



# Green Building Certification Institute™

## CERTIFICATION AGREEMENT

**BY ACCEPTING THIS AGREEMENT YOU ACKNOWLEDGE THAT YOU ARE FULLY AWARE OF AND AGREE TO ALL OF THE FOLLOWING TERMS, CONDITIONS, AND PROVISIONS, YOU REPRESENT THAT YOU HAVE CONSULTED WITH AN ATTORNEY ABOUT YOUR RIGHTS AND OBLIGATIONS HEREUNDER, AND YOU ARE HEREBY ENTERING INTO A LEGALLY BINDING AGREEMENT.**

This Certification Agreement (this "Agreement") is entered into by You (as defined below) and the Green Building Certification Institute ("GBCI"), a non-profit corporation of the District of Columbia located at 2101 L Street, NW, Suite 500, Washington, DC 20037, and constitutes a binding agreement between You, on the one hand, and GBCI, on the other hand. As used herein, the terms "You," "Your," "Yourself," and "Owner" refer to the individual(s) or entity(ies) that holds all legal right to possess and control the real and personal property associated with the Project (defined below) and that is executing this Agreement, as may be implemented by a third party such as an architect, property manager or consultant who has been granted authority to act on Your behalf (Your "Agent").

If Your Agent is entering into this Agreement on Your behalf, You represent and warrant that You have completed a "Confirmation of Agent's Authority" (the form of which is available online at <http://www.usgbc.org/resources/agent-authority>) and that You or Your Agent will provide this form to GBCI upon execution of this Agreement. In such instance, GBCI shall have no obligation to render any decision or provide any other information with respect to the precertification or LEED® Certification of any Project registered under this Agreement until You have provided this form to GBCI. GBCI agrees that Your Agent has no responsibility for the breach of any contractual obligations arising from the Agent's authorized conduct on Your behalf. Any attempt to modify the terms of the Confirmation of Agent's Authority may render the form invalid as to be determined by GBCI in GBCI's sole discretion.

If more than one person or entity constitutes an Owner as defined herein, such parties must irrevocably designate You as the sole Owner with the authority to accept this Agreement and work directly with GBCI for the purpose of administering the LEED Certification process (the "Primary Owner"). GBCI will only communicate with and take direction from You as the Primary Owner with regard to the performance of GBCI's obligations under this Agreement.

**1. PURPOSE.** The purpose of this Agreement is to establish the terms and conditions of the LEED Certification Program (the "Program," to which You (and Your Agent, if any) are bound.

**2. THE PROGRAM.** The Program consists of the process whereby GBCI reviews documentation submitted by participants to determine if a building, interior space or neighborhood, as described to GBCI, complies with the requirements of the LEED Green Building Rating System, and has accumulated the minimum number of points necessary to achieve precertification or a particular level of LEED Certification (i.e., LEED Certified™, LEED Silver®, LEED Gold® or LEED Platinum®). GBCI administers the Program and confers precertification and LEED Certification under license from the U.S. Green Building Council,

Inc. ("USGBC").

### **3. THE PROJECT.**

- 3.1 As used herein, the term "Project" refers to the real and personal property (including the buildings, space(s), structure(s), land, fixtures, etc.) comprising the single-family home(s), multi-family residential building(s), commercial building(s), commercial interior space(s), neighborhood development, or as identified conceptually in the neighborhood development plan or Prototype that You register under this Agreement for the purpose of seeking precertification or LEED Certification, whichever the case may be. The format of Your Project and the number of buildings and interior spaces which may encompass Your Project, and to which this Agreement will apply, may vary depending on the manner in which You pursue precertification or LEED Certification.
- 3.2 If You are participating in the Volume Program and intend to certify multiple buildings or interior spaces under this Agreement via a Prototype, the term "Project" refers to the Prototype you hereby register and to each of the buildings or interior spaces ("Volume Projects") that you register in the future associated with this Prototype. The term "Prototype" refers to the conceptual building model or certification framework demonstrating the common design and construction elements or operations and maintenance practices, as well as quality management processes, which will be incorporated, applied and followed in the implementation of all associated "Volume Projects." While Your Prototype may be submitted for precertification review, it does not represent an actual building or interior space and cannot be independently awarded LEED Certification.
- 3.3 If You are pursuing certification via the campus approach and intend to certify multiple buildings or interior spaces within a campus environment through the registration and submission of one or more Master Sites, the term "Project" refers to each of the buildings and interior spaces ("Campus Projects") and each of the Master Sites that you register in the future under this Agreement. The term "Master Site" refers to a separately registered and submitted Project consisting of a partial Application designed to represent certain common aspects of numerous buildings or interior spaces within a campus for which LEED Certification is sought. While Master Sites may be submitted for review, they are grouping tools rather than complete applications for the associated building(s) or interior space(s) and cannot be independently awarded LEED Certification.

### **4. APPLICATION AND RATING SYSTEM.**

- 4.1 Upon registering Your Project, You will gain access to an electronic application (the "Application") to be used for the sole purpose of applying for precertification or LEED Certification from GBCI. The Application consists of a collection of electronic data entry screens ("Forms") which are specific to the Rating System (defined below) and the particular format of each Project. You may access and submit multiple Applications under this Agreement. You are not required to submit an Application, and may exit the Program at any time.
- 4.2 Each Application is designed to elicit information necessary to determine if a Project complies with the requirements of the LEED Green Building Rating System that You have selected for Your Project to be reviewed under (the "Rating System") and any applicable Minimum Program Requirements ("MPRs") associated with such rating system (collectively referred to herein as "Rating System Requirements"). While USGBC will continue to revise the Rating System and the MPRs from time to time,

Your Project will be held to the Rating System Requirements that exist at the time Your Project is registered. Regardless, if You are pursuing LEED Certification via the Volume Program, each Volume Project registered under this Agreement will be held to the same Rating System Requirements as Your Prototype. If You are pursuing Certification via the campus approach, each Campus Project will be held to the Rating System Requirements that exist at the time the Campus Project is registered; provided however, with respect to those Rating System Requirements satisfied through the use of a Master Site, each Campus Project will be held to the Rating System Requirements that exist at the time the associated Master Site is registered.

