



CLEANmp WEST

SERVICE PROVIDER PERFORMANCE AGREEMENT



This performance agreement is established with SES, Inc. (hereafter referred to as the program administrator) and _____ (hereafter referred to as service provider) this _____ day of _____ (month, year) to provide technical services in the Comprehensive Livestock Environmental Assessment and Nutrient Management Plan West (CLEANmp) Program.

By signing this contract, the service provider agrees to abide by and practice the program requirements in the most up-to-date and approved versions of the CLEANmp program documents, guidance materials and standard operating procedures.

Failure to implement the CLEANmp program according to the specifications and requirements presented in these documents will result in cancellation of approval to participate in the program, and if appropriate, legal proceedings to recover damages incurred resulting from the service provider's actions.

The service provider agrees that participation approval can be revoked by the program administrator, as outlined in the *CLEANmp Service Provider Policy* document, including:

- Receiving an unacceptable score (as defined in CLEANmp SOP No. 001: *Service Provider and Program Implementation Verification*) on an assessment or planning oversight review.
- Failing to submit completed project documents, for two projects, to the program administrator within program-stipulated delivery windows, over a 365 day period. These delivery windows are as follows: within 44 days and 60 days of receiving a notice-to-proceed for an environmental assessment (EA) and nutrient management plan (NMP), respectively. These windows can be increased upon approval by the CLEANmp program administrator.
- Consistently submitting incomplete data collection forms, reports or plans. Consistently is defined as submitting two consecutive incomplete sets of documents after receiving feedback from the program administrator regarding similar areas of concern on past projects. An incomplete set of documents is a set missing data on two or more applicable questions on an EA data collection form or a missing or incomplete section of an NMP.
- Consistently receiving marginal scores on their service provider oversight/verification reviews. Consistently is defined as receiving two consecutive marginal scores after receiving feedback from the program administrator regarding similar areas of concern on past oversight reviews.

- Failing to assess a critical assessment point or high risk condition at a production facility, as defined by the program.
- Being denied access to conduct a CLEANmp project due to his or her actions (i.e., not meeting facility biosecurity, arriving more than one hour late for an appointment, etc.).
- Failure to hold a valid social security number.
- Not adhering to and practicing the CLEANmp Code of Conduct (see Section 12.0).
- Making “off the record” observations.

If the service provider is unable to maintain their approval status for a one-year period due to legitimate reasons, the service provider must contact the program administrator prior to the suspension of their approved status. If a service provider’s approval is revoked, they may appeal the termination of certification by submitting a letter to the CLEANmp program administrator explaining why their certification should not be terminated. References and testimonials are permitted in this appeal letter.

The program administrator will manage the CLEANmp project bidding system described in the program document *Bidding Process – CLEANmp Program*. The Program Administrator agrees to maintain all records regarding service provider approval and performance. The information will be considered confidential.

The program administrator will conduct service provider oversight reviews. These reviews will be used to verify the service provider understands the program and to assure consistent implementation of the program and interpretation of the standards. The service provider oversight will be conducted in accordance with the CLEANmp Standard Operating Procedure (SOP) Number 001: *Service Provider and Program Implementation Verification*.

The program administrator will review all CLEANmp reports and data collection forms for completeness and technical content. Once a report and associated data collection forms are considered acceptable, the program administrator will notify the Environmental Resources Coalition (ERC) that the project is complete. ERC will then issue payment to the service provider for conducting the project. Payments will be made per ERC policy (see *Service Provider Policy*, Section 10.0).

The service provider is an independent contractor. Being awarded a CLEANmp project does not make the service provider an employee of either the program administrator or ERC. Because of this contractor relationship, the service provider agrees to either indemnify the program administrator and ERC, their assignees and licensees, or provide errors and omissions (E&O) and general liability (GL) insurance in

the amount of \$1 million to co-insure the program administrator and ERC relative to claims resulting either directly or indirectly from a CLEANmp project.

If the service provider chooses to indemnify the program administrator and ERC, their assignees and licensees, the service provider will hold each of them harmless from and against any and all claims, demands, losses, damages, liabilities, costs and expenses, including legal fees, by reason of liability imposed upon the program administrator or ERC, whether or not such claims, demands, losses, damages, liabilities, costs and expenses are due or claimed to be due to any negligence of the service provider, his employees, his agents or servants arising out of or by reason of any breach by the service provider of any of the representations, warranties, or agreements made under this contract.

If the service provider chooses to provide E&O and GL insurance, the service provider is required to supply the program administrator written proof that the program administrator and ERC are co-insured by the service provider's policy. A service provider choosing to provide E&O and GL insurance, naming the program administrator and ERC as co-insured, will have their approved status suspended if the proof of insurance expires, is terminated or is not kept current.

Initial the statement that you are accepting:

_____ I agree to indemnify and hold harmless the program administrator (SES, Inc.) and ERC, their assignees and licensees, relative to claims resulting either directly or indirectly from a CLEANmp project.

_____ I have E&O and GL insurance greater than or equal to \$1 million, naming the program administrator (SES, Inc.) and ERC as co-insured.

Service Provider

Date

Program Administrator

Date