

Reconciliation Agreement on Construction Codes

WHEREAS:

The Governments of Canada, Ontario, Québec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, Newfoundland and Labrador, Yukon, the Northwest Territories, and Nunavut as Parties to the CFTA have resolved to:

PROMOTE an open, efficient, and stable domestic market for long-term job creation, economic growth, and stability;

PROMOTE innovation and competition across Canada by reducing administrative and compliance costs, cutting red tape, and time to market;

REDUCE AND ELIMINATE, to the extent possible, barriers to the free movement of goods, services, and investments within Canada.

The regulation of buildings and their construction is within the constitutional responsibility of the Provinces and Territories, and the National Code Development System provides a framework that the Provinces and Territories depend on in fulfilling that responsibility;

The economic benefit to Canada attributable to the harmonization and timely adoption of Construction Codes has been estimated at \$750 million to \$1 billion by 2028;

Canada committed in November 2018 to invest \$13.5 million annually to ensure that the National Codes and the Construction Codes are freely available to the public;

The Parties recognize the policy-setting and technical expertise of the Provinces and Territories in developing and implementing the Construction Codes;

The Provinces and Territories are committed to maintain code objectives, such as safety, health, accessibility, and fire, structural and environmental protection, and

The Parties recognize the importance of a National Code Development System and that reconciliation between *Construction Codes* and National Codes will be a continuous process and not a point in time exercise.

THEREFORE, the Parties agree as follows:

1. PURPOSE

1.1 The purpose of this Reconciliation Agreement (“Agreement”) is to set out the terms by which the Parties will address barriers to trade or investment within Canada by committing the Parties to:

- (a) Reduce or eliminate Differences and Variations in the Technical Provision of Construction Codes;
- (b) Timely adoption of Construction Codes;
- (c) A transformed National Code Development System to meet the needs of the Parties; and
- (d) Provide freely available National and Construction Codes.

2. OBLIGATIONS AND TIMELINES

2.1 **Scope** - The Parties agree that the subject of the Agreement, with respect to the purposes set out in 1.1 (a) and (b), is on Technical Provisions of Construction Codes (the National

Codes as made effective within the Provinces and Territories) and the National Codes.

2.2 Reducing or Eliminating Variations - To achieve reconciliation:

- (a) Each Province and Territory will identify Differences and report Variations and Exceptions in Technical Provisions between the applicable Construction Codes and the National Codes;
- (b) Each Province and Territory will identify Differences and report Variations and Exceptions between Construction Codes and the 2015 National Codes by September 1, 2020;
- (c) Further to paragraphs (a) and (b), Each Province and Territory will report Variations and Exceptions within six months of the effective date of subsequent editions of Construction Codes;
- (d) Each Province and Territory will report Variations to the National Research Council as detailed in the Implementation Plan;
- (e) Each Province and Territory will reduce or eliminate the number of Variations in Technical Provisions between their Construction Codes and the National Codes as detailed in the Implementation Plan;
- (f) Provinces and Territories that have not made building, plumbing, energy, farm or fire codes effective, must report the non-applicability of these codes as Variations; and
- (g) A Province or Territory that has not made effective building, plumbing, energy, farm or fire codes, but plans to do so, shall ensure that any new code is harmonized with the applicable National Code, subject to Variations and Exceptions provided for under this Agreement.

2.3 Exceptions for Legitimate Objectives - After January 1, 2025, a Province or Territory will not adopt a new Variation or Exception unless:

- (a) the purpose of the Variation or Exception is to achieve a Legitimate Objective;
- (b) the Variation or Exception is necessary to achieve that Legitimate Objective;
- (c) the Variation or Exception is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Provinces and Territories where the same conditions prevail; and
- (d) the Variation or Exception is not applied in a manner that would constitute a disguised restriction on trade or investment.

2.4 CFTA Article 202 Does Not Apply - For greater certainty, CFTA Article 202 (Legitimate Objectives) does not apply to this Agreement.

