

ZERO CARBON BUILDING 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 AND YOU ARE ENTERING INTO A LEGALLY BINDING AGREEMENT.

This Certification Agreement (this "Agreement") is entered into by You and Canada Green Building Council ("CAGBC"), and constitutes a binding agreement between You, on the one hand, and CAGBC, on the other hand.

1. DEFINITIONS. The following terms shall have the meanings ascribed thereto in this Agreement:

- a) "Agent" means a third party who has been granted authority to act on an Owner's behalf in respect of this Certification Agreement;
- b) "Agreement" means this agreement and includes all schedules and related agreements, guides, and references, including, without limitation, the Standards, the Certification Guide, the Fee Schedule, and the Trademark Policy and Branding Guidelines;
- c) "Application" means the documentation to be provided to CAGBC in connection with the Registration;
- d) "Certification" refers to the determination by CAGBC that a project has satisfied the requirements set forth in the Standard;
- e) "Certification Guide" refers to the Zero Carbon Building (ZCB) Standards™ Certification Guide, incorporated by reference herein, which is available for review online here: <https://www.cagbc.org/news-resources/technical-documents/zcb-certification-guide>;
- f) "Fee Schedule" is the schedule of applicable fees for services provided pursuant to this Agreement as determined and published by CAGBC from time to time;
- g) "Marks" means the Zero Carbon Building Standards logo, ZCB-Performance Standard Certification Mark and other proprietary marks, service marks, certification marks, logos, and other graphic images, including, but not limited to the marks listed out in the Trademark Policy and Branding Guidelines;
- h) "Optional Services" has the meaning ascribed thereto in Section 6 hereof;
- i) "Owner" refers to the individual(s) or entity(ies) that holds the legal right to possess and control the real and personal property that comprises the Project, or the tenant whose leased space comprises the Project;
- j) "Program" means the Zero Carbon Building (ZCB) Program™;
- k) "Project" refers to the real and personal property as defined within the Registration under this Agreement;
- l) "Project Database" means the public directory of Projects maintained by CAGBC, from time to time;

Current as of December 14, 2023

- m) "Project Information" means any information related to You or any Project provided to CAGBC prior to executing this Agreement, information contained within the Application(s) and any additional information or data provided to CAGBC at any time in connection with the Project;
 - n) "Public Project Information" includes, in respect of any given Project, the project name, project type, building type, project address, registration date, identity of the Owner, Owner organization type, project team information, project size, and other similar project information which You expressly permit CAGBC to publish, and, to the extent that the Project achieves certification, the date of certification, performance year, and project results such as the operational carbon emissions, embodied carbon intensity, onsite fuels used, energy use intensity, thermal energy demand intensity, and peak demand;
 - o) "Registration", "Registering" and similar references refer to You selecting a Standard, completing the online registration form (available at https://leed.cagbc.org/LEED/Register_ZCB_Project_EN.aspx), paying the applicable fee, and agreeing to the terms, conditions and provisions represented in this Agreement;
 - p) "Standard" refers to the particular ZCB standard selected by You;
 - q) "Trademark Policy and Branding Guidelines" means the policy and guidelines established by CAGBC governing the use of CAGBC Marks, including without limitation, colours, typefaces, and application guidelines, available for reference on the CAGBC website;
 - r) "You", "Your", and "Yourself" refer to the person executing this Agreement and includes in all instances, the Owner and, if applicable, the Agent;
2. **THE PROGRAM.** The Program is a made-in-Canada framework for designing and operating buildings to achieve zero carbon. The Program consists of the process whereby the Owner of a Project may apply to CAGBC for Certification under one of the ZCB Standards. Applicable Zero Carbon Building Standards are found here: <https://www.cagbc.org/news-insights/technical-resources/>, and include:
- 2.1. Zero Carbon Building - Performance Standard certification evaluates building operational performance for a twelve-month period. Projects that are awarded ZCB-Performance certification will be provided a certification mark that indicates the performance year. Please consult the Certification Guide, available at <https://www.cagbc.org/news-resources/technical-documents/zcb-certification-guide/>, to ensure that You are aware of recertification requirements. Failure to maintain certification will cause the Project's certification to expire and the Project will either be listed as having an expired certification within the Project Database (available at https://leed.cagbc.org/LEED/projectprofile_EN.aspx) or be removed from the Project Database at the discretion of CAGBC.
 - 2.2. Zero Carbon Building - Design Standard certification evaluates the design of new buildings and the retrofit of existing buildings. There is no certification mark for earning ZCB-Design certification.

