

***BE GREEN ORGANIC YARDS NY***  
**SERVICE MARK AGREEMENT**  
**for COURSE PROVIDERS**

**This agreement is between the New York State Department of Environmental Conservation (“NYSDEC”) and a business or individual who provides *Be Green Organic Yards NY* courses and exams, and who may use the *Be Green Organic Yards NY* Service Mark, pursuant to the terms of this Agreement.**

Name \_\_\_\_\_  
(Name of Course Provider- Individual or Business)

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

E-mail Address \_\_\_\_\_

**Service Mark Agreement**

By signing this agreement, the *Be Green Organic Yards NY* Course Provider (“Course Provider”) agrees to adhere to the terms and conditions set forth herein.

Joe Martens, Commissioner  
New York State Department of Environmental Conservation

By: \_\_\_\_\_  
Salvatore Ervolina, P.E.  
Director, Division of Materials Management  
New York State Department of Environmental Conservation

Date \_\_\_\_\_

**For the Course Provider:**

\_\_\_\_\_  
Signature of Course Provider or Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Course Provider or Authorized Representative

\_\_\_\_\_  
Title

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***BE GREEN ORGANIC YARDS NY***  
**SERVICE MARK AGREEMENT for**  
**COURSE PROVIDERS**

**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)*<sup>1</sup> and the Department agree to comply with the following terms and conditions.**

**I. *BE GREEN ORGANIC YARDS NY***  
**COURSE AND EXAM ELEMENTS**

**A. Basic Education Courses**

Below are the basic topics the Course Provider agrees to cover in any *Be Green Organic Yards NY* Basic Education course. The Course Provider must offer a minimum of seven hours of instruction for each Basic Education course and a one-half hour Basic Education exam at the end of the course. In addition to instruction and exam time, Course Providers should schedule time for breaks and lunch

Time frames indicated below for each topic area reflect the NYSDEC's assessment of the relative emphasis that should be accorded each primary topic, but Course Providers may give further emphasis to areas of special interest, such as arboriculture, and/or make adjustments to the order of presentation,

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<sup>1</sup> Under this agreement, "Be Green 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.

as long as the required basic topics are covered in full. The NYSDEC may reject any course it considers inadequate with regard to the elements listed in this Section, with an explanation of how it must be revised.

1. Introduction (15 minutes):  
Explaining the goals of the *Be Green Organic Yards NY* Program
  - a. Fostering a healthy and diverse soil/plant ecosystem
  - b. Reducing the likelihood of infestations through general ecosystem health and stability
2. The Service Mark Agreement for Be Green Businesses (1 hour):  
Understanding the functioning of the Service Mark Agreement and the Business's obligations under it.
  - a. Conditions and prohibitions explained
  - b. How the Service Mark may be used and displayed
  - c. Reasons why the Agreement could be revoked (e.g. use of prohibited products; improper marketing; violation of other laws, such as failure to be a certified applicator if applying an allowed pesticide)
  - d. Communicating with clients (required information and contracts)
3. Elements of a Site Analysis (½ hour): How to inventory site conditions so that plantings and maintenance are appropriate to site-specific light, water, slope, and soil conditions. Features to discuss include:
  - a. Surface indicators of soil conditions and quality (e.g. ledge and outcrops showing shallow soil, how to recognize compaction, and weed species prevalent in poor soils)

