be Green Organic Yards NY
SERVICE MARK
AGREEMENT
for BUSINESSES

CONDITIONS

In consideration of the mutual promises given to each herein, and for such other good and valuable consideration, the *Be Green Organic Yards NY* Business (Be Green Business)² and the Department agree to comply with the following terms and conditions.

The conditions of this agreement specify:

- Training and related requirements for basic training of Be Green Businesses;
- Pest management practices that are prohibited as *Be Green Organic Yards NY* services; and
- Certain limitations on the use of the *Be Green Organic Yards NY* service mark and other general conditions.

Introduction

Successful organic lawn and ornamental care is based on a holistic approach, encompassing a range of considerations, such as plant selection, soil structure, watering needs, and fertility. Pest management – a general term covering control of weeds, insects, fungi, and other pests – is one component of this larger approach.

For the prohibitions in this agreement to be successful, all aspects of establishing a healthy plant community must be properly managed.

² Under this agreement, “Be Green Business” and “Business” shall mean any person, individual, partnership, association, corporation, not-for-profit corporation, limited liability company, private or public authority, federal, state or local agency, government or political subdivision, or any other legal entity whatsoever, which signs this agreement.

Pest-resistant cultivars should be selected and planted where they receive the appropriate amount of sunlight and moisture. The various factors that contribute to healthy soils (aeration, organic content, beneficial biota, drainage, appropriate pH) should be promoted, and Be Green Businesses should be aware of the source of any fertilizers or soil amendments used by the Business. Mechanical or biological pest management should be the preferred means of addressing any pest issues that arise. The training requirements of this agreement are intended to ensure that Be Green Businesses are familiar with the larger concept and practices of organic landscape care.

I. APPLICATION AND TRAINING REQUIREMENTS FOR ENTERING INTO AGREEMENT

- A. The Be Green Business shall, prior to entering into the initial agreement:
1. Submit a completed application for a service mark agreement on the form prescribed by the New York State Department of Environmental Conservation (NYSDEC), and
 2. Ensure that the Be Green Business has at least one individual on staff that has successfully completed a minimum of seven (7) hours of basic training *Be Green Organic Yards NY* training, and passed the basic training course exam, both of which must have been provided by an approved *Be Green Organic Yards NY* Course Provider. The Business must provide NYSDEC documentation of the completion of such training, as identified on the instructions for the application for an agreement.
- B. The Be Green Business shall ensure that, every two years from the date of the signed service mark agreement, or the date of the basic training course and exam for any subsequent Business

Representative, the Business Representative³ shall have completed a minimum of four (4) hours of *Be Green Organic Yards NY* continuing education provided by a Department-approved *Be Green Organic Yards NY* Course Provider. The Be Green Business must provide the NYSDEC documentation of the completion of such continuing education on the form prescribed by the NYSDEC.

- C. The Be Green Business shall notify the NYSDEC, on the form prescribed by NYSDEC, of any additional individuals on the staff of the Business who successfully complete a *Be Green Organic Yards NY* basic training course.
- D. The NYSDEC will issue a *Be Green Organic Yards NY* identification card for each Business Representative in the Business who successfully completes the Be Green basic training course and passes the basic training exam. The Be Green Business shall return to the NYSDEC, within ten (10) business days via certified mail, such identification card under the following circumstances:
 - 1. If, for any reason, the Be Green trained individual no longer provides such services for the Be Green Business under this Agreement; and
 - 2. The Business Representative has not completed continuing education courses every two years from the date of the signed service mark agreement, or the date of the basic training course and exam for any subsequent Business Representatives.

³ “Business Representative”, under this agreement, means an individual who has successfully completed the training and exam called for under this agreement and performs or supervises the *Be Green Organic Yards NY* service for the Be Green Business signing this agreement.

- 3. If this agreement is terminated under the termination conditions in Section III.

II. PEST MANAGEMENT PROHIBITIONS

- A. The Be Green Business shall not treat lawns, ornamental plantings, other foliage and soils maintained according to *Be Green Organic Yards NY* conditions with:
 - 1. Synthetic herbicides, insecticides, insect growth regulators, fungicides, rodenticides, or molluscides (except those limited synthetic products allowed by the United States Department of Agriculture’s National Organic Program).
 - 2. Products that contain synthetic synergists, such as piperonyl butoxide.
 - 3. Products that contain inert ingredients on the United States Environmental Protection Agency’s (EPA) List 1: Inert Ingredients of Toxicological Concern.
 - 4. Arsenical pesticides.
 - 5. Nicotine.
 - 6. Rotenone.
 - 7. Soil fumigants.