3. APPLICATION REQUIREMENTS.

- 3.1. The certification process starts by Registering the Project.
- 3.2. Upon Registration of the Project, You will be responsible for documenting compliance with the Standard. The

Application must be complete before CAGBC can certify the Project to the Standard.

- 3.3. The Standards may be revised and updated from time to time at the discretion of CAGBC. Major updates will be represented by a version number. Minor updates will be represented by addenda. Notwithstanding the foregoing, Your Project will be required to comply with, and will be reviewed under the version of the Standard to which Your Project was Registered.
4. **CERTIFICATION GUIDE.** The Certification Guide contains information and instructions related to the Program including associated policies, processes, and guidelines and may be updated at the discretion of CAGBC from time to time. You agree to comply at all times with the Certification Guide, including all updates and changes provided to You or made available by CAGBC from time to time.
5. **CERTIFICATION REVIEW.**
 - 5.1. Upon receipt of all required documentation of Your Application for a Project, CAGBC will initiate its review to determine if the Project is eligible for Certification. During a review, CAGBC may request additional documentation, resubmission of calculations and any other information or factors that CAGBC deems relevant. CAGBC will use all reasonable efforts to meet any review timelines set forth in the Certification Guide; however, such review timelines are estimates only. The failure of CAGBC to meet any review timeline will not be considered a material breach of this Agreement and You will not be entitled to any refund of any portion of any Fees paid by You under this Agreement as a result of such failure.
 - 5.2. You recognize and acknowledge that the Program, while regulated by specific policies and procedures, also requires discretion and judgment. The decision whether to grant or deny Certification to a Project will be made in the discretion of CAGBC, acting reasonably, based on interpretation of the Standard by CAGBC, the sufficiency of the submitted Application, and any other information that CAGBC deems relevant.
6. **OPTIONAL SERVICES.** CAGBC may make available certain optional services to assist You to complete the Application and apply the Standard requirements to Your Project, including without limitation, the review of and/or response to requests for alternative adherence paths, 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 shall be governed by the terms of this Agreement.
7. **FEES.** In consideration for the review of Your Project and the provision of any Optional Services that You request under this Agreement, You agree to pay CAGBC, the applicable fees for services as set forth in the Fee Schedule. The Fee Schedule is available for review online at the following webpage: <https://www.cagbc.org/our-work/certification/zero-carbon-building-standard/zero-carbon-building-standard-performance-resources/>. The Fees that You will incur will vary depending on the applicable Standard, and other relevant factors such as Project size, the number and type of Optional Services You request, and CAGBC membership. CAGBC will issue an invoice to You for all applicable Fees as they are incurred. All Fees must be paid to CAGBC within thirty (30) calendar days of the date of the applicable invoice. CAGBC will collect, and You hereby agree to pay, any and all applicable sales or use taxes required by law. You hereby represent and warrant that You have fully reviewed and understand the Fee Schedule. Fees are not refundable and may change at any time. Changes in Fees shall be posted in the Fee Schedule at least thirty (30) days prior to implementation.
8. **PROJECT INFORMATION.**

