

# CalCERTS Rater Agreement

## RATER AGREEMENT

This Rater Agreement (the “**Agreement**”) is made by and between CalCERTS, Inc. (“**CalCERTS**”) and the individual identified on the signature page hereto seeking certification as a Rater (as defined below) pursuant to the California Home Energy Rating System Regulations set forth at California Code of Regulations, Title 20, Section 1670 *et seq.*, and related applicable authority (“**HERS Regulations**”).

1.     Intent of the Parties. In entering into this Agreement it is the intent of the parties to set forth their relative rights and responsibilities, and specifically to provide for the manner in which a Rater that is certified by CalCERTS shall conduct himself or herself consistent with the HERS Regulations so as to promote accurate ratings and protect consumers and to not harm CalCERTS’ status as a “Provider” certified by the State of California Energy Resources Conservation and Development Commission (“**Commission**”).

2.     Definition of Rater. As used in this Agreement, the term “Rater” means an applicant who has signed this Agreement, a separate Subscriber Agreement, met CalCERTS’ required training and certification procedures, and is a “Compliance Rater,” a “Whole House Rater,” and/or a “HERS BPC Rater” as defined herein. “Prospective Rater” simply refers to a Rater who has not yet been certified by CalCERTS.

3.     Certification of Rater. Upon completion of CalCERTS’ training and testing requirements in effect at the time of a Prospective Rater’s application and upon the payment of applicable fees, CalCERTS shall provide a certificate of completion and a notice of certification as a Rater to the Commission.

4. Type of Certification. Subject to completion of CalCERTS' training and testing requirements, a Rater may be certified as a Compliance Rater, a Whole House Rater, and/or a HERS BPC Rater all of which are referred to generically in this Agreement as a Rater.

- i. Compliance Rater. A "Compliance Rater" is a rater performing the site inspection and data collection required to produce a home energy rating or the field verification and diagnostic testing required for demonstrating compliance with the Building Energy Efficiency Standards set forth in Title 24, Part 6 of the California Code of Regulations ("**Building Energy Efficiency Standards**") and who is listed on a registry in compliance with the HERS Regulations.
- ii. Whole House Rater. A "Whole House Rater" is a Rater who has been trained, tested, and certified by a provider to perform one or more of the functions or procedures used to develop a California Whole-House Home Energy Rating and a California Home Energy Audit and who is listed on a registry in compliance with the HERS Regulations.
- iii. HERS BPC Rater. A "HERS BPC Rater" is a Whole House Rater who has also met the requirements of CalCERTS' HERS Building Performance Contractor Program, as approved by the Commission, and is employed by (or is personally) a general contractor with a current and active Class B license that is in good standing according to the California Contractors State License Board.

5. Registry. CalCERTS shall maintain a registry of all Raters who meet the requirements for certification, provide an electronic copy of the registry to the Commission and make that registry available in printed or electronic form upon written request to the Commission.

6. Credential Requirements. Rater shall meet CalCERTS' Credential Requirements, receipt of which the Rater hereby acknowledges. Rater shall meet all of CalCERTS' continuing education requirements as promulgated from time to time in its sole discretion.

7. Code of Ethics. Rater hereby acknowledges receipt of CalCERTS' Rater Code of Ethics incorporated by this reference and will abide by the same.

8. Compliance with Law and Accuracy of Ratings. Rater shall comply with all applicable laws and regulations including, without limitation, the HERS Regulations. Rater shall provide true, accurate and complete data collection, analysis, ratings, and field verification and diagnostic testing in accordance to the HERS Regulations. Each rating shall be based on a Rater's *personal* inspection, testing, and verification of the subject property, unless the HERS Regulations provide otherwise. A certified Whole House Rater may use inspection and testing data gathered by another certified Whole House Rater for analysis or entry into simulation software; provided however, the Rater issuing the final rating is held responsible for the accuracy of all data used for the rating, as well as for the rating itself.