NOTE: Under State law, only certified pesticide applicators, or technicians, or persons working under the direct supervision of certified applicators may commercially apply pesticides in New York State. This includes exempt pesticides and those allowable under this Agreement. In addition, applicators may also be subject to business or agency registration requirements. For more information, please see <http://www.dec.ny.gov/permits/209.html>.

B. In addition, it is recommended that the Be Green Business not use any of the following during *Be Green Organic Yards NY* services:

1. Plant material or seeds derived from genetically modified organisms,
2. Synthetic fertilizers or fertilizers derived from sewage sludge⁴,
3. Chemically treated wood (including pressure-treated wood) and other treated articles.

III. GENERAL CONDITIONS

A. The Be Green Business shall:

1. Supply a copy of these conditions (excluding the signature page) to each customer prior to providing *Be Green Organic Yards NY* services and, upon request, give such customer a list of all products applied and services provided.
2. Not provide a service, or apply a product or material prohibited by this agreement on a site receiving Be Green services during a given calendar year, unless requested to do so by the customer, in which case the site cannot be represented as receiving Be Green services for the remainder of the calendar year.⁵ The

⁴ Be Green Businesses are cautioned to investigate the source of any fertilizer or soil amendment used. Please consult the *Be Green Organic Yards NY* resource lists on the NYSDEC website for more information about fertilizer sources.

⁵ The Be Green Business will not be considered in violation of this Agreement, if the customer contracts with a third party for services not in accordance with the Conditions in this Agreement.

⁶ Off-site direct supervision means that the staff being supervised have a means to contact and are able to contact the Be Green Business Representative within a reasonable time not to exceed 30 minutes.

Be Green Business must fill out and have the customer sign the Be Green Pesticide Authorization Form, or equivalent form, acknowledging that the Be Green Business has discussed all possible alternatives to control a pest, the customer has decided to go off the Be Green program, and the customer has decided to use methods not allowed under the Be Green Organic Yards NY standards. A Be Green customer may request to go off the Be Green program at any time, for any reason, but the site cannot be represented as receiving Be Green services for the remainder of the calendar year,

3. Ensure that the Business Representative is present at any site receiving Be Green services, or provides off-site direct supervision⁶ for staff, for the duration of the services provided under this agreement.
4. Ensure that the NYSDEC-issued Be Green identification card is carried by the Business Representative and will be made available for inspection upon request of the NYSDEC.
5. Allow the NYSDEC to post on the NYSDEC website, in a list of qualified Be Green Businesses, the Business name, address and telephone number and the name(s) of the Business Representative(s).
6. Maintain at the place of business, for the duration of this agreement, and make readily available to the NYSDEC upon request, the following records: (a) a copy of the *Be Green Organic Yards NY* service mark agreement, (b) a document, if any,

identifying the service advertised or promoted in connection with the use of the service mark, (c) records showing the date and place where any Be Green services were provided, and (d) a list of the products applied services provided, and (e) records stating when a site is no longer represented as receiving Be Green services. These records shall be retained for a minimum of three years.

- B. The NYSDEC grants a non-exclusive, non-transferable, limited license to use the registered Be Green service mark, and any other affiliated trademarks, in accordance with the conditions set forth in this agreement, and only during the term of this agreement.

In regard to the service mark, the Be Green Business shall:

1. Acknowledge that the NYSDEC has exclusive right, title, and ownership interest in the registered service mark and the Business shall not claim or represent that it has ownership of the service mark.
2. Use the *Be Green Organic Yards NY* service mark only when providing services consistent with the Be Green program and this agreement.
3. Not use the service mark in conjunction with, or displayed on, any product of the Be Green Business.
4. Not insert into or overlap the *Be Green Organic Yards NY* service mark with the Business name or logo, or any other name, service mark or logo.
5. Display the service mark only in the original form and colors provided upon execution of this agreement, and

shall not alter it in any way, except to enlarge or shrink it for display needs while maintaining original proportions.