- b. Sun and shade
  - c. Inventory of existing plants (relative health, insect or disease damage, appropriateness to the site)
  - d. Drainage
  - e. Microclimates (e.g. wind conditions, frost pockets)
4. Soil Health and Structure (1½ hours)  
Covering the basics of healthy soils (e.g. high organic matter content, appropriate pH, good aeration, drainage, soil biota), and how to promote them.
- a. Fertility
    - 1) Understanding soil testing reports and how to respond their information
    - 2) Compost, mulch, and other organic or mineral soil amendments<sup>2</sup>
    - 3) Timing fertilization for optimal effect and minimal runoff
    - 4) Macronutrients and micronutrients: how to determine the required levels for a given lawn, ornamental or tree species
    - 5) Adjusting pH and understanding the different pH requirements of different plantings
    - 6) Consequences of over-fertilization
- b. Structure
    - 1) Aeration
    - 2) Encouraging soil life (earthworms, beneficial fungi) though aeration, minimal disturbance, and additions of organic matter
    - 3) Avoiding and reversing soil compaction
    - 4) Good planting practices to preserve soil structure
5. How to Avoid Plant Stress (45 minutes):
- a. Species and cultivar selection
    - 1) Choosing species and/or cultivars that are well adapted to the site and which are inherently disease and pest resistant<sup>3</sup>
    - 2) Selecting healthy plants at the nursery/wholesaler.
    - 3) Seeking out native plants where appropriate to site conditions
    - 4) Never planting invasive species
  - b. Good planting practices
    - 1) Spacing
    - 2) Planting depth and hole width
    - 3) The right plant in the right place: accounting for water, light, and slope conditions
    - 4) Optimal seasonal planting times
    - 5) Handling to avoid injury

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<sup>2</sup> Note for Course Providers - Instructors must emphasize the following points:

- Soil amendments may be used as part of an organic soil fertility regimen that improves soil health and structure. They may not be used as a direct response to a pest infestation and no specific claims of direct pesticidal activity may be made for such amendments.
- Businesses are cautioned to investigate the source of any fertilizer or soil amendment used in their Be Green services. Please consult the *Be Green Organic Yards NY* resource lists on the NYSDEC website for more information about fertilizer sources.

6. Practice Proper Maintenance (45 minutes):

- a. Proper Mowing
  - 1) Mowing height
  - 2) Blade or reel condition
  - 3) Frequency and timing
  - 4) Cleaning equipment to avoid disease spread
- b. Watering

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<sup>3</sup> In particular, species that are susceptible to invasive plant pests should be avoided (e.g. hemlocks, ash).

- 1) Dangers of overwatering (fungal diseases, root rot)
  - 2) Timing
  - 3) Ensuring infiltration
  - 4) Differences between turf, shrub, and tree watering techniques
  - 5) Choosing water tolerant plants for poorly-drained sites
  - c. Pruning
    - 1) Proper timing and technique
    - 2) Pruning to control size
    - 3) Pruning to rejuvenate
  - d. Prevention and management of thatch buildup through aeration, species selection, and topdressing with compost. Describe damage potential of dethatching.
7. Pest Management (1¾ hours):  
Pest management under organic regimes is achieved primarily cultural and mechanical practices, building soil health, and attention to site conditions and appropriate plantings. This topic should cover these principles, as well discussing the limited types of pesticides allowed under these conditions.<sup>4</sup>
- a. Principles of prevention and pest tolerance

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<sup>4</sup> Note for Course Providers - Instructors must emphasize the following legal requirements for attendees:

- Only New York State registered pesticide products allowed by this agreement, Minimum risk pesticides exempted under Section 25(b) of the Federal Insecticide, Fungicide and Rodenticide Act or cultural/mechanical actions may be used to directly address a specific pest problem.
- Only certified pesticide applicators, or technicians, or persons working under the direct supervision of certified applicators may apply pesticides in New York State. This includes exempt pesticides and those allowable under the Be Green Business Agreement. In addition, applicators may also be subject to business or agency registration requirements. Please see <http://www.dec.ny.gov/permits/209.html> for more information.

- b. *Be Green Organic Yards NY* prohibitions reviewed
  - c. Alternative pest control techniques and the pest issues they address
    - 1) Monitoring/action threshold concepts
    - 2) Biocontrols (eg. milky spore, beneficial nematodes, *Bacillus thuringiensis*)
    - 3) Mechanical/cultural controls
      - a) Traps and barriers
      - b) Mowing height and cleaning blades
      - c) Pruning
      - d) Companion planting
      - e) Avoidance of alternate hosts
    - 4) Allowable or exempt (25b) pesticides (e.g. dormant oils, corn gluten meal, soaps)<sup>3</sup>
    - 5) Proper timing of allowable pesticide applications
8. General Resource Discussion (½ hour):  
Discuss how to locate further information on the following subjects:
- a. more detailed instruction on the course topics, including DEC resources
  - b. transitioning from a chemically-dependent landscape
  - c. trouble-shooting issues with an organic yard
9. Communicating with Clients (15 minutes):  
Transitioning from chemical applications and management of site stress.