- 8.1. License to Use for Purpose of Assessment. In order to complete the Certification application process, You must submit Project Information to CAGBC related to each Project, as required by the Application, this Agreement or as requested by CAGBC from time to time. You hereby grant CAGBC and CAGBC's subcontractors a license to access, view, reproduce and otherwise use all Project Information submitted to CAGBC, including all copyrighted materials, tradenames and other proprietary information, solely for the limited purpose of assessing each Project for certification purposes.
- 8.2. "Public" Project. Unless You affirmatively select the option for Your Project to be "Confidential" (see Section 8.3, below), Your Project will be considered a "public" project and will be included in the Project Database. Inclusion in the Project Database allows the general public and members of the media to look up specific project listings and the Public Project Information in respect of such Project. CAGBC shall not distribute or publish any submitted plans, drawings or schematics pertaining to any project without Your express written permission except to CAGBC's employees, agents, representatives and subcontractors for the purpose of assessing the relevant Project. By virtue of this section, CAGBC may share the identity of Your certified Project in order to promote the Certification of Your Project.
- 8.3. "Confidential" Project. You may choose to opt out of allowing certain information relating to Your Project to be included in the Project Database and publicity opportunities by electing the Project to be a "confidential project" at the time of registration. By electing to remain "confidential", the Project's name, street address, city, and project team (including identity of the Owner) (the "Identifying Project Information"), will not appear within the Project Database. All other Public Project Information will appear in the Project Database. Notwithstanding the above, if it is determined in the reasonable discretion of CAGBC, that despite your election to treat the Project as a Confidential Project, Your Project has been/is marketed to the public as having registered for or received certification under this Agreement, You agree that You will be deemed to have elected Your Project to be a Public Project and CAGBC will be entitled to disclose Your Project Information as Public Project Information.
- 8.4. License to Aggregated, Non-Identifying Information. Whether or not You elect for Your Project to be confidential, You hereby confer the right to CAGBC to publish, display and exploit the Project Information in aggregated, anonymized and non-identifying form (the "Aggregated Project Information").
- 8.5. License for Internal Use. You agree that CAGBC may make internal use of any anonymized Project Information submitted to CAGBC, including, and not limited to, project performance data.
- 8.6. License for Public Use. You further agree that CAGBC may access, publish, reproduce, display and exploit Public Project Information (except, in the case of a confidential project, Identifying Project Information) and Aggregated Project Information, to, inter alia, educate and provide resources for the relevant project teams and others, showcase project strategies and promote the Standards on a global scale.
- 8.7. No Public Endorsement. Each party to this agreement agrees that, subject to the Trademark Policy and Branding Guidelines, it shall not furnish any logo, trademark (except tradename to identify the Project(s)) or proprietary indicia of the other or any affiliate in any press release, testimonial, quotations, case study, or endorsement without the other party's prior written consent (which may be withheld in either party's absolute discretion).
- 8.8. Disclosure When Legally Compelled. Nothing in this Agreement shall prevent CAGBC from disclosing information where legally compelled to do so. 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.

- 8.9. Classified Information. You agree to disclose to CAGBC, prior to delivery of any documents, instruments or information provided to CAGBC whether such items are or contain classified information. For the purposes of this Agreement, "Classified Information" is considered sensitive information to which access is restricted by law or regulation to particular classes of people.
- 8.10. PIPEDA. The parties expressly acknowledge and agree to the application of The Personal Information Protection and Electronic Documents Act ("PIPEDA") to personal information of the Owner. The Owner also expressly acknowledges and confirms that the information provided to CAGBC hereunder in regards to the Project and related items, is not "Personal Information" as that term is defined in PIPEDA.
- 8.11. CASL. As a part of this Agreement, the Owner expressly acknowledges and consents, pursuant to the provisions of Canada's Anti-Spam Legislation ("CASL"), to receipt of commercial electronic messages in regards to events, products, services or other information from CAGBC, subject to any exercise of its rights to unsubscribe, from time to time.

9. CAGBC TRADEMARKS AND INTELLECTUAL PROPERTY.

- 9.1. The Marks are owned by CAGBC. To promote the Standards, CAGBC has brand requirements, including colours, typefaces, and application guidelines. You agree to use the Marks in accordance with all applicable laws, rules and regulations, and You will comply at all times with the Trademark Policy and Branding Guidelines available here: <https://www.cagbc.org/our-work/certification/marketing-support/#Zero-Carbon-projects>, and as may be updated from time to time. You acknowledge and agree that any unauthorized use of both the applicable and inapplicable marks constitutes both intellectual property infringement and a material breach of this Agreement.
- 9.2. You acknowledge and agree that You shall have access to CAGBC proprietary intellectual property as part of the Application Process, including, without limitation, forms and processes such as the Workbook and calculators. You covenant and agree that You shall not reproduce, license, disclose or otherwise use any of the said CAGBC intellectual property for any purpose other than the Certification of the Project pursuant to this Agreement.

