



TERMS OF USE FOR USERS OF THE GREEN GLOBES SOFTWARE PROGRAM

These Terms of Use ("**Agreement**") govern all access to and use of the **GREEN GLOBES SOFTWARE PROGRAM** (as defined herein), which is owned and provided by **GREEN BUILDING INITIATIVE, INC.** ("**GBI**").

ALL USERS (INCLUDING WITHOUT LIMITATION THE PROJECT OWNER AND ALL PROJECT COLLABORATORS, AS SUCH TERMS ARE DEFINED HEREIN) OF THE GREEN GLOBES SOFTWARE PROGRAM (AS SUCH TERM IS DEFINED HEREIN) HEREBY AGREE THAT THIS AGREEMENT GOVERNS ALL USER'S ACCESS TO, AND USE OF, THE GREEN GLOBES SOFTWARE PROGRAM. EACH USER HEREBY AGREES THAT USE OF THE GREEN GLOBES SOFTWARE PROGRAM IS SUBJECT TO THE USER'S COMPLIANCE WITH ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS AGREEMENT CAN BE AMENDED AT ANY TIME BY GBI UPON REASONABLE NOTICE.

BY CLICKING THE "I AGREE" LINK TO REGISTER A PROJECT (AS SUCH TERM IS DEFINED HEREIN) OR BY CONTINUING TO USE THE GREEN GLOBES SOFTWARE PROGRAM, ALL USERS (AS DEFINED BELOW) OF THE GREEN GLOBES SOFTWARE PROGRAM HEREBY AGREE TO BE AUTOMATICALLY BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AS IT IS PRESENTED TO YOU AS OF THE DATE OF YOUR FIRST USE OF THE GREEN GLOBES SOFTWARE PROGRAM (THE "EFFECTIVE DATE").

NO CHANGES (ADDITIONS OR DELETIONS) BY YOU TO THIS AGREEMENT WILL BE ACCEPTED BY GREEN BUILDING INITIATIVE, INC. IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN YOU SHOULD NOT USE THE GREEN GLOBES SOFTWARE PROGRAM. THIS IS A LEGALLY BINDING CONTRACT. YOU SHOULD DOWNLOAD AND PRINT THIS AGREEMENT FOR YOUR RECORDS.

1. **Definitions.** The following terms have the following meanings:

1.1 "**GBI Server**" means any servers, other hardware, other computer systems or other software applications which are proprietary to GBI and are used by GBI to support the Green Globes Software Program.

1.2 "**Green Globes Certification**" means a certification indicating that a particular Project has met certain levels of the Green Globes System.

1.3 "**Green Globes Software**" means GBI's proprietary software program which is used in order for a Project to obtain a certain level of Green Globes Certification.

1.4 "**Green Globes System**" means GBI's Green Globes certification process or system which provides a method for assessing buildings in relation to commonly valued environmental and efficiency outcomes.

1.5 "**Project**" means the one specific project that the Project Owner has registered with GBI when paying the project registration fee and setting up the Project Account as contemplated by Section 3.

1.6 "**Project Collaborator(s)**" has the meaning set forth in Section 3.

1.7 "**Project Owner**" has the meaning set forth in Section 3.

1.8 "**Project Data**" means any words, data, images, information, or any other content regarding the Project that the Project Owner or any Project Collaborator uploads or stores during their use of the Green Globes Software Program.

1.9 "**Usage Guidelines**" are any additional guidelines or rules adopted by GBI, from time to time and at any time, which govern the permissible ways of using the Green Globes Software Program.

1.10 "**User(s)**" means, collectively, the Project Owner and all of its Project Collaborators.

2. Access Right; Conditions of Use.

2.1 Subject to all of the terms and conditions of this Agreement, GBI hereby grants to the Project Owner and its authorized Project Collaborators a non-exclusive, personal, non-sublicenseable, non-assignable, non-transferrable, and limited license to access and use the Green Globes Software Program, only in the format and only the version made available by GBI, for the sole purpose of seeking to obtain a Green Globes Certification for the one specific Project registered by that Project Owner under this Agreement, but for no other purposes or other projects whatsoever ("**Access Right**").

2.2 Notwithstanding the foregoing Access Right, GBI has the right to do the following, at any time and from time to time: (i) adopt new, or amend existing, Usage Guidelines regarding the proper ways of accessing and using the Green Globes Software Programs; (ii) change, suspend, or discontinue any of the features or functionalities of the Green Globes Software Program or Green Globes System; or (iii) amend, modify or discontinue, in whole or in part, the Green Globes Software Program or the Green Globes System.