9. HERS BPC Rater Additional Requirements. HERS BPC Raters must be current and active licensed class B building contractors, or a W-2 employee thereof, and abide by the laws and regulations of the California Contractors State License Board ("CSLB"), including, but not limited to, complying with advertising requirements, home improvement contract requirements, and use of properly licensed subcontractors. HERS BPC Raters must provide home energy rating services only under a Commission-approved Building Performance Contractor program pursuant to Section 1674(e) of the HERS Regulations; and, in the case that the HERS BPC Rater is also the class B license holder, then he must comply with requirements for the issuance of building permits, state and local building codes, and other requirement of Section 7110 of the Contractor's License Law. HERS BPC Raters must notify CalCERTS of any citation, suspension, or revocation actions by the CSLB against them.

10. Independent Status. Rater shall be independent from, and not an employee or agent of, any person or company that performs work on the subject property (including, for example only, a general contractor or a subcontractor) and shall have no financial interest in the work performed on the subject property or in the subject property itself. Rater shall comply with the conflict of interest requirement specified in section 1673(j) of the HERS Regulations.

11. Limited Exception to Independent Status. A Whole House Rater or a HERS BPC Rater who is an employee of a HERS Building Performance Contractor shall not be required to be an independent entity from the person or company performing the work on a subject property unless performing field verification or diagnostic testing to verify compliance with Building Energy Efficiency Standards. A HERS BPC Rater shall retain a signed copy of all disclosures of the business relationship between the HERS BPC Rater and building performance contractor, as required in the HERS Technical Manual, Section 8.3.5 to be given to the homeowner, including the disclosures regarding conflicts of interest that are subject to the Title 20, Article 8, Chapter 4, Sections 1673(j)(1-3) of the HERS Regulation for other types of Raters.

12. Payment for Services. Rater shall not accept payment or consideration in exchange for reporting data gathered for a rating, analytical results used for a rating, or a rating result that was not in fact conducted and reported in compliance with the HERS Regulations.

13. No Recommendations. Rater shall not recommend contractors or subcontractor installers for potential services to customers.

14. No Employment Relationship. Rater acknowledges and agrees that he/she is not an employee or agent of CalCERTS and shall not represent himself or herself as such.

15. CalCERTS Materials. As part of the training and certification process CalCERTS may provide a Rater or a Prospective Rater with copies of and/or access to its intellectual property, copyrighted materials, trademarks, service marks, trade secrets, and/or confidential and proprietary information including, without limitation, training manuals and materials, user's guides, checklists, forms, related documents and/or software, the data registry, data and rating processes, and documents and information that is not otherwise publically available ("**CalCERTS Materials**"). Rater's use of CalCERTS Materials is specifically governed by a Subscriber Agreement.

16. Confidentiality of CalCERTS Materials. Rater agrees that the CalCERTS Materials that may be provided as part of the training and certification process are owned by CalCERTS and shall be kept confidential and used by the Rater pursuant to a non-exclusive terminable license. Raters may not at any time disclose the CalCERTS Material and/or derivative documents and information, including, but not limited to, the registry and rating processes, to anyone other than CalCERTS or the Commission. All materials shall be returned in the event that a Prospective Rater is not ultimately certified or a Rater is subsequently decertified. Raters may not alter or copy any of the CalCERTS Materials other than the collection forms. Any breach of the obligations of confidentiality may cause irreparable harm in which case injunctive and monetary relief shall be available. A Rater's obligations pursuant to this section shall survive termination of this Agreement.

17. Marketing Materials. A Rater may indicate on marketing materials that it is a CalCERTS Certified Rater. A Rater may use CalCERTS' trademark in good faith and solely for the purpose of marketing rating services so long as use of the trademark does not diminish the goodwill associated with the CalCERTS' name and reputation.

18. Access to Registry Login & Passwords. Rater will be issued a secure login and password to the CalCERTS data registry (the "**Registry**"). Rater may not provide their login and password to any person. Raters shall report any unauthorized use of their login or password to CalCERTS immediately upon discovery. Rater's access to and use of the Registry shall be subject to a Subscriber Agreement.