- 4.3 The full text of the Rating System and the MPRs is published and available for review at the USGBC website: <http://www.usgbc.org>. You hereby represent and warrant that You have fully reviewed and understand the Rating System and MPRs, and You agree to check for updates prior to registering any Campus Projects or Master Sites under this Agreement in the future.

## **5. CERTIFICATION GUIDE & REFERENCE GUIDE.**

- 5.1 As used herein, the term "Certification Guide" refers to "The Guide to LEED Certification" published by GBCI. The Certification Guide contains extensive information and instructions related to the Program including associated policies, processes and guidelines. You agree to comply at all times with the Certification Guide, including all updates and changes provided to You or made available by GBCI from time to time. The Certification Guide is available for review online at the following webpage: <http://www.usgbc.org/cert-guide>. You hereby represent and warrant that You have fully reviewed and understand the Certification Guide, and You agree to check for updates often.
- 5.2 As used herein, the term "Reference Guide" refers to the LEED Green Building Rating System Reference Guide associated with the Rating System selected for Your Project, including the applicable Reference Guide Supplement, if any, which GBCI shall use to interpret and apply the requirements of the Rating System. The Reference Guide and Reference Guide Supplements are available for purchase at the USGBC website: <http://www.usgbc.org>. USGBC periodically updates the Reference Guide and Reference Guide Supplements by publishing Addenda online on the USGBC website. You agree to comply at all times with the Reference Guide and applicable Reference Guide Supplement, if any, including all changes and Addenda published by USGBC. You hereby represent and warrant that You have fully reviewed and understand the applicable Reference Guide and Reference Guide Supplement, if any, and You agree to check for updates often.

## **6. CERTIFICATION REVIEW.**

- 6.1 Upon receipt of Your Application, GBCI will initiate its review to determine if Your Project is eligible for precertification or LEED Certification, and if so, the appropriate level of LEED Certification to be conferred. During a review, GBCI may request additional documentation, resubmission of calculations and any other information GBCI deems relevant. GBCI will strive to meet the review timelines set forth in the Certification Guide (each, a "Review Timeline"); however, the Review Timelines are estimates only. GBCI's failure to meet any Review Timeline will not be considered a breach of this Agreement and You will not be entitled to any remedy, including a refund of any portion of any Fees paid by You under this Agreement. Further, GBCI's failure to meet any Expedited Review Timeline provided in the Certification Guide will not be considered a breach of this Agreement and You will not be entitled to any remedy under this Agreement; however, GBCI will refund any

premium fees paid by You to expedite the review.

- 6.2 You recognize and acknowledge that GBCI is a nonprofit organization engaged in the effort to lessen the environmental impacts of buildings and communities, and that the Program, while regulated by specific policies and standards developed by GBCI and USGBC, also requires discretion and judgment. The decision whether to grant or deny precertification or LEED Certification to a Project will be made in the sole discretion of GBCI based on GBCI's interpretation of the Rating System, the sufficiency of the submitted Project Information (defined below), and any other information or factors that GBCI deems relevant.

**7. PROGRAM UPGRADES.** From time to time GBCI may develop and make available new versions of LEED Online designed to enhance the Application and improve the certification process. You may be allowed to upgrade to a new version of LEED Online as limited in the Certification Guide. If You are entering into this Agreement with the intention of upgrading (meaning, registering a Project in this version of LEED Online that has been previously registered under another version) You understand and agree that this Agreement will supersede, extinguish and take the place of any and all agreements You have previously entered into with GBCI regarding the registration, precertification, or certification of Your Project(s) with respect to all of Your and GBCI's liabilities, obligations and receipt of benefits under those agreements. You agree that the additional benefits to You and to GBCI provided under this Agreement constitute good and valuable consideration and that this Agreement comprises a valid novation with regard to any prior agreements entered into regarding any Project registered under this Agreement.

**8. OPTIONAL SERVICES.** GBCI and/or USGBC may make available certain optional services to assist You to complete the Application, apply the Rating System requirements to Your Project, confirm Your status as a participant in the Program, and/or confirm the status or progress of Your Project, including without limitation, the review of and response to credit interpretation requests and/or LEED interpretations, the review and/or precertification of additional credits or alternative compliance paths, the registration and review of pilot credits, the review and approval of corrective action reports, the undertaking of additional audits, the drafting and transmittal of a letter of support, the undertaking of appeals, and other services related to the Program (collectively, "Optional Services"). You acknowledge and agree that the performance of all Optional Services by GBCI, GBCI's subcontractors and/or USGBC shall be governed by the terms of this Agreement, including without limitation, all provisions herein related to indemnification and limitations of liability.