2.3 The Access Right granted to Users under this Agreement will immediately terminate upon the expiration, cancellation or termination of this Agreement for any reason.

2.4 In addition to any other conditions set forth in this Agreement, all Users agree to the following additional terms and conditions:

- (a) Users are prohibited from posting, distributing, uploading, storing or otherwise disseminating any Project Data if the Project Data is not owned by the User or if Project User does not have the absolute right to use such Project Data.
- (b) Users are also prohibited from posting, distributing, uploading, storing or otherwise disseminating any Project Data if such act or action: (i) infringes on any patent, trademark, trade secret, copyright, right of publicity, or any other intellectual property or proprietary right of any party; or (ii) violates any other laws, statutes, ordinances or regulations anywhere.
- (c) Users are solely responsible for obtaining and maintaining any equipment or ancillary services needed to access the Green Globes Software Program.
- (d) Users are only permitted to use the Green Globes Software Program solely in accordance with this Agreement (and, if applicable, any Usage Guidelines). Users are explicitly prohibited from using the Green Globes Software Program: (i) for any purpose that is not directly related to obtaining the Green Globes Certification for the Project; (ii) for any other purposes that are prohibited by this Agreement or any Usage Guidelines; (iii) in any manner that could damage, disable, overburden, or impair the Green Globes Software Program or any GBI Server; or (iv) for any unlawful purpose.
- (e) Users shall not: (i) attempt to obtain or obtain any data or other content through any means not intentionally made available or provided for by the Green Globes Software Program; or (ii) violate or attempt to violate any security features or protocols associated with the Green Globes Software Program or any GBI Server.

2.5 In addition to any other right in this Agreement, GBI has the right to immediately:

- (a) remove any Project Data from the Green Globes Software Program which, in GBI's sole determination, violates any provision of this Agreement, any Usage Guidelines, or any law, statute, ordinance or regulation anywhere; or
- (b) suspend or terminate the Access Rights or this Agreement for any and all Users.

3. Project Registration.

3.1 Each Project must be registered by the particular project owner (hereinafter referred to as the "**Project Owner**") who is responsible for opening the Project account with GBI, identifying and registering the specific Project with GBI, paying GBI the required registration fees for such Project, and finalizing any other registration steps required by GBI to register the Project (collectively, the "**Project Account**").

3.2 Each Project Owner is responsible for the following with regard to the Project:

- (a) paying all registration fees and other fees to GBI for use of the Green Globes Software Program;
- (b) authorizing the specific end users which the Project Owner will permit to use the Green Globes Software for only the particular Project ("**Project Collaborator(s)**") and providing GBI (upon GBI's request) of a list of all Project Collaborators and maintaining the confidentiality of all information related to each such Project Collaborator; and
- (c) maintaining the completeness and accuracy of all information related to the use of the Green Globes Software by all User and of the Project in general.

3.3 The Project Owner is further solely responsible: (a) for ensuring (at GBI's reasonable request) that all Project Collaborators are bound by all the terms and conditions of this Agreement ; and (b) for any and all breaches of this Agreement by any and all

Project Collaborators. Without limiting the foregoing in any way, and in addition to any other provision in this Agreement, the Project User hereby agrees to indemnify, defend and otherwise hold GBI, its affiliates, and their officers, directors, employees, agents and representatives harmless for, from and against any and all damages, losses, liabilities, costs and expenses of any kind or nature (including costs and reasonable fees of attorneys and other professionals) arising from or related to any breach of this Agreement by any of the Project Collaborators.

3.4 In the alternative, and without limiting the foregoing provisions in any way, GBI reserves the right to require each Project Collaborator to first agree to an end user agreement (in a form acceptable to GBI) before a Project Collaborator may have access to or use of the Green Globes Software Program.

4. **Additional User Covenants.**

4.1 Each User acknowledges and agrees that all Project Data and any other information uploaded by the Users to the Green Globes Software Program:

- (a) is provided strictly on behalf of that User and not as an agent or representative of GBI; and
- (b) each such User is solely responsible for the accuracy and completeness of all such Project Data and other information that such User provides.