## **B. Basic Education Exams**

1. The Course Provider must hold a proctored one-half hour exam at the end of each Basic Education Course.

2. The exam must cover the range of topics in the Basic Education Course and verify competence in the subjects discussed.
3. A minimum of ten questions from a DEC-provided list of questions must be included in the exam, as specified on the list of questions. The Course Provider should add 5-10 questions of their own.
4. The NYSDEC may reject any exam it considers inadequate, in regard to the basic topics listed in Section I and the number of DEC questions included, with an explanation of how it must be revised.
5. The Course provider will consider any attendee who correctly answers seventy-five (75) percent of the questions on the Basic Education exam to have passed the exam.

### **C. Continuing Education Courses**

The Course Provider must offer Be Green Organic Yards NY Continuing Education courses, to fulfill the responsibility of Be Green Organic Yards NY Businesses to take such courses on a biennial basis. The Course Provider must:

1. Offer a minimum of four hours of NYSDEC approved Be Green continuing education.
2. Select topics for the course agenda from any of those covered in Section I for the Basic Education course. New topics can also be proposed, subject to NYSDEC review.

The NYSDEC may reject any agendas which are inconsistent with Be Green Organic Yards NY conditions and prohibitions, with an explanation of how it must be revised.

### **D. Course Instructor Qualifications for Basic Education and Continuing Education Courses**

In order to qualify as a Be Green Organic Yards NY Course Instructor (“Instructor”) for Basic Education or continuing education courses, the Instructor must meet at least one of the following criteria, and provide a resume with at least two references:

1. Have completed a Bachelor of Arts or Bachelor of Science degree from an accredited college or university, which included course work in organic-related fields, and have one season of organic field experience or the equivalent, as deemed acceptable to the NYSDEC.
2. Be accredited by an industry recognized organic organization and have one season of organic field experience or the equivalent, as deemed acceptable to the NYSDEC.
3. Demonstrate a minimum of three (3) years of organic industry experience, as deemed acceptable to the NYSDEC.
4. Be a currently employed technical representative of an organic product or equipment manufacturer, with a minimum of three (3) years appropriate experience. The Instructor may only present information about the company’s product line, unless the instructor has appropriate additional credentials. An organic product distributor, dealer, or sales representative can only qualify to instruct on other subjects, if he/she has one of the other listed qualifications.

## II. COURSE PROVIDER RESPONSIBILITIES

The Course Provider must, for each Basic Education or Continuing Education course the Provider offers:

- A. administer all aspects of *Be Green Organic Yards NY* in relation to the courses and exams which the Course Provider offers.
  - B. submit to the NYSDEC (at the address in Section III), at least 30 days prior to offering a course, the following:
    1. A completed *Be Green Organic Yards NY* Basic Education course application, including a course agenda, and exam application for each such Course,
    2. a completed Continuing Education Course application, including a course agenda, for each such course,
    3. a detailed description of the topics to be covered in each Course,
    4. a completed course instructor application form for each Instructor and ensure that all Instructors meet the qualifications in Section I. D.
  - C. submit to the NYSDEC a new *Be Green Organic Yards NY* course application, if the Course Provider plans to make substantive changes to the content or Instructors of a previously held course. If there are no changes to a previously accepted course, and the course content and instructors are identical to the original, the course may be reoffered without requiring new NYSDEC acceptance.
  - D. ensure that all Instructors meet the minimum qualifications in Section II. D.
  - E. receive NYSDEC acceptance of the Basic Education Course and Exam or Continuing Education Course application before conducting any *Be Green Organic Yards NY* courses and exams.
  - F. submit to the NYSDEC (at the address in Section III) within ten (10) days of course completion a legible course roster, on the roster form prescribed by the Department. The roster must contain:
    1. the course identification number
    2. the names and signatures of the attendees at each course session,
    3. the driver's license number of each attendee,
    4. an indication, for Basic Education courses, of whether each attendee passed the exam by demonstrating proficiency with the course topics.
    5. Any other information indicated on the NYSDEC form.
- The Course Provider must keep a copy of each roster for a minimum of three (3) years.
- G. notify the NYSDEC of the date and location of each session of a course previously accepted by NYSDEC at least 10 business days prior to the date it is offered.
  - H. allow, as a condition of NYSDEC course acceptance, NYSDEC staff to monitor any *Be Green Organic Yards NY* course offered by the Course Provider, and waive registration fees for such staff. If the course is found to deviate significantly from the course outline accepted by the NYSDEC, the NYSDEC may invalidate the course as a *Be Green* course.

