

# **CalCERTS, Inc. Subscriber Agreement**

## **SUBSCRIBER AGREEMENT**

This Subscriber Agreement (the “**Agreement**”) is made by and between CalCERTS, Inc. (“**CalCERTS**”) and the individual or entity identified on the signature page and Attachment A hereto in his, her or its capacity as a Subscriber (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 Parties. In entering into this Agreement it is the intent of the parties to set forth their relative rights and responsibilities with regard to the Subscriber’s use of CalCERTS Materials (as defined herein), the Registry (as defined herein), and related aspects of the business relationship.

2. Definition of Subscriber. As used in this Agreement, “**Subscriber**” refers to a person or entity that has paid the required fees to CalCERTS, and that is one or more of the following: a certified rater pursuant to the HERS Regulations (as described and defined therein); a certified rater’s employer; a non-rater user (as defined herein); a non-rater user’s employer; a California Code of Regulations Title 24 consultant; or any other user approved by CalCERTS.

3. Definition of Registry. As used in this Agreement, “**Registry**” refers to CalCERTS online data registry service provided in connection with ratings and related activities.

4. Fee Schedule and Payments. Subscriber shall pay all amounts due CalCERTS in accordance with the then in effect Fee Schedule (aka Price Sheet), receipt of which the Subscriber acknowledges which includes the annual subscription fee. Fees will be incurred

upon registration of documents, and before they can be accessed by the user. CalCERTS reserves the right to allow some users to be invoiced at its sole discretion, and on a case-by-case basis. CalCERTS will assess a late charge on all unpaid and past due balances at the rate of 1.5% per month (18% per annum). Payments received by CalCERTS will be applied to Subscriber's account in a manner determined by CalCERTS. Subscriber will pay all collection fees incurred by CalCERTS, including the services of a collection agency or reasonable attorneys' fees and costs in connection with such collection. CalCERTS, in its sole discretion, may change the Fee Schedule upon thirty (30) days' prior written notice to Subscriber. Notwithstanding the foregoing, the Annual Subscription Fee is subject to change without notice. Required payments may be made through CalCERTS' website, online merchant services or by other method agreeable to both parties.

5. Use of Registry. Subject to payment of the required fees, a Subscriber will be provided access and may use the Registry subject to the Terms and Conditions posted on the website in connection with permitted and/or required activities under the HERS Regulations. Subscriber will be issued a secure login and password to the Registry. Subscriber may not provide their login and password to any person including, without limitation, a fellow employee or their employer. Subscriber shall report any unauthorized use of their login or password to CalCERTS immediately upon discovery. A certified Compliance Rater, Whole House Rater and/or a HERS BPC Rater ("**Rater**") may designate a Subscriber other than him, her, or it to enter data on the Rater's behalf (a "**Non-Rater User**"); provided, however, that any Subscriber that is an employer or entity shall only designate current employees as Raters and/or Non-Rater Users.

6. Compliance with CalCERTS Policies. Subscriber hereby acknowledges receipt of CalCERTS Quality Assurance Procedures and Policies, and CalCERTS Rater Code of Ethics (the "**CalCERTS' Policies**"). Subscriber agrees that CalCERTS may revise the CalCERTS' Policies from time to time, in its sole discretion, and that Subscriber shall comply with any such revised CalCERTS' Policies from and after the date they are transmitted by email.

7. Compliance with Law. Subscriber shall comply with all applicable authority including, without limitation, the HERS Regulations.

8. Subscriber'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 Subscriber. Subscriber shall maintain with CalCERTS a current telephone number, personal email address (different from a work email address), and a U.S. mailing address (not a PO Box), notifying CalCERTS in writing within ten (10) days of any changes of mailing address, email address or telephone number.

9. Subscriber's Employer Information Requirements. Subscriber shall maintain with CalCERTS current employment information, whether the Subscriber is self-employed or employed by a multi-rater firm or other third party entity. Subscriber must notify CalCERTS in writing within ten (10) days of any changes to Subscriber's employment status.

10. Confidentiality of Information on Registry. Subscriber shall keep confidential all rating 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, as reasonably required. Subscriber's obligation of confidentiality under this section shall survive termination or expiration of this Agreement.

11. CalCERTS Materials. CalCERTS may provide a Subscriber 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 publically available ("**CalCERTS Materials**").

12. Confidentiality of CalCERTS Materials. Subscriber agrees that the CalCERTS Materials that may be provided are owned by CalCERTS and shall be kept confidential and used by the Subscriber pursuant to a non-exclusive terminable license. Subscribers may not at any time disclose the CalCERTS Materials and/or derivative documents and

information, including, but not limited, the registry and rating processes, to anyone other than CalCERTS or the Commission. All materials shall be returned in the event that this Agreement is terminated. Subscribers 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 Subscriber's obligations pursuant to this section shall survive termination of this Agreement.

13. License to Use CalCERTS Materials. Subject to the limitations below, CalCERTS grants to Subscriber a non-exclusive, terminable license to use CalCERTS Materials.