4.2 Each User hereby further acknowledges and agrees that:

- (a) GBI is not responsible for any liability or any damages arising out of any User's access to or use of the Green Globes Software Program including but not limited to, the use of any Project Data or any other information that is posted, distributed, uploaded, stored or otherwise disseminated by any User via or through the Green Globes Software Program; and
- (b) User hereby agrees to look solely and exclusively to Project Owner for any and all damages suffered by User, or for any remedies sought by User, arising out of User's use (or any other User's use) of the Green Globes Software Program

5. **Certain Uses of Project Data by GBI.** The parties acknowledge that either the Project Owner or another User may own the Project Data, provided, however, each User hereby agrees that GBI has, and each such User hereby explicitly grants to GBI, a non-exclusive, worldwide, perpetual, assignable, sub-licensable, transferable, fully paid up right and license to use (in a de-identified format) any Project Data in the normal course of GBI's business for statistical purposes, industry trend analysis, for evaluating the efficiency of the features and functionalities of the Green Globes Systems and the Green Globes Software Program or for any other purpose that supports GBI's overall certification and assessment goals and mission.

6. **Intellectual Property Rights; Reservation of Rights.**

6.1 GBI's policy is to respect the copyright and intellectual property rights of others. Thus, GBI has the absolute right to:

- (a) immediately terminate the Access Right and this Agreement of any and all Users if, in GBI's determination, any User infringes upon the copyright or intellectual property rights of others, and
- (b) remove any Project Data from the GBI Green Globes Software Program that, in GBI's determination, may infringe the copyright or other intellectual property rights of any third party.

6.2 Without limiting the generality of the foregoing in any way, each User hereby represents, warrants and covenants to GBI that all Project Data used by such User via, on or through the GBI Green Globes Software Program: (a) is either owned by User or that User has obtained all necessary permissions for the use of such Project Data; and (b) does not infringe any copyright or other proprietary or intellectual property right of any other person or entity anywhere.

6.3 Each User hereby further acknowledges and agrees that GBI solely and exclusively owns all rights, title and interest in and to all of the following (hereinafter collectively referred to as the "**GBI IP Assets**"):

- (a) The Green Globes System and Green Globes Software Program;
- (b) All trademarks, service marks and logos held by GBI in association with the Green Globes System, the Green Globes Software or GBI's other business, including without limitation all Green Building Initiative and Green Globes trademarks, service marks or logos, and all good will associated therewith (collectively the "**GBI Mark(s)**"); and
- (c) All other processes, techniques, patents, images, graphics, content, software, website designs, copyrights, and all other intellectual property rights provided in, made available by using, or otherwise contained in or arising out of, the Green Globes System or the Green Globes Software Program or which is otherwise provided in furtherance of this Agreement.

6.4 Except for the limited Access Right given to a User pursuant to the explicit terms and conditions of Section 2 of the Agreement, nothing in this Agreement shall be construed as granting to any User, by implication, estoppel or otherwise, any rights in or license in or to any GBI IP Assets, including without limitation any rights to use any of the GBI Marks. GBI reserves without prejudice the ability to protect all of its intellectual property rights in its GBI IP Assets from any and all unauthorized use by any User, including without limitation any unauthorized use of any GBI Mark by any User.

6.5 In addition to all other conditions in this Agreement, each User agrees that:

- (a) Except as expressly permitted by the Access Right given to a User, the User will not copy, display, transfer, distribute, sell, publish, broadcast or otherwise use, any GBI IP Assets;
- (b) The User shall not modify, disassemble, decompile or reverse translate or create derivative works from any GBI IP Asset or otherwise attempt to derive any source code of the same or let any third party do the same;
- (c) The User shall not remove, alter, cover or obscure any copyright notices or other proprietary rights notices of GBI or any other party placed on or embedded in any GBI IP Assets and shall otherwise retain all such notices on all copies of the same;
- (d) Use of the GBI IP Assets is expressly prohibited by anyone who is not an authorized User under this Agreement and only to the explicit extent permitted by the Access Right in Section 2 of this Agreement; and
- (e) Unauthorized use is a violation of copyright and other intellectual property rights and is actionable under law.

6.6 Project Owner agrees that the terms and conditions of this Section 6 survive the cancellation, expiration or termination of this Agreement for any reason.

7. Disclaimer of Warranties. THE GREEN GLOBES SOFTWARE PROGRAM, ANY INFORMATION OR DATA PROVIDED WITH IT, AND THE UNDERLYING GREEN GLOBES SYSTEM ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED.