- I. allow the NYSDEC to post the Course Provider name and address on the NYSDEC's website as a qualified *Be Green Organic Yards NY* Course Provider.
- J. submit any required or requested information to the NYSDEC within the requested time frames. Failure to adhere to this condition may result in the rejection of future course applications from the Course Provider.

### III. GENERAL CONDITIONS

- A. The NYSDEC grants to the Course Provider a non-exclusive, non-transferable, limited license to use the *Be Green Organic Yards NY* 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.
- B. The Course Provider acknowledges the NYSDEC's exclusive right, title, and ownership interest in the service mark, and the Course Provider shall not claim or represent that it has ownership of the service mark.
- C. The service mark shall only be used when providing services consistent with the *Be Green Organic Yards NY* program and this Agreement. The service mark shall not be used in conjunction with, or displayed on, any product of the Course Provider, and is intended solely for the purpose of identifying services provided that are in accordance with the *Be Green Organic Yards NY* program.
- D. The Course Provider's name, business name or logo or any other name, service mark or logo shall not be inserted into or overlap the *Be Green Organic Yards NY* service mark.

- E. The service mark shall only be displayed in the original form and colors provided upon execution of this Agreement, and may not be altered in any way except to enlarge or shrink it for display needs while maintaining original proportions.
- F. The service mark shall be displayed in a clean and orderly manner, and services covered by this Agreement shall be of a high standard.
- G. No advertising, promotional or merchandising materials that include the service mark shall be false, misleading, or deceptive, nor shall the service mark be used in claims which discredit, disparage or otherwise unfairly attack the quality, value, sale, or use of any competing course provider service.
- H. Maintain at the place of business, records, for a minimum of three (3) years from the date the record was originated, on how the service mark was used by the Course Provider (e.g. on brochures, business cards). The records shall be made readily available to the NYSDEC upon request.
- I. The Course Provider 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 Course Provider's use of the service mark, and (c) the Course Provider's breach of this Agreement.
- J. This Agreement shall commence on the date signed by the NYSDEC 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, NYSDEC shall notify the Course Provider, in writing, of

its intentions regarding renewal following the expiration date. The Course Provider 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, if so determined by the NYSDEC). The NYSDEC reserves the right to terminate the agreement within that 45 day period.

K. In the event that the NYSDEC determines that the Course Provider has failed to comply with the terms and conditions of this Agreement or any applicable federal/state law or regulation, the Agreement and all 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.

L. Either party may terminate the agreement with thirty (30) days written notice.

M. 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 Course Provider's right to use the service mark shall be borne solely by the Course Provider; (b) the standard of proof for the arbitration shall be the preponderance of the evidence, and (c) the Course Provider 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.

N. The permission to use the service mark herein granted is personal to the Course Provider, and may not be assigned, sublet or transferred in any way without the prior written consent of the NYSDEC.

O. Any notice provided by this Agreement shall be in writing and served by certified mail, and addressed as follows:

For the NYSDEC:

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

For the Course Provider:

\_\_\_\_\_  
(Course Provider Name)  
\_\_\_\_\_  
(street address)  
\_\_\_\_\_  
(city)  
\_\_\_\_\_  
(state and zipcode)

O. 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.

P. This Agreement and the rights and obligations under it are to be governed by the laws of the State of New York. Any claim, dispute, action or proceeding relating to this Agreement shall be brought exclusively in the applicable State or Federal court in the State New York, subject to Section L hereinabove.

Q. 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.

- R. 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.
- S. The individual signatories to this Agreement represent that they have the authority to bind the respective parties by execution of this Agreement.