6. Not display the service mark on any signage required by the neighbor notification law or on commercial lawn care markers.
7. Ensure that it displays the service mark in a clean and orderly manner, and that services covered by this agreement are of a high standard.
8. Not include the service mark on any advertising, promotional or merchandising materials that are false, misleading, or deceptive, and shall not use the service mark in claims which discredit, disparage or otherwise unfairly attack the quality, value, sale, or use of any competing service.
9. Comply with advertising standards, and all applicable local, state, and federal laws.⁶

- C. This agreement shall commence on the date signed by the NYSDEC (the effective date) and shall continue in effect until the expiration date, which shall be four (4) years from the effective date of this agreement. Not less than 45 days prior to the expiration date of this agreement, the Be Green Business shall notify NYSDEC, in writing, of its intentions regarding renewal following the expiration date. The Business shall submit proof that the continuing education requirements have been met and notify the NYSDEC of its intent to renew the agreement for a new four (4) year period (or more than four (4) years,

⁶ This agreement is not intended to supersede any existing State or local laws, ordinances, plans (eg. fertilizer limits in watershed areas), regulations, permits or licenses.

if so determined by the NYSDEC). The NYSDEC reserves the right to terminate the agreement within that 45-day period.

- D. In the event that the NYSDEC determines that the Be Green Business failed to comply with the terms and conditions of this agreement or any applicable federal/state law or regulation, this agreement and the Business' rights to use the service mark may be terminated by the NYSDEC, effective immediately upon service of notice, by regular certified mail, identifying the specific acts which form the basis for the termination. If the NYSDEC terminates this agreement under this condition, the Be Green Business must return to the NYSDEC, within ten (10) business days via certified mail, the Be Green identification card(s) issued to it by the NYSDEC and cease to use the Be Green service mark, because the Business' rights to use the service mark would be terminated.
- E. Either party may terminate the agreement with thirty (30) days written notice.
- F. Any conflict arising out of or relating to this agreement, or the breach thereof, shall be settled by arbitration administered in accordance with the Arbitration Rules of the American Arbitration Association, except that (a) all costs of any arbitration regarding the Business's right to use the service mark shall be borne solely by the Business; (b) the standard of proof for the arbitration shall be the preponderance of the evidence, and (c) the Business shall bear the burden of proof of proving it has not violated any term or condition of this agreement. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

- G. The permission to use the service mark herein granted is personal to the Business, and may not be assigned, sublet or transferred in any way without the prior written consent of the NYSDEC.
- H. The Business shall indemnify and hold harmless the NYSDEC and its respective employees and agents from any claims, actions, suits, injuries, damages, costs, expenses, and/or other liabilities arising out of or connected with (a) this agreement, (b) the Business' use of the service mark, and (c) the Business' breach of this agreement.
- I. Any notice provided by this agreement shall be in writing and delivered by certified mail and addressed as follows:

For the NYSDEC:

NYS Department of Environmental Conservation
Bureau of Pesticide Management
Attention: *Be Green Organic Yards NY*
625 Broadway
Albany, New York 12233-7254

For the Be Green Business:

(business name)

(street address)

(city)

(state and zipcode)

- J. This agreement constitutes the entire agreement between the parties and supersedes any prior understanding or agreements between the parties relating to the use of the service mark. This Agreement may only be amended in writing and signed by all parties. All forms and applications attached hereto,

or referred to herein, are incorporated by reference. These forms and applications include, but are not necessarily limited to the forms documenting basic training for additional individuals and completion of continuing education.

This Agreement and any other documents that may be incorporated by reference herein contain the entire agreement between the parties with respect to the subject matter herein and supersede all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter herein.

- K. This agreement may only be amended in writing and signed by all parties. No waiver of any breach of any provision of this agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
- L. The NYSDEC hereby reserves all its legal, administrative and equitable rights arising at common law or as granted to it pursuant to statute or regulation, including, but not limited to, any summary abatement powers the Commissioner may have pursuant to ECL 71-0303.
- M. The individual signatories to this agreement represent that they have the authority to bind the respective parties by execution of this agreement.
- N. This agreement and the rights and obligations under it are to be governed by the laws of the State of New York. Any action or proceeding relating to this agreement shall be brought exclusively in the applicable State or Federal court in the State of New York, subject to Section F hereinabove.