GBI HEREBY EXPLICITLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

THE GREEN GLOBES SOFTWARE PROGRAM AND THE UNDERLYING GREEN GLOBES SYSTEM DO NOT PURPORT TO INSTRUCT USERS ON THE APPROPRIATE DESIGN, CONSTRUCTION, OPERATIONS, MAINTENANCE, STANDARDS, APPLICABLE LAWS, CODES OR REGULATIONS FOR PROJECT OR BUILDING THEREIN.

USE OF THE GREEN GLOBES SOFTWARE PROGRAM AND THE UNDERLYING GREEN GLOBES SYSTEM DOES NOT ESTABLISH, EXPRESSLY OR IMPLICITLY, THE APPROPRIATE STANDARD OF CARE OF LICENSED DESIGN OR OTHER PROFESSIONALS NOR THE APPROPRIATE DUTIES AND RESPONSIBILITIES OF OWNERS, DESIGN, CONSTRUCTION, OPERATIONS OR MAINTENANCE PERSONNEL.

GBI DOES NOT GUARANTEE OR WARRANT THE ACTUAL PERFORMANCE OF ANY PROJECT OR BUILDING THEREIN AS A RESULT OF (A) THE USE OF THE GREEN GLOBES SOFTWARE PROGRAM OR THE UNDERLYING GREEN GLOBES SYSTEM, OR (B) A PARTICULAR LEVEL OF ASSESSMENT INDICATED THROUGH USE OF THE GREEN GLOBES SOFTWARE PROGRAM OR THE UNDERLYING GREEN GLOBES SYSTEM, WHETHER THROUGH INDIVIDUAL USE OR IN CONJUNCTION WITH A PROVIDER OF A THIRD-PARTY ASSESSMENT.

THE GREEN GLOBES SOFTWARE PROGRAM AND THE UNDERLYING GREEN GLOBES SYSTEM IS NOT A DESIGN, CONSTRUCTION, OPERATIONS OR MAINTENANCE TOOL OR A QUALITY OR PERFORMANCE ASSURANCE SYSTEM. BUILDING SYSTEMS, TECHNOLOGY, CONSTRUCTION PROCESSES, DESIGN METHODOLOGIES AND BEST PRACTICES ARE CONSTANTLY EVOLVING AND NO BUILDING PERFORMANCE ASSESSMENT SYSTEM OR TOOL, INCLUDING THE GREEN GLOBES SOFTWARE PROGRAM AND THE UNDERLYING GREEN GLOBES SYSTEM, CAN ACCOUNT FOR THESE CHANGES OR THE SITE-SPECIFIC VARIANCES AND LIMITATIONS ASSOCIATED WITH INDIVIDUAL PROJECTS AND THE BUILDINGS THEREIN.

USE OF THE GREEN GLOBES SOFTWARE PROGRAM AND THE UNDERLYING GREEN GLOBES SYSTEM DOES NOT SERVE AS A SUBSTITUTE FOR THE WORK AND ADVICE OF KNOWLEDGEABLE, LICENSED DESIGN, AND OTHER PROFESSIONALS; SKILLED CONSTRUCTION PERSONNEL; BUILDING OPERATORS; AND DEDICATED BUILDING OWNERS.

GBI MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE RESULTS TO BE OBTAINED FROM USING THE GREEN GLOBES SOFTWARE PROGRAM AND THE UNDERLYING GREEN GLOBES SYSTEM.

GBI DOES NOT REPRESENT OR WARRANT THAT THE GREEN GLOBES SOFTWARE PROGRAM WILL OPERATE OR FUNCTION UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SERVER MAKING THE GREEN GLOBES SOFTWARE PROGRAM AVAILABLE IS FREE OF COMPUTER VIRUSES OR OTHER HARMFUL COMPONENTS

GBI IS NOT RESPONSIBLE FOR ANY STATEMENT, OPINION, OR ADVICE (OR ANY DAMAGES ARISING FROM THE FOREGOING) MADE BY ANYONE (INCLUDING, WITHOUT LIMITATION, BY ANOTHER USER) OTHER THAN BY AN AUTHORIZED GBI SPOKESPERSON SPEAKING IN HIS/HER OFFICIAL CAPACITY.

GBI DOES NOT ENDORSE OR VERIFY THE ACCURACY OR RELIABILITY OF ANY STATEMENT, OPINION, OR ADVICE MADE BY ANYONE (INCLUDING, WITHOUT LIMITATION, BY ANOTHER USER) OTHER THAN BY AN AUTHORIZED GBI SPOKESPERSON SPEAKING IN HIS/HER OFFICIAL CAPACITY.

