

Green Business Certification Inc.™

WELL WELL PERFORMANCE TESTING ORGANIZATION AGREEMENT

BY ACCEPTING THIS WELL PERFORMANCE TESTING ORGANIZATION AGREEMENT (“AGREEMENT”) COMPANY ACKNOWLEDGE THAT COMPANY ARE FULLY AWARE OF AND AGREE TO ALL OF THE FOLLOWING TERMS, CONDITIONS, AND PROVISIONS AND COMPANY ARE HEREBY ENTERING INTO A LEGALLY BINDING AGREEMENT.

This WELL Performance Testing Organization Agreement (this “Agreement”) is entered into by and between [Provider], a [state or country if not U.S.] [Type of Organization] with its principal place of business located at [Address], (“Company”), Green Business Certification Inc. (“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 Company, on the one hand, and GBCI, on the other hand.

1. PURPOSE. The purpose of this Agreement is to establish the terms and conditions required by GBCI in order for GBCI to recognize Company as a “WELL Performance Testing Organization” for GBCI’s administration of the WELL Building Standard™ (“WELL™ or WELL v2™”). The WELL Building Standard is referred to herein as “WELL.”

2. THE PROGRAM. GBCI administers and confers certification under WELL (the “Program”) under license from the International WELL Building Institute, PBC, a Delaware public benefit corporation (collectively, “IWBI”). Under the Program, GBCI reviews documentation submitted by clients, including that submitted by WELL Performance Testing Agents, to determine if a building complies with the requirements of WELL. The purpose of a testing agent process in the Program is for an impartial agent to check that the selected measures are in fact physically installed in the building and that features in WELL have been achieved.

3. TERM. This Agreement shall begin upon Company’s acceptance and signature and remain in place for one year unless earlier terminated as provided here. GBCI may renew this Agreement for renewal periods of one-year terms so long as Company pays any and all required fees, Company performs testing for at least one project every year, Company employs at least one individual who is an approved WELL Performance Testing Agent in good standing, and Company employs at least one individual who is a WELL AP in good standing.

4. MINIMUM QUALIFICATIONS/FEES/CONTINUED RECOGNITION/TERMINATION OF RECOGNITION.

a. Qualifications. Company hereby affirms that Company possesses and will continue to possess at least the minimum qualifications to be listed as an approved WELL Performance Testing Organization by GBCI, including *GBCI’s Performance Testing Quality Assurance Manual* and those set forth in IWBI’s *WELL Performance Verification Guidebook* (“*Verification Guidebook*”) and *WELL Certification Guidebook* (“*Certification Guidebook*”) and the *WELL Building Standard v2 plus addenda* (collectively “*the Guidebooks*”), which are found here: <https://www.wellcertified.com/node/4579> and here:

<https://www.wellcertified.com/node/4580> and which are incorporated by reference. Company acknowledges that Company has read and understood the *Verification Guidebook* and the *Certification Guidebook* and the *WELL Building Standard* and Company understands and agrees that each from time to time shall be updated, that Company shall check for such updates often, and that Company shall be bound by each such updates.

Company agrees that it is responsible for gaining access to the equipment necessary to execute accurate and compliant performance tests as required for projects. All equipment must be in proper working condition and calibrated within the equipment manufacturer's specifications when executing all performance testing activities.

Company agrees that at all times at least one individual shall be employed by Company who is a GBCI approved WELL Performance Testing Agent and who shall carry out the required performance testing activities. Company acknowledges and affirms that GBCI's approval is in no way an endorsement regarding Company's fitness as a WELL Performance Testing Organization beyond the rating criteria outlined in the *GBCI Performance Testing Quality Assurance Manual*, the *Guidebooks*, and during the GBCI performance testing training. Company further agrees that, at no point will Company affirm or state that it has received any further endorsement from GBCI or IWBI regarding its fitness as a WELL Performance Testing Organization. Company shall aver that their employee WELL Performance Testing Agent(s) has/have received approval from GBCI and attended the GBCI performance testing training only upon receipt of confirmation from GBCI. Company shall not affirm or state that its employee has received further endorsement from GBCI or IWBI beyond the rating criteria detailed above.