## **9. FEES.**

- 9.1 In consideration for GBCI's review of Your Project Information (defined below) and the provision of any Optional Services that You request under this Agreement, You agree to pay GBCI certain fees in accordance with the LEED Certification Fees (the "Fee Schedule"), (collectively, the "Fees"). The Fee Schedule is available for review online at the following webpage: <http://www.usgbc.org/cert-guide/fees>. The Fees that You will incur will vary depending on the manner in which You pursue LEED Certification and the amount of Optional Services You request. GBCI will invoice You for all applicable Fees as they are incurred. All Fees must be paid within thirty (30) calendar days of the date of GBCI's invoice. You hereby represent and warrant that You have fully reviewed and understand the Fee Schedule, and You agree to check for updates often.
- 9.2 GBCI reserves the right to increase the Fees by no more than twenty seven percent (27%) per calendar year. You agree to pay the then-current fees as they are incurred. GBCI will provide You with no less than ninety (90) days prior written notice of any Fee increases. You may elect to pay any Fees in advance. If You pay any Fees in

advance, You will not be charged for the difference should a subsequent increase occur. If You do not agree to any of GBCI's Fee increases, Your sole remedy is to terminate this Agreement pursuant to Section 12.1(a). In the event You elect to terminate this Agreement, You will forego any benefit for which You have paid in advance, and GBCI will not be required to provide You with any refund.

**10. PROJECT INFORMATION.** In order to complete the LEED Certification application process, You must submit extensive information to GBCI related to the Project, including without limitation, any information related to You or Your Project provided prior to executing this Agreement, information contained within the Application(s) and any additional information or data provided to GBCI in connection with the Project (collectively, "Project Information"). You hereby grant GBCI, GBCI's subcontractors and USGBC a perpetual, non-exclusive, royalty-free, fully paid-up and irrevocable license to access, view, reproduce and otherwise use all Project Information submitted to GBCI, including all copyrighted materials, trademarks and other proprietary information, for the purposes of assessing the Project. This license also grants GBCI and USGBC the right to use, reproduce, publish, create derivative works from, perform and display such Project Information as described in the Certification Guide. GBCI and USGBC reserve the right to change the ways they use and disclose Project Information regarding Your Project; provided however, GBCI will provide You with no less than ninety (90) days prior written notice of any changes.

Nothing in this Agreement shall prevent USGBC or GBCI from disclosing information, including where legally compelled to do so by duty, order or command under color of law. Unless prohibited by law, prompt notice of any compelled disclosure will be provided to You to facilitate an opportunity to limit or prevent such disclosure at Your sole expense. Without limitation, GBCI and/or USGBC may disclose Project Information if such disclosure, in GBCI's or USGBC's sole discretion, is deemed to be in the interest of public safety.

GBCI does not wish to receive classified information. Any information or material submitted to GBCI will be deemed not to be classified. By submitting information to GBCI, You represent that such information, be it submitted in connection with an Application for LEED certification or otherwise, is not controlled for export under the International Traffic in Arms Regulations, 22 C.F.R. Part 120 et seq., or the Export Administration Regulations, 15 C.F.R. Part 730 et seq.

#### **11. TRADEMARKS.**

11.1 USGBC owns all rights to several proprietary trademarks, service marks, certification marks, logos and other graphic images, including, but not limited to, the "LEED" trademark and the LEED Certification trademarks (collectively, the "Marks") and, pursuant to licenses from USGBC, in the event You receive LEED Certification, GBCI has the right to grant You the limited right to use the Marks as set forth herein. The Marks constitute valuable intellectual property held by USGBC and GBCI and their licensors and are protected by law. You acknowledge and agree that any unauthorized use of these Marks constitutes both intellectual property infringement and a breach of this Agreement.

11.2 While Your Project is under review, or after it has been precertified, GBCI and USGBC grant You the limited right to use the applicable Marks (depending on the format of the Program You choose to participate in) to indicate that You are applying for LEED Certification, and/or have achieved precertification, under the Program; provided however, that You are prohibited from using the Marks in any manner that indicates or implies (as determined by GBCI in its sole and absolute discretion) that the Project has achieved, or will achieve, LEED Certification at any level. In the event that Your Project, or any portion thereof, is awarded LEED Certification by GBCI, then, subject to the terms and conditions of this Agreement, GBCI and USGBC

grant You a non-exclusive, non-sublicenseable, non-transferable, revocable (in the sole discretion of GBCI), royalty-free, limited license to use the applicable Marks, depending on the Program in which You choose to participate and the level of LEED Certification achieved, for the purposes of indicating the level of LEED Certification granted in relation to the Project.

- 11.3 In connection with all use of the Marks as set forth herein, You agree to use the Marks in accordance with all applicable laws, rules and regulations, and You will comply at all times with the USGBC Trademarks Policy as published by USGBC and as may be updated from time to time (the "Trademark Usage Policy"), and any other reasonable related standards associated with the use of the Marks as provided by GBCI in writing to You. The Trademark Usage Policy is available at the USGBC website: <http://www.usgbc.org/trademarks>. You hereby represent and warrant that You have fully reviewed the Trademark Usage Policy, and You agree to check for updates often.
- 11.4 All rights not expressly granted herein are reserved by GBCI and USGBC, and no license is granted hereunder for the use of the Marks for any purpose beyond the uses set forth in this Section 11, or to any other intellectual property of GBCI or USGBC. You acknowledge and affirm USGBC's ownership of the Marks and the validity and enforceability thereof, and You shall not engage in or support any action, claim or challenge that is inconsistent with the foregoing. All use of the Marks and the goodwill associated therewith shall inure to the sole benefit of USGBC.
- 11.5 You acknowledge that the Marks and the goodwill associated therewith possess special, unique, and extraordinary characteristics, which make difficult the assessment of monetary damages that GBCI and USGBC would sustain as a result of Your unauthorized use of the Marks. You recognize that GBCI and USGBC would suffer irreparable injury by such unauthorized use and agree that injunctive and other equitable relief is appropriate in the event of a breach by You of any of the terms of this Section 11. Such remedy shall not be exclusive of any other remedies available to GBCI and USGBC, nor shall it be deemed an election of remedies by GBCI or USGBC.