14. License to Use CalCERTS Marks. Without limiting the generality of the foregoing, and subject to the limitations below, CalCERTS grants to Subscriber a non-exclusive, terminable license to use the following CalCERTS trade and/or service marks: "CalCERTS Accredited Rater," "CalCERTS Certified Rater," "CalCERTS Registered Home," "CalCERTS Rated Home," and the "flying" or "elongated" star with CalCERTS, Inc. superimposed on the logo (collectively, the "**CalCERTS Marks**"); provided that such use is only on, near, or in reference to, a home that has been rated by a CalCERTS' certified Rater and accompanied by the name of a CalCERTS certified Rater or used in conjunction with a rating business.

15. Disclaimers Regarding Subscribers Use of Registry. CalCERTS makes no representations or warranties, express or implied, and expressly disclaims any such warranties, as to the operation, functionality, reliability, speed, error rate, or compatibility of the Registry and related software; provided, however, that CalCERTS will reasonably cooperate with, and attempt to facilitate Subscriber's access to and use of the Registry and related software.

16. Term. The term of this Agreement shall be for one (1) year; provided, however, that this Agreement shall automatically renew for successive one (1) year periods unless 30 days prior written notice of termination is provided to CalCERTS by Subscriber or to Subscriber by CalCERTS.

17. Termination of Agreement. Subscriber may terminate this Agreement ten (10) days after written notice is provided to CalCERTS. Upon written notice to Subscriber, CalCERTS may terminate this Agreement upon the occurrence of any of the following events:

- i. failure of Subscriber or Subscriber's employee to comply with any of the terms and conditions of this Agreement, or any other agreement between Subscriber and CalCERTS;
- ii. failure of Subscriber or Subscriber's employee to comply with the HERS Regulations;
- iii. failure to respond promptly and truthfully to any request for information from Subscriber or Subscriber's employee reasonably required by CalCERTS;
- iv. failure of Subscriber or Subscriber's employee to provide accurate information to CalCERTS in this Agreement, in the Rater Agreement, or in any other agreement, document or statement delivered to CalCERTS;
- v. misrepresentation to any party of Subscriber's relationship with CalCERTS;
- vi. failure of Subscriber to promptly pay CalCERTS any monies due;
- vii. any conduct by Subscriber or Subscriber's employee which is detrimental to CalCERTS' business, reputation, and/or status as a Commission certified "Provider;"
- viii. Subscriber, Subscriber's business, or Subscriber's employer is adjudicated bankrupt, placed in the hands of a receiver, makes an assignment for the benefit of creditors, takes the benefit of any insolvency act, or is liquidated or dissolved.

18. Effect of Termination of Agreement. Upon termination of this Agreement for any reason and by either party:

- i. Subscriber 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 Subscriber to CalCERTS for services not rendered will be returned to Subscriber, subject to offset against any monies due to CalCERTS by Subscriber;

- ii. Subscriber shall have no access to the Registry which will prevent Subscriber from submitting data to the Registry;
- iii. Subscriber shall cease use and immediately return to CalCERTS all CalCERTS Materials and copies;
- iv. Subscriber shall cease use of CalCERTS Marks and related materials.

19. Indemnification. Subscriber 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 Subscriber'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.

20. Assignment. Subscriber may not assign this Agreement to any party.

21. 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.

22. Sole Agreement. This Agreement and documents referenced in it, along with the Rater Agreement, contains the entire and only agreement between the Subscriber 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 issued by CalCERTS and signed by Subscriber.

23. Acknowledgement. Subscriber acknowledges that Subscriber has read this Agreement, understands it and agrees to be bound by its terms and conditions. Subscriber further acknowledges that he/she has read and understands the HERS Regulations and will comply with them. For a Subscriber that is either a Whole House Rater or a HERS BPC Rater, such individual additionally acknowledges that they have read and understand 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.

24. 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.

25. 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 therefrom and the remainder of the Agreement shall remain valid and enforceable in accordance with its terms and of full force and effect.

26. 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.

27. Subscriber Relationships. Subscribers who are Raters or Non-Rater Users must identify their employer or indicate self-employed on Attachment A which is hereby made a part of this Agreement. Subscribers who are employers of Raters or Non-Rater Users must sign the most current Subscriber Agreement BEFORE CalCERTS, Inc. will activate the Rater or Non-Rater User. An employer only needs to sign once, and then all employee relationships will be managed on the CalCERTS Registry. All Subscribers are responsible for the accuracy of the relationships attested to in this Agreement and/or in the CalCERTS Registry.

SUBSCRIBER

CalCERTS

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

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

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

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

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

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

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

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

**Attachment A**

**Section I  
Subscriber Information (All items required)**

Full Name (First, Last, Middle Initial) \_\_\_\_\_

Home Address (No PO Box) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Personal Email (NOT a Company Address) \_\_\_\_\_

Home Phone \_\_\_\_\_ Mobile Phone \_\_\_\_\_

Employer \_\_\_\_\_

Type of Subscriber: (check only one)

Rater Employee:

Self-Employed Rater:  (Complete Section II below)

Non-Rater User

Rater AND Employer  (Complete Section II below)

Non-Rater Employer  (Complete Section II below)

**Section II  
Employer or Self-Employed Information (ALL items required)**

Company Name \_\_\_\_\_

Company Address (No P.O. Box) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Company  
Phone \_\_\_\_\_ Fax \_\_\_\_\_

Company Contact \_\_\_\_\_

Company Contact Email \_\_\_\_\_

Billing Contact \_\_\_\_\_

Billing Email \_\_\_\_\_