Company warrants that Company shall ensure that all relevant Company personnel, including all WELL Performance Testing Agent(s), maintain knowledge of all current WELL Building Standard requirements, the *Guidebooks*, WELL Addenda, the *GBCI Performance Testing Quality Assurance Manual*, and any other guidance published by GBCI or IWBI. Company shall adopt the guidance documents provided by GBCI and shall make the guidance available to WELL Performance Testing Agent(s). Additionally, Company shall provide documented instructions to its personnel describing their specific duties and responsibilities. GBCI guidance documents include, but are not limited to, the most recent versions of the following:

- i. GBCI Performance Testing Quality Assurance Manual
 - ii. Performance testing results submittal template
- b. Fees. Upon GBCI's acceptance of Company's application to become a WELL Performance Testing Organization, Company agrees to pay the non-refundable fees listed at <https://wellcertified.com/performance-testing> and abide by all the terms of the fee schedule, such fees in payment for being recognized by GBCI as a WELL Performance Testing Organization with approved WELL Performance Testing Agents. Company agrees to pay the fees upon a renewal of this Agreement, such fees to be determined by GBCI not less than 30 days prior to such renewal, provided, however, that such fees shall in no event be increased by more than 25% per annum. Company acknowledges that under no circumstances will Company be entitled to any refund or pro-rate of any portion of any Fees paid by Company under this Agreement.
- c. Continued Recognition. To maintain recognition from GBCI, Company must:
- i. Refrain from assigning its employee, the WELL Performance Testing Agent, or issuing permission to perform, prohibited services relating to any building for which Company's

employees are performing testing services on behalf of Project Owner or another party as outlined in the *GBCI Performance Testing Quality Assurance Manual*;

- ii. Be impartial, objective, accurate, truthful, forthcoming, and cooperative in Company's dealings with GBCI;
- iii. Share concerns relating to the Program and submission (including client concerns) with GBCI so as to improve the WELL program;
- iv. Maintain all records of Company's submissions to the Program for three years;
- v. Abide by all applicable laws, including but not limited to the relevant national and/or international safety codes (whichever is more stringent) when visiting sites;
- vi. Carry out Company's work as a WELL Performance Testing Organization in a competent, impartial and objective manner;
- vii. Accurately represent Company's recognition as a WELL Performance Testing Organization;
- viii. Provide requested information in a timely manner; and
- ix. Maintain a current professional credential to carry out work herein as required by the jurisdiction in which the Company practices (this may include a license, certificate, or registration).

Company bears the burden for demonstrating and maintaining continuous compliance with this Agreement and all relevant GBCI/IWBI policies and procedures. If Company fails to do so, GBCI may immediately terminate this Agreement and its recognition of Company as a WELL Performance Testing Organization and GBCI may remove Company from its list of recognized WELL Performance Testing Organizations. GBCI reserves the right to remove Company's employee and Company's name from its list of WELL Performance Testing Agents for failing to meet any of the guidelines in the *Guidebooks* or the *GBCI Performance Testing Quality Assurance Manual*.

d. Audit/Termination. GBCI shall annually audit some or all of its recognized WELL Performance Testing Organization and Agents. If Company is found to be deficient on the basis of such audit (as more fully set forth in the *Guidebooks and GBCI Performance Testing Quality Assurance Manual*), GBCI may terminate this Agreement and its recognition of Company as a WELL Performance Testing Organization and remove Company from its list of recognized WELL Performance Testing Organizations. GBCI may also terminate this Agreement if, in its sole discretion, GBCI determines that: (i) Company has failed to meet the required qualifications for initial or continued recognition or (ii) Company has failed to pay required fees. Company may terminate this Agreement at any time upon thirty (30) days written notice to GBCI. In the event this Agreement is terminated by either Company or GBCI, Company's right to reference Company as a WELL Performance Testing Organization will terminate and Company must immediately discontinue any such reference.