## **12. TERM AND TERMINATION.**

- 12.1 The term of this Agreement begins when You accept this Agreement in accordance with Section 29 below, and shall continue in effect unless terminated as follows:
  - a. You may terminate this Agreement in whole or in part at anytime upon thirty (30) days written notice.
  - b. GBCI may terminate this Agreement in full, (or as it relates to any Project registered under this Agreement or Optional Service), immediately and without notice to You if You fail to timely pay GBCI any Fees due under this Agreement.
  - c. Without limiting the forgoing clause regarding non-payment, this Agreement shall terminate in full, (or as it relates to any Project registered under this Agreement), if You breach Your obligations under this Agreement and You fail to cure such breach within thirty (30) days from the date of notice of breach provided to You by GBCI. Such breach of obligations shall include, without limitation, Your misuse of any Marks or other intellectual property held by GBCI or USGBC, and any misstatement, whether intentionally or unintentionally made, in the Project Information that You submit in connection

with the Program.

- d. If You are pursuing LEED Certification via the campus approach, GBCI may terminate this Agreement at any time as it relates to Your ability to register additional Campus Projects or Master Sites within a campus upon providing ten (10) days notice to You.
- e. If You are pursuing Volume Certification, GBCI may terminate this Agreement at any time as it relates to Your ability to purchase additional Volume Project registrations upon providing ten (10) days notice to You.
- f. This Agreement will automatically terminate in full (or as it relates to any Project registered under this Agreement) if GBCI delivers final notice to You that Your Project has been denied precertification or LEED Certification and you have exhausted all opportunities to appeal this determination.
- g. This Agreement will automatically terminate in full (or as it relates to any Project registered under this Agreement) to the extent You sell, transfer or otherwise dispose of all or substantially all of Your interest in the Project, unless the recipient of such interest agrees to assume Your obligations as a party to this Agreement as evidenced by a fully executed "Change of Owner Agreement" (the form of which is available online at <http://www.usgbc.org/resources/change-of-owner>), which is provided to and accepted by GBCI, in its sole discretion (with such acceptance to be evidenced by written notice to You by GBCI).
- h. This Agreement will automatically terminate in full (or as it relates to any Project registered under this Agreement) upon: i) the complete or substantial demolition of the Project; ii) Your failure or unwillingness to comply with any applicable ongoing Rating System Requirements or conditions of precertification or LEED Certification; or iii) the revocation or expiration of precertification or LEED Certification for the Project as set forth in the Certification Guide.
- i. You acknowledge that GBCI and USGBC have established prestige and goodwill in the Program and the Marks, which are well recognized in the minds of the public throughout the world. It is of great importance, and in the mutual interest of You, GBCI and USGBC, that all Projects registered under this Agreement embody the highest standards and reputation connected with USGBC, GBCI and LEED. Therefore, You agree that if You use the Marks in any manner that could or does disparage, tarnish, or dilute the distinctive quality of the Marks or the reputation and goodwill embodied in the Marks, or which would reflect adversely on the Marks, any of the GBCI Indemnitees, the LEED Green Building Rating System, and/or the Program, in GBCI's sole discretion, then at the time of any such act or at any time after GBCI or USGBC learns of any such act, GBCI will have the right, at its sole option, to terminate this Agreement by written notice to You.

12.2 Upon termination of this Agreement pursuant to Section 12.1 above:

- a. Your access to the Application(s) for the associated Project will be revoked by GBCI, and GBCI may, in its sole discretion, delete or destroy any such Application(s) and Form(s) and all data therein;

- b. All of Your rights to use the Marks pursuant to the license granted under Section 11, will terminate and You must immediately discontinue all use and display of the Marks (or, if the Project includes more than that which was terminated, with respect to the applicable portion of the Project).
  - c. All fees owed to GBCI by You as of the effective date of such termination must be paid to GBCI in full within thirty (30) days of the effective date of such termination. There shall be no refund of any fees paid or owed to GBCI under this Agreement.
- 12.3 It is expressly understood and agreed that the parties' respective obligations under this Agreement in Articles 9 and 10, Sections 11.1, 11.3, 11.4, and 11.5, Articles 12 through 16, and Articles 19 through 29 shall survive any termination of this Agreement.

**13. REPRESENTATIONS AND WARRANTIES.** You hereby warrant and represent that:

- 13.1 You have the power and authority and the legal right to enter into this Agreement and to grant the rights and perform the obligations set forth herein. If this Agreement is executed by Your Agent, the Agent has the power and authority and the legal right to enter into this Agreement and to grant the rights and perform the obligations set forth herein on Your behalf and this Agreement constitutes a legal, valid and binding obligation on You that is enforceable against You in accordance with its terms. If more than one person or entity constitutes an Owner as defined herein, You represent and warrant that all other persons or entities constituting an Owner under this Agreement, if any, have each completed a "Confirmation of Primary Owner's Authority" (the form of which is available online at <http://usgbc.org/resources/primary-owner>) confirming Your authority to act on their behalf, and that these forms will be provided to GBCI by You or Your Agent upon execution of this Agreement by written notice. You therefore represent and warrant that You have been irrevocably, explicitly and actually granted the power and authority and the legal right by all Owners, as the Primary Owner, to enter into this Agreement and to grant the rights and perform the obligations set forth herein on behalf of all Owners, including Yourself, as necessary to render this Agreement a legal, valid and binding obligation against all Owners, including Yourself, and that is enforceable against all Owners, including Yourself, in accordance with its terms. The obligations of all Owners, including Yourself, shall be joint and several and the GBCI Indemnitees (defined below) may enforce their rights against any Owner in any order.
- 13.2 You have taken all necessary action required to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder;
- 13.3 You have the right to provide all Project Information provided to GBCI by You or on Your behalf, to grant the licenses to GBCI, GBCI's subcontractors and USGBC as purported to be granted pursuant to this Agreement and to otherwise grant the rights granted under this Agreement;
- 13.4 No rights granted by You to GBCI, GBCI's subcontractors or USGBC pursuant to this Agreement are in violation of any other agreement; and
- 13.5 The Project Information is and will be true, correct and complete, and accurate in all respects, and does not and will not infringe upon or misappropriate the intellectual property rights of any third party.