19. Transmission of Ratings. Rater shall transmit, within 48 hours of the field verification and/or diagnostic testing work being completed, or may designate a user to transmit within 48 hours of the work being completed, all rating data, as described in paragraph 8, to CalCERTS via the CalCERTS Registry. If a Rater designates a user, the user must obtain their own secure login and password from CalCERTS. Rater is personally responsible for the accuracy, truth, completeness and timeliness of all rating data transmitted to CalCERTS' Registry under the Rater's electronic signature whether or not the Rater personally entered the data.

20. Confidentiality of Ratings. Rater shall keep confidential all ratings results and any related data, notes or information, personal identification information of consumer(s) and all information gathered from ratings except for transmitting to CalCERTS, the builder, the local building department, the homeowners, the real estate listing agent, lender, utility, or energy efficiency mortgage facilitator, all only as reasonably required. Rater's obligation of confidentiality under this section shall survive termination or expiration of this Agreement.

21. Rater's Contact Information Requirements. CalCERTS uses email notifications as its sole means of communicating technical changes, policy changes, important notices, and information that may be useful to the Rater. Rater must provide a personal email address and a personal mailing address to CalCERTS. A personal email address, different from a work email address, if applicable, and a personal mailing address (no P.O. Boxes) must be current within the CalCERTS' Registry at all times. Rater must notify CalCERTS immediately in writing if the Rater's contact information changes.

22. Quality Assurance of Rater. CalCERTS may annually perform a quality assurance review of certified Raters as more specifically described in CalCERTS' Quality Assurance Procedures and Policies, receipt of which the Rater hereby acknowledges ("**QA Policy**"). Rater shall cooperate with CalCERTS' quality assurance and CalCERTS' QA Policy.

- i. Quality Assurance for BPC Raters. A Prospective Rater who is ultimately certified as a BPC Rater acknowledges and agrees that any quality assurance failure of a rating conducted under the employment of a HERS Building Performance Contractor will be attributed equally and fully to the BPC RATER and the HERS Building Performance Contractor.
- ii. Quality Assurance for HERS Building Performance Contractors. A prospective Rater who is ultimately certified as a HERS Building Performance Contractor understands that any quality assurance failure of a rating conducted by an employee will be attributed equally and fully to both the BPC RATER and the HERS Building Performance Contractor.

23. Investigation of Rater Conduct and Performance. Rater acknowledges and agrees that CalCERTS may, at its sole discretion, conduct investigations of Rater's conduct

and performance whether due to complaints received from third parties, quality assurance reviews, or otherwise. As part of its investigation, CalCERTS may conduct additional quality assurance reviews of the Rater in addition to the minimum number otherwise required. CalCERTS may require Rater to pay, in its sole discretion, reasonable costs for such additional quality assurance reviews conducted due to additional quality assurance or investigations. Rater shall be informed of the existence of an investigation within a reasonable period of its commencement, shall be informed of the basis of the investigation, and shall have an opportunity to present information and documents related to the substance of the investigation; all before CalCERTS' concludes the investigation and takes any disciplinary action set forth in Section 24.

24. Suspension of Rater During Investigation. In the event that CalCERTS commences an investigation of Rater, CalCERTS may, for purposes of determining the validity of any complaint or investigation, temporarily suspend a Rater's ability to enter data into the CalCERTS' Registry during the investigation period when further activity by the Rater could interfere with CalCERTS' investigation or continued ratings might jeopardize a consumer's rights to true, accurate and complete Ratings.