In the event of the termination of the Agreement, there shall be no refund of any fees paid under this Agreement.

e. Disclosures. If Company discovers any elements of the Project during the performance of Company's obligations that are noncompliant with the WELL criteria, Company must disclose such factors to GBCI.

5. PERFORMANCE TESTING SERVICES. To the extent Company offers performance testing services under the Program, Company understands and agrees that Company will be compensated for Company's services by Company's client independently of Company's recognition as a WELL Performance Testing Organization by GBCI. Company agrees to utilize a written contract with each client for whom Company performs WELL Performance Testing services, and that such contract shall include all elements as necessary to ensure compliance with the *Guidebooks*. Company agrees that Company shall indemnify and hold harmless GBCI and IWBI from any claims arising out of the actions or inactions Company undertakes as a WELL Performance Testing Organization. Company also acknowledges that there may be fees associated with Company's submittal of performance testing results for WELL Certification and that such fees are not included in the scope of this Agreement.

6. PERFORMANCE TESTING RATINGS. Company acknowledges that client will have the right and opportunity to provide Company with a corresponding rating on the GBCI website. This rating will range from 1 to 5, with 5 being the highest. Scores will be based on the average score taken from all client ratings. GBCI agrees to verify that ratings are provided by clients who have actually received performance testing services before using them to calculate a score. Company acknowledges and affirms that the ratings themselves and the views, information, or opinions expressed therein, belong solely to the clients and do not necessarily represent those of GBCI, IWBI, or their employees.

Company separately acknowledges that GBCI will evaluate the quality of all submissions and that it and its employees are required to meet GBCI quality thresholds consisting of the following factors: performance testing accuracy, result analysis accuracy, completeness of information provided to GBCI, professionalism, and any other factors clients deem relevant as outlined in the *GBCI Performance Testing Quality Assurance Manual*.

7. WARRANTIES. Company hereby warrants that Company will offer performance testing services only to those buildings about which Company is knowledgeable and that the Company is competent to perform. The full text of WELL is published and available for review at the IWBI website. Company hereby represents and warrants that Company has fully reviewed and understands WELL requirements, and Company agrees to check for updates often.

Upon Company's acceptance of this Agreement and payment of fees, Company will be added to the list of WELL Performance Testing Organizations and WELL Performance Testing Agents recognized by GBCI, which is available in the WELL Performance Testing Agent Database at <https://wellcertified.com/performance-testing>. Company will be listed on the website so long as Company i) complies with this Agreement and ii) maintains the minimum average GBCI quality rating of at least 4.5 and an average Customer Satisfaction rating of 4 stars as outlined in the GBCI Performance Testing Quality Assurance Manual, subject to change as outlined in 4(c)(v) above. Company acknowledges that GBCI may, in its discretion, audit both the GBCI internal quality ratings and the client ratings described in Section 6 to ensure that Company is meeting this requirement.

8. TRADEMARKS. IWBI owns worldwide, all right, title and interest in and to several proprietary trademarks, service marks, certification marks, logos, trade dress, and other graphic images, including, but not limited to WELL Building Standard™, WELL Certified™ and the WELL Certified™ logo (collectively, the "Marks") and, pursuant to licenses from IWBI, in the event clients receive WELL Certification, GBCI has the right to grant clients the limited right to use the WELL Certified Marks as set forth in the WELL Certification Agreement between GBCI and clients. The Marks constitute valuable intellectual property held by IWBI and licensed to GBCI and their licensors and are protected by law. Company acknowledges and agrees that any unauthorized use of the Marks constitutes both intellectual property infringement and a breach of this Agreement. Certification mark or trademark applications have

been submitted, and may or will have obtained registrations for, some or all of the Marks in several jurisdictions worldwide. Company acknowledges that IWBI is the owner of all right, title and interest in and to each of the Marks worldwide, in every jurisdiction pursuant to applicable statutes, common law or otherwise, regardless of whether each Mark has been applied for or registered in each jurisdiction.