10. TERM AND TERMINATION.

- 10.1. The term of this Agreement begins on the date on which You accept this Agreement in accordance with Section 17 below, and shall continue in effect unless terminated as follows:
- a) You or CAGBC may terminate this Agreement in whole or in part at any time upon thirty (30) days written notice to the other. You are not required to complete the Application and subject to the foregoing notice requirement, may terminate the Agreement at any time.
 - b) This Agreement shall terminate in full (or as it relates to any Project registered under this Agreement), if You materially breach Your obligations under this Agreement including Your failure to make Fee payments due and as agreed under this Agreement, and You fail to cure such breach within sixty (60) days from the date of notice of material breach provided to You by CAGBC. Such breach of obligations shall include, without limitation, Your failure to pay any Fees invoiced, Your misuse of any Marks or other intellectual property the limited use of which is granted to You pursuant to this Agreement, and any misstatement, whether intentionally or unintentionally made, in the Project Information that You submit in connection with the Program.

- c) This Agreement will automatically terminate in full (or as it relates to any Project registered under this Agreement) if CAGBC delivers notice to You that Your Project has failed to achieve Certification (whichever is applicable), and You (i) indicate Your acceptance of this determination, or (ii) have exhausted all opportunities to appeal this determination. The terms of the procedures for appeals are included in the Certification Guide.
- d) This Agreement will automatically terminate in full upon: (a) the complete or material demolition or renovation of the Project; (b) Your failure or unwillingness to comply with any applicable conditions of Certification; (c) the expiry of a 30 day period from the date of service of a written notice of abandonment of the Application from CAGBC ("Notice of Abandonment") in the event CAGBC reasonably determines that you have failed to file information within a reasonable period of time or have abandoned the Application; or (d) the revocation or expiration of Certification for the Project as set forth in the Certification Guide.

10.2. Upon termination of this Agreement pursuant to Section 10.1 above:

- a) Your access to the Application(s) for the Project will be revoked by CAGBC, and CAGBC may, in its reasonable discretion, delete or destroy any such Application(s) and all data therein.
- b) All of Your rights to use the Marks pursuant to the license granted under Section 9, will terminate and You must immediately discontinue all use and display of the Marks.

11. WARRANTIES, ACKNOWLEDGEMENT, WAIVER, AND INDEMNITY.

11.1. You represent and warrant that all feedback, materials, and other information You provide to CAGBC, will be accurate and complete as of the date data was provided. You also represent and warrant that You have the right to Register hereunder and to provide the Application and all information contained therein to CAGBC, and to make all decisions and to waive or grant any and all rights required hereunder including, without limitation, the provisions of Article 8, and that the use, modification, copying, disclosure and distribution of the Application by CAGBC under this Agreement will not infringe or violate the intellectual property, privacy, confidentiality or other rights of any third party.

11.2. You acknowledge and agree that the ZCB Standard and the Certification and Optional Services provided under this Agreement by CAGBC are completely "as is", and without warranties, conditions, guarantees or representations whatsoever, including those relating to accuracy, reliability, quality, fitness for purpose or non-infringement. You acknowledge and agree that the use of the Certification and Optional Services is completely at your own risk. CAGBC shall not be liable for any errors, omissions, or misstatements in or as a result of the Certification and Optional Services, and You hereby waive any and all claims, and damages, including costs of litigation and legal fees, against CAGBC, incurred by You in connection with the Certification and Optional Services, their participation in the ZCB Standard, or this Agreement. Without limiting the foregoing, CAGBC will not be liable to You for any special, consequential, indirect or incidental damages under the Agreement, and the total liability of CAGBC under this Agreement or in connection with the Certification and Optional Services will never exceed a maximum of \$500.