8. Limitation of Liability. IN NO EVENT SHALL GBI, ITS AFFILIATES, OR ANY OF THEIR OFFICES, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES BE LIABLE TO ANY USER OR ANY THIRD PARTY FOR ANY DIRECT, SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM INCONVENIENCE, OR LOSS OF USE, DATA OR PROFITS, WHETHER OR NOT GBI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND ON ANY THEORY OF LIABILITY, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE GREEN GLOBES SOFTWARE PROGRAM OR THE GREEN GLOBES SYSTEM.

9. Indemnification. Upon a request by GBI, each User hereby agrees to defend, indemnify, and hold GBI, its affiliates and their officers, directors, employees and agents and representatives harmless from all liabilities, claims, and expenses, including attorney's fees, that arise out of, or is related to each User's: (a) violation or breach of this Agreement; (b) use, misuse or unpermitted use of the Green Globes Software Program or any other GBI IP Asset; (c) infringement by any User of any intellectual property or other right of any person or entity. GBI reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by User, in which event User will cooperate with GBI in that action.

10. Termination of Use; Amendment or Changes to this Agreement.

10.1 Each User agrees that GBI has the right, in its sole discretion, to terminate or suspend User's right to access or use (including, without limitation, the User's Access Right as defined herein) to all or part of the Green Globes Software Program for any reason, including, without limitation, breach of this Agreement by any User. Upon termination or suspension, regardless of the reasons therefore, User's right to access or use (including, without limitation, the User's Access Right as defined herein) the Green Globes Software Program immediately ceases, and each User acknowledges and agrees that GBI has the right to immediately deactivate or delete each such User's account and all related information and files or bar any further access to such files or to the Green Globes Software Program.

10.2 Once User begins to use its Access Rights to the Green Globes Software Program, GBI has the right to modify this Agreement at any time and User will thereafter be bound by the version of this Agreement that is in effect at the time User next uses the Green Globes Software Program. Any use of the Green Globes Software Program by User thereafter shall be deemed to constitute automatic acceptance by User of all such amendments to this Agreement (without any duty on GBI to give any affirmative notice of such Amendments).

10.3 This Agreement may not be altered, supplemented, or amended by any User without the prior written consent of GBI.

11. Governing Law. The laws of the State of Oregon govern this Agreement for all purposes, without regard to the conflicts of laws principles thereof or the United Nations Convention on the International Sales of Goods. Each User agrees and hereby submits to the exclusive personal jurisdiction and venue by any court of competent jurisdiction within the State of Oregon with respect to such matters.

12. Notices. All notices to a party shall be in writing. Notices to GBI must be sent to the attention of Green Globes Administrator at info@thegbi.org. Notices to each User may be sent by GBI to the email address for each User as supplied in the Project Account information. In addition, GBI may broadcast notices or messages through the Green Globes Software Program to inform each User of changes to the Green Globes Software Program or other matters of importance, and such broadcasts shall constitute notice by GBI to each User at the time of sending. Regardless of the method of sending the notice, all notices sent to Users by GBI shall be deemed to be given and deemed to be effective as of the date sent by GBI.

13. **Remedies.** Each User acknowledges that monetary damages may not be a sufficient remedy for unauthorized use of GBI's Green Globes Software Program, and therefore User agrees that GBI shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court or arbitration panel of competent jurisdiction without necessity of posting a bond and without having to plead and prove lack of an adequate remedy at law.

14. **Attorney Fees.** If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court and, if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

15. **Binding Effect; No Assignment by Users; Permissible Assignment by GBI.** This Agreement shall be binding upon and inure to the benefit of each party's respective successors and lawful assigns; *provided, however*, that Users may not assign this Agreement, in whole or in part. Any purported assignment by a User in violation of this Section shall be void. GBI shall have the right to assign this Agreement, or any part of it, in its sole discretion to any party, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by such successors and assigns.

16. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties concerning the subject matter of this Agreement and supersedes all prior agreements and understandings of the parties with respect to that subject matter. This Agreement may not be altered, supplemented, or amended by any User without the prior written consent of GBI.

17. **Enforcement.** Any failure by GBI to enforce or exercise any provision of this Agreement or any related rights shall not constitute a waiver of that right or provision.

18. **Contact Information.** If you have any questions about this Agreement, or about GBI's Green Globes Software Program, please email Green Building Initiative, Inc. at info@thegbi.org.