GBCI has the right to grant Company the limited right to recognize Company and list Company in the lists of WELL Performance Testing Organizations and WELL Performance Testing Agents recognized by GBCI. Both lists are available on the website here: <https://wellcertified.com/performance-testing>. Company acknowledges that as between Company and GBCI, GBCI is the owner of all right, title and interest in the Marks “WELL Performance Testing Organization™”, “WELL Performance Testing Agent™”, or any deviation worldwide in accordance with all applicable laws, rules and regulations, in every jurisdiction pursuant to applicable statutes, common law or otherwise, regardless of whether the Mark has been applied for or registered in each jurisdiction.

Company acknowledges and agrees that Company shall not make any claim of, or seek any right to, title or ownership in and to any of the Marks, nor shall Company submit any trademark or other intellectual property application anywhere in the world covering, in whole or in part, any of the Marks or any terms, designs or logos confusingly similar to any of the Marks. Company acknowledges that the Marks “WELL”, “WELL Performance Testing Organization” and “WELL Performance Testing Agent”, and the goodwill associated therewith possess special, unique, and extraordinary characteristics. Furthermore, Company, and Company will comply at all times with both GBCI’s and IWBI’s reasonable rules regarding the Marks.

9. INDEMNIFICATION. Company agrees to indemnify, defend and hold harmless GBCI, IWBI and each of their respective officers, directors, employees, agents, representatives, affiliates, subcontractors, subsidiaries and independent contractors 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 arising out of or relating to Company’s breach of any of the representations, warranties or obligations set forth herein.

10. MODIFICATION OF TERMS. Company agrees that GBCI or IWBI may change any policy or guideline at any time as set forth in this Agreement and incorporated herein in their reasonable discretion. GBCI and/or IWBI will provide at least 90 days’ notice of any material modification to this Agreement; however, Company agrees to check for updates to WELL often to be certain Company is informed of all updates to WELL and related guidebooks. Company’s ongoing use of the recognition of Company as a WELL Performance Testing Organization constitutes Company’s acceptance of all such changes which were made, and the legal amendment of this Agreement.

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

Notices To Company – GBCI shall send all notices to Company at the email addresses provided by Company to GBCI. Such notices shall be effective when sent. Company agrees to provide GBCI with up-to-date contact information for the duration of this Agreement.

Notices To GBCI – Company 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: Email Address:
Green Business Certification Inc. legal@gbci.org
Attn: General Counsel
2101 L Street, NW, Suite 500
Washington, DC USA 20037

12. GOVERNING LAW. This Agreement, and all of the rights and duties of Company, Company's Agent(s), 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.

13. 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 Company and GBCI concerning WELL Performance Testing Organizations/Agents. Company agrees 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.

14. MODIFICATION AND WAIVER. The Ancillary Documents may be amended by GBCI as described in this Agreement, Otherwise, this Agreement may only be modified in writing and all such written modifications must be signed by Company and GBCI's then-current President, Chief Operating Officer, or General Counsel.

15. EXECUTION. BY SELECTING THE BUTTON BELOW MARKED "I AGREE" COMPANY HEREBY AGREES TO THE TERMS, CONDITIONS AND PROVISIONS REPRESENTED IN THIS AGREEMENT. COMPANY ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THIS AGREEMENT AND ALL EXHIBITS AND SCHEDULES HERETO, AND THAT IT HAS BEEN PROVIDED THE OPPORTUNITY TO MAINTAIN A RECORD OF THIS AGREEMENT, AND ALL SUCH ANCILLARY DOCUMENTS. FURTHER, COMPANY UNDERSTANDS THAT BY AGREEING TO THESE TERMS IT WILL BE BOUND TO A LEGALLY ENFORCEABLE CONTRACT NO DIFFERENT THAN A CONTRACT EXPRESSED ON PAPER AND PHYSICALLY SIGNED. TO THE EXTENT COMPANY ACCEPTS THIS AGREEMENT AS DESCRIBED HEREIN, GBCI SHALL MAINTAIN AN ELECTRONIC RECORD OF THIS AGREEMENT WHICH COMPANY MAY REQUEST TO REVIEW AND DOWNLOAD AT ANY TIME.