**14. INDEMNIFICATION.**



- 14.1 You agree to indemnify, defend and hold harmless GBCI, USGBC and each of their respective officers, directors, employees, agents, representatives, affiliates, subcontractors, subsidiaries and independent contractors (collectively, the "GBCI Indemnitees") from and against all claims, actions, suits, losses, costs, liabilities, judgments, damages and expenses, including reasonable attorneys' fees, court costs, litigation expenses and related expenses (collectively, "Claims") arising out of or relating to (i) Your breach of any of the representations, warranties or obligations set forth herein, (ii) any incompleteness or inaccuracy of the Project Information, (iii) Your use of the Marks other than as set forth in Section 11, (iv) any third party claim, (v) Your use of, and/or reliance upon, any LEED Certification awarded under this Agreement, and/or (vi) Your Project (whether or not any individual building(s) or individual interior space(s) comprising Your Project has received LEED Certification); all of the foregoing, except to the extent such Claim was directly caused by the gross negligence or willful misconduct of GBCI, GBCI's subcontractors and/or USGBC. You understand and agree that it is specifically intended for You to indemnify the GBCI Indemnitees for their sole negligence and contributory negligence but not for their gross negligence or willful misconduct. To the extent You are required to indemnify any of the GBCI Indemnities, You shall not enter into any settlement without obtaining GBCI's prior written consent. Without limitation of the foregoing, any or all of the GBCI Indemnitees may elect to participate in any cause of action with counsel of their choosing at their own expense.
- 14.2 If, subsequent to the acceptance of this Agreement, it is determined that such acceptance was by an unauthorized individual or entity purportedly acting on the behalf of the party (or parties) that holds all legal right to possess and control the real and personal property associated with the Project, the person or entity that accepts this Agreement acknowledges and agrees that, as between such person or entity and GBCI, such person or entity shall be responsible for all liability to, and incurred by, the GBCI Indemnitees and all third parties, and such person or entity hereby agrees to indemnify, defend and hold harmless the GBCI Indemnitees for any and all Claims arising out of or relating to this Agreement. No settlement shall be entered into without GBCI's prior written consent and any or all of the GBCI Indemnitees may elect to participate in any cause of action with counsel of their choosing at their own expense.

## **15. DISCLAIMER OF WARRANTIES.**

- 15.1 **NEITHER GBCI NOR USGBC MAKES ANY (AND BOTH GBCI AND USGBC HEREBY DISCLAIM, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY AND ALL) WARRANTIES, REPRESENTATIONS, AND CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES OF ACCURACY, COMPLETENESS, TITLE, AGAINST INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PROGRAM, THE RATING SYSTEM, ANY APPLICATION OR FORM, THE LEED CERTIFICATION REVIEW PROCESS, AND ANY OPTIONAL SERVICES PROVIDED BY OR ON BEHALF OF ANY GBCI INDEMNITEE. GBCI AND USGBC EXPLICITLY DISCLAIM ANY AND ALL LIABILITY ARISING FROM YOUR USE OF LEED ONLINE AND ANY APPLICATION OR FORM FOR ANY PURPOSE OTHER THAN FOR THE PURSUIT OF PRECERTIFICATION OR LEED CERTIFICATION FROM GBCI.**
- 15.2 ALL DETERMINATIONS RELATED TO LEED CERTIFICATION ARE IN THE SOLE AND ABSOLUTE DISCRETION OF GBCI AND IN NO EVENT SHALL ANY GBCI

INDEMNITEE HAVE ANY LIABILITY AS A RESULT OF ANY DECISION TO GRANT OR NOT TO GRANT LEED CERTIFICATION TO YOUR PROJECT (OR ANY PORTION OF YOUR PROJECT) FOR ANY REASON.