2.5 Timeline for Making Construction Codes Effective

In order that Construction Codes based on the National Codes are made effective in a timely manner, the Parties agree that:

- (a) Each Province and Territory will bring its new Construction Codes into force within 24 months following the date on which the 2020 National Codes are published in both official languages, as detailed in the Implementation Plan;
- (b) Each Province and Territory will bring its new Construction Codes into force within 18

months following the date on which the 2025 editions of the National Codes, and subsequent editions, are published in both official languages, as detailed in the Implementation Plan;

- (c) Each Province or Territory may individually decide which mechanisms are used to make Construction Codes effective; and

2.6 Transforming the National Code Development System

The Parties agree that:

- (a) A transformed National Code Development System will be jointly supported by the Parties, and engage and assemble expertise to develop and produce effective, uniform and accessible model regulatory solutions in an open and transparent way;
- (b) Canada will support, resource, and manage a transformed National Code Development System;
- (c) Canada will support the work of all Parties within the National Code Development System to execute change from the current National Code Development System into a more inclusive (of Provinces and Territories), agile, responsive governance model to achieve a desired system performance that includes collective and effective decision-making by all Parties, integration of all Parties' code development activities and the engagement of stakeholders and the Public;
- (d) Further to paragraph 2.6(c), the Parties will implement an agile, responsive and inclusive governance model for the National Code Development System that:
 - (i) responds quickly to the needs and priorities of the Parties by regularly identifying their code development priorities and by reviewing and allocating available resources based on those priorities so that performance measures are met;
 - (ii) values input from the Provinces and Territories in the development of future editions of the National Codes;
 - (iii) includes all Provinces and Territories, collectively, as effective decision-makers;
 - (iv) provides for broad Provincial and Territorial representation on any decision-making committees to aid the understanding of policy goals in the development of future National Codes that are responsive to the needs of Provinces and Territories as detailed in the Implementation Plan;
 - (v) recognizes the policy-setting and technical expertise of the Provinces and Territories early and effectively in developing and implementing Construction Code provisions as to minimize future Variations;
 - (vi) invites input and advice from stakeholders
 - (vii) engages stakeholders in the decision-making process;
 - (viii) is independent of any undue influence; and
 - (ix) is open and transparent for all stakeholders;
- (e) The Parties will implement a robust and responsive National Code development process that:

- (i) integrates Provincial and Territorial code development processes into the national process in the interest of moving forward together with fewer Variations, including collecting joint code issues and reducing duplication of development efforts, as detailed in the Implementation Plan;
 - (ii) recognizes the Technical Provisions of Construction Codes which provide leadership in specific areas;
 - (iii) provides a dedicated mechanism to submit Provincial and Territorial code development initiatives into the National Code Development System; and
 - (iv) recognizes Provincial and Territorial code development solutions in the National Codes.
- (f) The Parties will transform the National Code Development System by December 31, 2021, as detailed in the Implementation Plan;
- (g) Canada will provide the National Code Development System with funding dedicated for code-related research, development, operational support and the operations of the required committees.

2.7 **Freely available National Codes** - Canada will provide Provinces, Territories and the Public with free and unlimited access to the National Codes, in a digital format;

3. IMPLEMENTATION

3.1. **Development and Submission of Implementation Plan** - The Parties will develop a joint Implementation Plan and submit the Implementation Plan to the RCT by September 30, 2020.

3.2. **Contents of Plan** - The Parties will include in the Implementation Plan the mechanisms and timelines to achieve the commitments set out in the Agreement.

3.3 **Further Reporting to RCT** - The Parties will report to the RCT the progress in executing the Implementation Plan no later than December 31, 2021, and annually thereafter, or as may be requested by the RCT.

4. CONFIDENTIAL INFORMATION

4.1 The Parties may exchange confidential information. Confidential information means any confidential or proprietary information, either of a business or technical nature, disclosed by one party (the "Discloser") to the other party (the "Receiving Party"), whether in electronic, written, graphic or other tangible form, that is clearly marked "Proprietary" or "Confidential".

4.2 Information gathered by the Parties in carrying out this Agreement is subject to the applicable federal, provincial, and territorial legislation regarding access to information and privacy.

4.3 No Party shall disclose confidential information except where disclosure is required by law, or with the written consent of the other Parties. Where a Party is required by law to disclose information, that Party shall notify the affected Parties as soon as possible.