25. Discipline of Rater. Following its investigation, CalCERTS may, at its sole discretion (i) require additional education or training; (ii) suspend Rater for a period of time beyond the investigation; (iii) decertify Rater; and/or (iv) terminate this Agreement, upon occurrence of any of the following:

- i. failure to comply with this Agreement, or any other agreement between Rater and CalCERTS;
- ii. failure to comply with the HERS Regulations;
- iii. disciplinary action against Rater by the Contractors State License Board or any similar authority, including another HERS training and certification provider;
- iv. failure to provide a true, accurate and complete rating, field verification or diagnostic testing in accordance with all regulations;

- v. two or more valid complaints about Rater from Rating customers, or potential customers, or any other source;
- vi. failure to respond promptly and truthfully to any request for information from the Rater reasonably required by CalCERTS;
- vii. failure to provide accurate information to CalCERTS in this Agreement, the Subscriber Agreement, or in any other agreement, document, or statement delivered to CalCERTS by Rater;
- viii. misrepresentation to any party of Rater's relationship with CalCERTS;
- ix. failure to promptly pay CalCERTS any monies due;
- x. any conduct which is detrimental to CalCERTS' business, reputation, and/or status as a Commission certified "Provider."

26. Termination of Agreement. CalCERTS may terminate this Agreement pursuant to the preceding section. Rater may terminate this Agreement ten (10) days after written notice is provided to CalCERTS.

27. Effect of Termination. Upon termination of this Agreement, for any reason, by either party:

- i. Rater's certification shall be deemed immediately revoked and Rater will no longer be permitted to perform Ratings as a CalCERTS certified Rater and/or enter data into the CalCERTS Registry;
- ii. Rater shall arrange to have pending ratings completed by another CalCERTS certified rater;
- iii. CalCERTS shall notify the Commission of the termination, along with the reason(s) for termination, including any disciplinary, legal, and/or administrative proceedings that may be involved;
- iv. Rater shall immediately remit to CalCERTS all monies and fees, including interest penalties, which are due and payable to CalCERTS. Any monies paid in advance by Rater to CalCERTS for services not rendered will be returned to Rater, subject to offset against any monies due to CalCERTS by Rater;



- v. Rater shall cease use of and immediately return any and all CalCERTS Materials and copies;
- vi. Rater shall immediately cease the display of any CalCERTS credentials, logos or other media materials and cease any representation to the public that Rater is CalCERTS certified.

28. Indemnification. Rater shall indemnify and hold harmless CalCERTS, its officers, directors, agents, and employees from and against all claims of all kinds arising from or in connection with performance of Rater's services and conduct, including all expenses, costs, settlements, judgments, awards, and legal fees (including attorneys' fees) incurred by CalCERTS in defense or settlement of such claims.

29. Assignment. Rater may not assign this Agreement or Certification as a Rater to any party.

30. Governing Law. This Agreement, together with the parties' respective rights and obligations hereunder, shall be governed by, and interpreted and construed in accordance with the laws of the state of California.

31. Sole Agreement. This Agreement and agreements referenced in it, including the Subscriber Agreement, contain the entire and only agreement between the Rater and CalCERTS and supersedes all preexisting agreements between them respecting its subject matter. This Agreement may not be amended or modified except in a writing signed by CalCERTS and Rater.

32. Acknowledgement. Rater acknowledges that Rater has read this Agreement, understands it and agrees to be bound by its terms and conditions. Rater further acknowledges that he/she has read and understands the HERS Regulations and will comply with them. For a Rater that is a Whole House Rater or a HERS BPC Rater, such individual additionally acknowledges that he/she has read and understands the HERS Technical Manual, found in Publication #CEC-400-2008-012-CMF dated December 2008 and available on the Commission website, incorporated herein by reference.

33. Counterparts. This Agreement may be executed in two (2) or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on all parties.

34. Severability. If a court of competent jurisdiction finds any provision in this Agreement to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remainder of the Agreement; the provision shall be deemed severed there from and the remainder of the Agreement shall remain valid and enforceable in accordance with its terms and of full force and effect.

35. Waiver. No waiver of any provision of this Agreement shall constitute or be deemed a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless it is executed in writing by the party making the waiver.

RATER

CalCERTS

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_