15.3 WITHOUT LIMITING THE BROAD SCOPE OF THIS SECTION 15, YOU AGREE AND ACKNOWLEDGE THAT:

- a. LEED CERTIFICATION IS NOT A REPRESENTATION, AND DOES NOT MEAN THAT YOUR PROJECT (OR ANY INDIVIDUAL BUILDING(S) OR INTERIOR SPACE(S) COMPRISING YOUR PROJECT) IS STRUCTURALLY SOUND OR SAFE, CONSTRUCTED IN ACCORDANCE WITH APPLICABLE LAWS, REGULATIONS OR CODES, FREE OF MOLD OR MILDEW, OR FREE OF VOLATILE ORGANIC COMPOUNDS OR ALLERGENS OR TOXINS, OR THAT YOUR PROJECT (OR ANY INDIVIDUALLY REGISTERED BUILDING(S) INTERIOR SPACE(S), VOLUME PROJECT(S), CAMPUS PROJECT(S), OR RESIDENCE(S) COMPRISING YOUR PROJECT) SHALL ACHIEVE A RELATIVE OR SPECIFIC LEVEL OF ENERGY EFFICIENCY, PERFORMANCE, OR UTILIZATION OF RENEWABLE, RECYCLED OR RECYCLABLE RESOURCES AS A RESULT OF ANY LEED CERTIFICATION;
- b. ANY GRANT OF LEED CERTIFICATION DOES NOT MEAN THAT GBCI OR USGBC ENDORSES, VERIFIES OR AGREES WITH ANY PROJECT INFORMATION THAT HAS BEEN PROVIDED OR REPRESENTED TO GBCI OR USGBC;
- c. ANY GRANT OF LEED CERTIFICATION SHALL NOT GUARANTEE: (A) ENERGY EFFICIENCY FOR THE PROJECT; (B) COST-SAVINGS FOR THE PROJECT; (C) ECONOMIC BENEFITS FOR YOU OR YOUR AGENT; OR (D) GOVERNMENT INCENTIVES, INCLUDING GOVERNMENT TAX INCENTIVES, FOR YOU OR YOUR AGENT; AND
- d. ANY GRANT OF LEED CERTIFICATION DOES NOT GUARANTEE YOU OR YOUR AGENT OF THE SATISFACTION OF ANY MANDATES OR REQUIREMENT FOR THE PROJECT TO BE CONSTRUCTED "GREEN."

**16. LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE REQUIRED BY LAW, IN NO EVENT SHALL ANY OF THE GBCI INDEMNITEES BE LIABLE TO YOU, YOUR AGENT OR ANY THIRD PARTY FOR ANY DIRECT, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES OR COSTS DUE TO LOSS OF PROFITS, TAX CREDITS, ECONOMIC BENEFITS, DATA, LOSS OF GOODWILL, OR PERSONAL OR OTHER PROPERTY DAMAGE REGARDING THIS AGREEMENT OR RESULTING FROM OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT BY ANY GBCI INDEMNITEE OR IN CONNECTION WITH THE PROGRAM, ANY OPTIONAL SERVICES, THE RATING SYSTEM, THE MPRS, THE CERTIFICATION GUIDE, THE REFERENCE GUIDE, LEED ONLINE OR ANY APPLICATION OR FORM, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. REGARDLESS OF THE FOREGOING, AND WITHOUT LIMITING ANY OTHER PROVISION HEREIN, (I) YOUR SOLE REMEDY VIS A VIS GBCI, GBCI'S SUBCONTRACTORS AND USGBC SHALL BE LIMITED TO A RETURN OF FEES PAID BY YOU TO GBCI; AND (II) IN NO EVENT SHALL GBCI, GBCI'S SUBCONTRACTORS OR USGBC BE LIABLE, IN THE AGGREGATE, TO YOU, YOUR AGENT OR ANY THIRD PARTY IN EXCESS OF THE TOTAL AMOUNT OF FEES PAID BY YOU TO GBCI UNDER THIS AGREEMENT FOR THE PRODUCT OR SERVICE TO WHICH SUCH

CLAIM RELATES. FURTHER, WHILE GBCI TAKES REASONABLE EFFORTS TO ENSURE THE FUNCTIONALITY OF LEED ONLINE, THE APPLICATION, AND EACH FORM CONTAINED THEREIN, ANY OF THE FOREGOING MAY CONTAIN CALCULATIVE, PROGRAMMATIC OR OTHER ERRORS, INCLUDING ERRORS THAT COULD RESULT IN INTERRUPTION OF SERVICE OR LOSS OF DATA, OR POTENTIALLY CAUSE A FORM TO MISREPRESENT COMPLIANCE OR NON-COMPLIANCE WITH A PREREQUISITE OR CREDIT, AND, ACCORDINGLY, IN NO EVENT SHALL ANY GBCI INDEMNITEE BE LIABLE TO YOU OR ANY OTHER THIRD PARTY FOR ANY SUCH ERRORS.

#### **17. MODIFICATION OF TERMS.**

17.1 EXCEPT AS OTHERWISE PROVIDED HEREIN, GBCI OR USGBC MAY CHANGE ANY OF THE PROGRAM POLICIES OR GUIDELINES, (INCLUDING WITHOUT LIMITATION, THE CERTIFICATION GUIDE, FEE SCHEDULE, REFERENCE GUIDE AND TRADEMARK USAGE POLICY) AT ANY TIME IN THEIR SOLE DISCRETION. YOUR LOGGING IN TO ACCESS OR SUBMIT YOUR APPLICATION AND FOLLOWING ANY REQUIRED PROMPTS, AND/OR YOUR ONGOING USE OF THE MARKS, CONSTITUTES YOUR IRREVOCABLE ACCEPTANCE OF ALL SUCH CHANGES WHICH WERE MADE, AND THE LEGAL AMENDMENT OF THIS AGREEMENT.

17.2 In the event of any modification of any material terms in accordance with Section 17.1 to which You do not assent (other than pricing changes as allowed under Section 9.2), Your sole remedy shall be the right to terminate the Agreement and receive a refund of any Fees paid by You within the one hundred and eighty (180) days immediately preceding the date of termination in relation to Your Project.