11.3. If applicable, You, as Agent of the Owner, hereby represent and warrant that You have authority to bind the Owner to all the terms of this Agreement and hereby assume all risks incidental to the Owner's performance of this agreement and shall, at all times, fully indemnify and save harmless CAGBC, its successors and assigns (the "Indemnitees"), from and against any and all claims, damages, losses, costs and expenses which the Owner or

any of them, may make against CAGBC rising out of any alleged breach by You of your warranty of authority on behalf of the Owner. Prior to consideration of an Application by CAGBC, you shall submit to CAGBC, a duly completed Confirmation of Agent's Authority executed by the Owner. The Confirmation of Agent's Authority Form is available here: <https://www.cagbc.org/news-resources/technical-documents/confirmation-of-agents-authority/>. Applications that do not have the properly completed and executed Confirmation of Agent's Authority Form shall not be considered for Certification.

- 11.4. You will indemnify and hold harmless the Indemnitees from and against any and all liability, loss, costs, damages, and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits, or other proceedings, by whomever made, sustained, incurred, brought, or prosecuted, in any way arising out of or in connection with: (a) Your or the Owner's breach of this Agreement, (b) Your or the Owner's misrepresentation to any of the Indemnitees, and (c) any negligent or wrongful conduct of Your or Owner, or any negligent or wrongful conduct of Your or Owner.
12. **MODIFICATION OF TERMS.** Except as otherwise provided herein, CAGBC may change any of the program policies or guidelines (including, without limitation, the Certification Guide, the Fee Schedule and the Trademark Policy and Branding Guidelines) at any time in its reasonable discretion. Your logging in to access project information, 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.
13. **SURVIVAL.** It is expressly understood and agreed that the parties' respective obligations under this Agreement in Articles 8, 9, 10 and 11, and Sections 12 through 18 shall survive any termination of this Agreement.
14. **FORCE MAJEURE.** No party will be responsible for any failure to perform its obligations under this Agreement to the extent caused by events beyond the non-performing party's reasonable control, limited to acts of God, war, riot, embargoes, fire, floods, national emergency, public health emergencies and accidents ("Force Majeure"). Force Majeure shall not include any financial disability on the part of either party. If a party cannot perform an obligation under this Agreement due to an event of Force Majeure, the party will promptly notify the other party in writing and will immediately use commercially reasonable efforts to overcome the event of Force Majeure as soon as possible. If the non-performing party does not resume full performance of its obligations under this Agreement within thirty (30) days after the event of Force Majeure, the other party may terminate this Agreement for cause.
15. **NOTICES.** Any notice shall be in writing and may be delivered by personal delivery to an officer or other responsible employee or the addressee, by registered mail, in the case of CAGBC, addressed to the Canada Green Building Council at 100 Murray St., Ottawa ON, K1N 0A1, or in the case of the Owner or the Agent, or both as the case may be, to the addresses supplied by the Owner and the Agent. Any notice personally delivered shall be deemed to have been validly and effectively given on the date of such delivery. Any communication sent by registered mail shall be deemed to have been validly and effectively given on the fourth business day following the day on which it was sent.
16. **GOVERNING LAW.** The national office of the CAGBC is located in Ottawa and the Parties hereto agree that this Agreement is made in the Province of Ontario and that it shall be governed by and interpreted in accordance with the laws of the Province of Ontario, and the laws of Canada applicable therein and that the courts of the Province of Ontario shall have exclusive jurisdiction with respect to any matter set out herein. All matters in dispute between the parties in relation to this Agreement shall be referred to the arbitration of a single arbitrator. Any arbitration shall be conducted in accordance with the Arbitration Act (Ontario). The award and determination of the arbitration shall be binding upon the parties hereto and their respective successors and assigns.

17. **THIRD PARTIES.** CAGBC reserves the right to assign and/or delegate any of its obligations in its reasonable discretion, including, and without limitation, the right to subcontract the performance of any services associated with the Certification.
18. **EXECUTION.** By selecting the button 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 referenced materials whether by URL or otherwise set forth in this Agreement, including the applicable Standard, Certification Guide, Fees, and the Trademark Policy and Branding Guidelines, and that You have been provided the opportunity to maintain a record of this Agreement and all referenced materials. 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. If You accept this Agreement as described herein, CAGBC shall maintain an electronic record of this Agreement which You may request to review at any time.