5. MISCELLANEOUS PROVISIONS

- 5.1 **Effective Date** - Subject to section 5.2, the Agreement shall enter into force on June 1, 2020. By such date, Canada, Provinces and Territories shall have taken all measures necessary to give effect to the Agreement.
- 5.2 **Accession** - Any Province or Territory that has not given effect to this Agreement by June 1, 2020 may accede to this Agreement by acceptance of its terms.
- 5.3 **Withdrawal** - A Party may withdraw from this Agreement 12 months after it gives notice in writing to the other Parties and the Chair of the RCT.
- 5.4 **Parties Can Request Amendment** - Any Party may request an amendment to this Agreement by giving written notice of such request to all Parties and the Chair of the RCT.
- 5.5 **Unanimous Approval Required** - Any proposed amendment to this Agreement requires unanimous approval of the Parties.
- 5.6 **Notice of Amendments** - Notice of amendments to this Agreement will be provided to the Chair of the RCT.
- 5.7 **Amendments to be published** - All amendments to this Agreement will be published on the CFTA website, and all Parties agree to communicate in a timely manner any such amendments to their respective stakeholders considered to be affected by the amendments.
- 5.8 **Costs and Expenses** - Any costs and expenses of a Party in relation to the Agreement shall be borne by that Party, except as otherwise provided in the Agreement, or unless one Party or Parties agree, in writing, to make funding available to cover all or some of the costs of a specific activity that is associated with an obligation that is the responsibility of another Party or Parties.
- 5.9 **Notices** - It is the responsibility of each Party to promptly and effectively communicate notices under the Agreement within 30 days.
- 5.10 **Delivery of Notices** - Any notice, information, or document required to be delivered under this Agreement is deemed delivered if forwarded by facsimile, email, or mail. Any notice sent by facsimile or email is deemed received one working day after it is sent. Any notice mailed is deemed received eight working days after being mailed.
- 5.11 **Both Languages Authoritative** – This Agreement has been made and executed in English and French and both versions are equally authoritative.

6. DISPUTE RESOLUTION

- 6.1 Part A (Government-to-Government Dispute Resolution) of CFTA Chapter Ten applies to this Agreement. For greater certainty, Part B (Person-to-Government Dispute Resolution) of CFTA Chapter Ten does not apply to this Agreement.

7. DEFINITIONS

- 7.1 For the purposes of this Agreement, except as otherwise provided:

CFTA means the Canadian Free Trade Agreement;

Confidential information means any confidential or proprietary information, either of a business or technical nature, disclosed by one party to the other party, whether in electronic, written, graphic or other tangible form, that is clearly marked “Proprietary” or “Confidential”;

Construction Codes mean the National Codes or a subject area addressed in the National Codes as made effective within the Provinces and Territories;

Difference means any dissimilarity between a Technical Provision in a Construction Code and a corresponding National Code;

Exception means a Variation where a Province or Territory has a policy interest in maintaining or making effective that Variation.

Legitimate Objective means any of the following objectives pursued within the territory of a Party:

- (a) public security and safety;
- (b) protection of human, animal or plant life or health;
- (c) protection of the environment;
- (d) consumer protection; or
- (e) protection of the health, safety, and well-being of workers

considering, among other things, if appropriate, fundamental climatic or other geographical factors, technological or infrastructure factors, or scientific justification;

National Codes means, collectively, the following:

- (a) the National Building Code of Canada;
- (b) the National Plumbing Code of Canada;
- (c) the National Fire Code of Canada;
- (d) the National Energy Code for Buildings; and
- (e) the National Farm Building Code of Canada;

and a “**National Code**” means any one of them;

National Code Development System means the system of governance and management processes that incorporates and supports the research, technical analysis, code change processes, maintenance, and publication of National Codes and related guides;

Parties means, collectively, the Governments of Canada, Ontario, Québec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, Newfoundland and Labrador, Yukon, the Northwest Territories, and Nunavut, and a “Party” means any one of them;

Provinces and Territories means, collectively, the Governments of Ontario, Québec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, Newfoundland and Labrador, Yukon, the Northwest Territories, and Nunavut, and a “**Province or Territory**” means any one of them;

RCT means the Regulatory Reconciliation and Cooperation Table established under Article 404 of the CFTA;

Technical Provision means an element of National Codes or a Construction Codes that sets out:

- (a) acceptable solutions or other performance or prescriptive provisions related to the design, construction, or alteration of buildings;
- (b) provisions for existing buildings or premises related to minimum levels of fire, safety, fire protection or fire prevention;
- (c) objectives and functional statements;
- (d) titles or headings under which the provisions set out in paragraphs (a) through (c) are organized; or
- (e) definitions of terms related to provisions covered under paragraphs (a) through (d).

Variation means a Difference that has a material effect on how a building is designed, constructed or occupied, including:

- (a) a Technical Provision in a Construction Code with no corresponding provision in a National Code;
- (b) a Technical Provision in a National Code with no corresponding provision in a Construction Code;
- (c) a technical matter addressed in both a Construction Code and a National Code, but where a Technical Provision is altered, added or deleted;
- (d) the subject matter of a National Code that has not been made effective in a Construction Code; or
- (e) the subject matter of a National Code that has not been made effective where a Province or Territory has previously regulated and continues to regulate the subject matter not based on that National Code.

7.2 If additional definitions are required for the functioning of this Agreement, including because of an amendment, the Parties shall use the definitions in Chapter Thirteen of the CFTA to the greatest extent possible.