**18. FORCE MAJEURE.** None of the GBCI Indemnitees shall be liable for inadequate or non-performance to the extent caused by any Force Majeure Event, which wholly or partially prevents or delays the performance of any of the duties, responsibilities or obligations of such GBCI Indemnitee. As used herein, the term "Force Majeure Event" shall mean any act, event or condition (except, in each case, for the payment of money) which is beyond the reasonable control of such GBCI Indemnitee, including, but not be limited to, an act of God; an act of the public enemy; civil disturbance or unrest; injunctions; lightning; fire, explosion or other serious casualty; water damage; terrorist attack (or threats thereof); epidemics; strike, lock-out or labor dispute (without regard to the reasonableness of any party's demands or any party's ability to satisfy such demands); accident or sabotage; unusually severe weather (including hurricane, earthquake, tornado, landslide or flood); war (whether declared or not) or threats thereof; blockades; embargoes; condemnation or other taking by the action of any governmental body on behalf of any public, quasi-governmental or private entity; other governmental action or change in Law; or shortages or failures of sources of labor, material, energy, fuel, water, other vital utility, equipment or transportation. GBCI shall have the right to terminate this Agreement if a Force Majeure Event lasts for period of five (5) days or more. In such event, GBCI shall return all prepaid fees for services not yet rendered (such calculation to be made by GBCI, in GBCI's sole discretion).

**19. NOTICES.** GBCI expects to be in regular communication with You regarding Your participation in the Program. Such communications will occur via email exchange and/or through Your Application(s). However, notices required by this Agreement must be communicated as follows:

Notices To You - GBCI shall send all notices to You and one (1) additional individual related to the Project designated by You (e.g., Project administrator or Prototype administrator) at the email addresses provided by You to GBCI in the Application. Such notices shall be effective when sent. You agree to provide GBCI with up-to-date contact information for the duration of this Agreement.

Notices To GBCI - You must provide written notice to GBCI by email with delivery confirmation, and by certified mail with return receipt requested. Such communications shall be effective when actually received and must be addressed as follows:

**Mailing Address:**  
**Green Building Certification Institute**  
**Attn: General Counsel**  
**2101 L Street, NW, Suite 500**  
**Washington, DC 20037**

**Email Address:**  
**legal@gbci.org**

## **20. NOTICE OF CLAIM; MEDIATION; ARBITRATION.**

- 20.1 If You believe that You have been damaged by any act or omission by GBCI, GBCI's subcontractors and/or USGBC, then You must provide GBCI with written notice in accordance with Section 19 within one hundred eighty (180) calendar days after the occurrence of each such act or omission, describing with reasonable detail (i) the act and/or omission, (ii) how You were damaged by it and (iii) a reasonable estimate of the amount of monetary damages You claim to have suffered (each, a "Notice of Claim").
- 20.2 In the event of any controversy, claim or dispute arising out of or relating to this Agreement, or a breach thereof, (each such event, a "Dispute") the parties hereto agree to seek to resolve the dispute through open and good faith discussions in the first instance. If the Dispute cannot be resolved through these discussions, the parties agree second to try and settle the dispute by mediation, administered by the American Arbitration Association ("AAA") under its Mediation Rules.
- 20.3 If settlement is not reached within sixty (60) calendar days after service of a written demand for mediation, such Dispute shall be finally resolved under the Rules of Arbitration of the American Arbitration Association (the "Rules") by three (3) arbitrators appointed in accordance with the Rules (each such arbitration, an "Arbitration"). Each Arbitration will be conducted in English and all foreign language documents shall be submitted in the original language and, if so requested by any arbitrator or party, shall also be accompanied by a translation into English. The place of arbitration, and the location for all hearings and meetings in an Arbitration, shall be the District of Columbia, United States of America, which location cannot be changed, and any Arbitration may be initiated by either party in accordance with the Rules. For each Arbitration, the governing law set forth in Section 21 shall be applied to the merits of the Dispute. Each party shall present its case in a pre-hearing memorial accompanied by all of its evidence in support of its position. The arbitrators in any Arbitration shall enforce, and not modify, the terms of this Agreement. The award or decision of the arbitrators shall be final and binding on each party and its respective successors and assigns, and judgment may be entered thereupon and enforced in any court of competent jurisdiction. All costs and expenses of any Arbitration, including reasonable attorneys' fees and expenses and the administrative and arbitrator fees and expenses, shall be borne by the parties as determined by the arbitrators. Nothing in this Section 20 shall be construed as limiting the right of a party to seek, in a court of competent jurisdiction, an injunction or other equitable relief in aid of arbitration (including to maintain the status quo or preserve the subject matter of the arbitration) with respect to any actual or threatened breach of this Agreement or otherwise, to prevent or avoid irreparable harm. Nothing herein shall permit the arbitrators to award any damages which are disclaimed in this Agreement, including those in Section 16.
- 20.4 It is understood and acknowledged that during the pendency of a Dispute, all of the terms and conditions of this Agreement shall remain in effect and the parties shall

continue to perform all of their respective obligations hereunder.

- 20.5 Except to the limited extent necessary to comply with any applicable law, legal process, or a court order or to enforce a final settlement agreement or secure enforcement of the arbitrators' award, the parties agree that the existence, terms and content of any Arbitration, all information and documents disclosed in any Arbitration or evidencing any arbitration results, award, judgment or settlement, or the performance thereof, and any allegations, statements and admissions made or positions taken by either party in any Arbitration shall be treated and maintained in confidence and are not intended to be used or disclosed for any other purpose or in any other forum.
- 20.6 Without limiting the confidentiality requirements of Section 20.5 above, You agree that during the pendency of a Dispute You will not publicly or privately disparage any of the GBCI Indemnitees in any way, make or give any comments, statements, or opinions which may be harmful to the goodwill and reputation of the GBCI Indemnitees, or directly or indirectly cause or encourage the making of such comments, statements, or opinions, or the taking of such actions, by anyone else. For the purposes of this Agreement, the term "disparage" includes, without limitation, comments or statements to the press and/or media, or to any individual or entity with whom the GBCI Indemnitees have a business or personal relationship which would adversely affect in any manner (i) the conduct of the business of the GBCI Indemnitees; (ii) the business reputation of the GBCI Indemnitees; or (iii) the personal reputation of the GBCI Indemnitees.

**21. GOVERNING LAW.** This Agreement, and all of the rights and duties of You, Your Agent, and the GBCI Indemnities arising out of or related to the Program, shall be governed by the laws of the District of Columbia, United States of America, without regard to its conflicts of law rules.

**22. REMEDIES.** Except as otherwise expressly provided in this Agreement, all remedies shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.

**23. RELATIONSHIP OF THE PARTIES.** The relationship between the parties to this Agreement is that of independent contractors with respect to the benefits described herein. This Agreement is not intended to, and does not, create any association, partnership, joint venture, employment, or agency relationship between the parties. You agree that You will not hold Yourself out as, an agent, affiliate, legal representative, joint-venturer, partner, employee or servant of any GBCI Indemnitee for any purpose whatsoever. As an independent contractor, we are solely responsible for determining the means and methods for providing the benefits described herein.

**24. USGBC, THIRD PARTIES AND ASSIGNMENT OF RIGHTS.** Nothing in this Agreement shall be deemed to confer any benefit or rights on or to any person or entity (including the Agent) other than You and GBCI; provided however, that the GBCI Indemnitees shall be intended third-party beneficiaries to this Agreement. GBCI reserves the right to assign and/or delegate any of its rights and/or obligations in its sole discretion, including, and without limitation, the right to subcontract the performance of any services associated with the Program. You may not assign and/or delegate any of the rights and/or obligations under this Agreement except as set forth in Section 12.1(g) above. Any unauthorized assignment or delegation shall be null and void.

**25. ENTIRE AGREEMENT.** This Agreement (including all Exhibits, Schedules, documents and information accessible through hyperlink or referencing a URL (the "Ancillary Documents"), which are hereby incorporated herein and made a part hereof) constitutes a fully integrated agreement that supersedes any and all prior agreements between You and

GBCI concerning the Project. You agree to comply with and be bound by the terms, conditions and provisions of all the Ancillary Documents whether or not any particular condition or provision is referenced in this Agreement. The Ancillary Documents are intended to be complementary and interpreted in harmony. In the event of any conflict, this Agreement shall take precedence, followed in descending order by the Certification Guide, the Fee Schedule, the Rating System, the MPRs, the Reference Guide and the Trademark Usage Policy. The terms and conditions for the use of the website hosting the Application are not superseded by this Agreement.

**26. MODIFICATION AND WAIVER.** The Ancillary Documents may be amended by GBCI as described in this Agreement, and You may be allowed to upgrade to a new version of LEED Online as provided in Section 7 above. Otherwise, this Agreement may only be modified in writing and all such written modifications must be signed by You and GBCI's then-current President, Chief Operating Officer, or General Counsel. No other individual has the authority to modify this Agreement on GBCI's behalf. No action or inaction by GBCI will be construed as a waiver of this or any other provision of this Agreement. To be enforceable, any waiver of this Agreement (excluding the Ancillary Documents) must be in writing and signed by You and GBCI, and shall be limited to the specific terms of the waiver.

**27. INTERPRETATION.** The invalidity of any part of this Agreement shall not impair or affect the validity or enforceability of the rest of this Agreement, which shall remain in full force and effect. Any provision found to be invalid shall be more narrowly construed so that it becomes legal and enforceable. The headings used in this document are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision. Any rule that ambiguities are construed or interpreted against the drafter of a document, or against the party for whose benefit the document is made, shall not apply. As used in this Agreement, the plural shall include the singular and the singular shall include the plural whenever appropriate.

**28. GOVERNMENT ENTITIES.** If You are a Government Entity within the United States; meaning, an agency or instrumentality operating under color of federal law, and/or an agency or instrumentality operating under state law or municipal ordinance, including all agencies, boards and commissions in the executive branch of such governments, the foregoing provisions of this Agreement regarding limitations of liability, indemnification, equitable relief, disputes and choice of law, to which You are prohibited from agreeing to as a matter of law, are hereby waived.

**29. EXECUTION.** BY SELECTING THE BUTTON BELOW MARKED "I AGREE" YOU HEREBY AGREE TO THE TERMS, CONDITIONS AND PROVISIONS REPRESENTED IN THIS AGREEMENT. YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THIS AGREEMENT AND ALL EXHIBITS AND SCHEDULES HERETO, ALL PROGRAM POLICIES AND GUIDELINES, INCLUDING THE RATING SYSTEM, MPRS, CERTIFICATION GUIDE, FEE SCHEDULE, REFERENCE GUIDE AND TRADEMARK USAGE POLICY, AND THAT YOU HAVE BEEN PROVIDED THE OPPORTUNITY TO MAINTAIN A RECORD OF THIS AGREEMENT, ALL SUCH ANCILLARY DOCUMENTS, AND ALL PROGRAM POLICIES AND GUIDELINES. FURTHER, YOU UNDERSTAND THAT BY AGREEING TO THESE TERMS YOU WILL BE BOUND TO A LEGALLY ENFORCEABLE CONTRACT NO DIFFERENT THAN A CONTRACT EXPRESSED ON PAPER AND PHYSICALLY SIGNED BY YOU. TO THE EXTENT YOU ACCEPT THIS AGREEMENT AS DESCRIBED HEREIN, GBCI SHALL MAINTAIN AN ELECTRONIC RECORD OF THIS AGREEMENT WHICH YOU MAY REQUEST TO REVIEW AND DOWNLOAD AT ANY TIME.