

## BUILDER AGREEMENT

THIS AGREEMENT is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BETWEEN:**

\_\_\_\_\_  
[Print the full and exact legal name of the Builder]  
("Builder")

\_\_\_\_\_  
[Print full address of the Builder for notice purposes]

**AND:**

**TARION WARRANTY CORPORATION**  
("Tarion")

**RECITALS:**

- A. Tarion is a private, not-for-profit corporation designated by regulation to administer the *Ontario New Home Warranties Plan Act*.
- B. The Builder (as a contract home builder or a builder who has entered into an agreement with a vendor to build homes) proposes to enter into a contract to build or begin to build one or more new homes.
- C. The Builder acknowledges that in order to offer to build, agree to build or begin building the builder must: be licensed under the *New Home Construction Licensing Act, 2017* ; and must ensure that any homes it builds are enrolled in the Ontario New Home Warranties Plan and Protection Plan.
- D. This Agreement sets out requirements in addition to regulatory conditions and provisions that govern the qualification for enrolment or enrolment for applicable homes.

**NOW THEREFORE** in consideration of the sum of \$1.00 and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Builder agrees with Tarion as follows:

## **ARTICLE 1**

### **INTERPRETATION**

#### **1.1 Recitals**

1.1.1 The recitals to this Agreement form part of the Agreement and are incorporated by reference herein.

#### **1.2 Definitions**

1.2.1 Any term used in this Agreement that is defined in the ONHWP Act or its regulations, and that is not otherwise defined in this Agreement, has the meaning given to the term in the ONHWP Act or its regulations.

1.2.2 In this Agreement:

1.2.2.1 **“Builder”** means the Builder noted on the title page of this Agreement, including any successors and assigns, whether or not licensed under the NHCL Act;

1.2.2.2 **“Builder Obligations”** means the Builder’s builder obligations as defined in Ontario Regulation 637/20 under the ONHWP Act and includes, for greater certainty, all obligations, liabilities and indebtedness of a builder to Tarion under the ONHWP Act, under an agreement with Tarion (including this Builder Agreement), under Specified Terms and Conditions, a Registrar Bulletin or Registrar Directive or otherwise, including without being limited to, obligations, liabilities and indebtedness for:

1.2.2.2.1 all payments made by Tarion in respect of a claim or potential claim,

1.2.2.2.2 the value of services provided by Tarion in respect of a claim or potential claim,

1.2.2.2.3 costs incurred by Tarion relating to a claim or potential claim, including legal fees, expert fees and other consultant fees on a full indemnity basis,

1.2.2.2.4 damages suffered by Tarion in respect of a claim or potential claim,

1.2.2.2.5 all costs incurred by Tarion in enforcing the obligations, liabilities and indebtedness of a builder to Tarion, and

1.2.2.2.6 applicable administration fees, penalties, taxes and interest on the above.

1.2.2.3 **“Construction Contract”** means a contract between a builder and an owner, under which the builder undertakes the construction of a new home that is subject to the ONHWP Act;

1.2.2.4 **“Effective Date”** means the date first written above;

- 1.2.2.5 **“Enrolment Confirmation”** means an enrolment of a home in the Plan as provided for under subsection 10.3(8) of the ONHWP Act;
- 1.2.2.6 **“Homes”** means any and all “homes” for which the Builder is the “builder”( including homes for which it enters into a Construction Contract) from and after the Effective Date until the Builder Obligations are exhausted as referenced in Section 8.1;
- 1.2.2.7 **“Indemnified Amounts”** means the amounts to be paid by the Builder under Section 4.1;
- 1.2.2.8 **“Insolvency Proceeding”** means any receivership, insolvency, proposal, bankruptcy, compromise, arrangement, reorganization, winding-up, dissolution or other similar proceeding, whether or not judicial in nature;
- 1.2.2.9 **“Material Change”** means a significant proposed, imminent, or implemented change in the business, operations, personnel, assets, liabilities, or affairs of the Builder including:
- (a) a significant change in matters relating to construction financing or the prospects for completion of construction of the Homes,
  - (b) a significant change in information about the proposed construction plans in relation to the Homes,
  - (c) a significant change in information concerning the servicing of warranties or protections for the Homes, and
  - (d) the commencement of an Insolvency Proceeding or receipt of knowledge of an imminent Insolvency Proceeding.
- 1.2.2.10 **“NHCL Act”** means the *New Home Construction Licensing Act, 2017* and regulations thereunder, as amended from time to time;
- 1.2.2.11 **“ONHWP Act”** means the *Ontario New Home Warranties Plan Act* and regulations thereunder, as amended from time to time;
- 1.2.2.12 **“QFE Confirmation”** means a written confirmation by Tarion under subsection 10.3(7) of the ONHWP Act that a home qualifies for enrolment in the Plan;
- 1.2.2.13 **“Security”** has the meaning given to it in Section 3.8.1.
- 1.2.2.14 **“Specified Terms and Conditions”** means those terms, conditions and provisions referred to in Section 3.5.1;
- 1.2.3 In this Agreement, unless the contrary intention appears, a reference to:
- 1.2.3.1 “this Agreement”, “hereto”, “herein”, “hereof”, “hereby”, “hereunder” and any similar expressions refer to this Builder Agreement as it may be supplemented, amended or restated from time to time, and not to any particular Article, section or other portion hereof;

- 1.2.3.2 an “amendment” includes an amendment, supplement, novation, re-enactment, replacement, restatement, or variation and “amend” will be construed accordingly;
- 1.2.3.3 any person includes its successors and assigns, replacements, transferees and substitutes from time to time; and
- 1.2.3.4 any document includes (without prejudice to any prohibition on amendments) all amendments (however fundamental) to that document, including any amendment providing for any increase (however great) in the amount or the provision of any facility.

### **1.3 Headings**

1.3.1 The inclusion of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

### **1.4 References to Articles and Sections**

1.4.1 Whenever in this Agreement a particular Article, section or other portion thereof is referred to, such reference pertains to the particular Article, section or portion thereof contained herein, unless otherwise indicated.

### **1.5 References to Agreements and Enactments**

1.5.1 Except as otherwise specifically provided:

- 1.5.1.1 reference in this Agreement to any contract, agreement or any other document shall be deemed to include (i) reference to the same as supplemented, amended or restated from time to time and (ii) reference to any contract, agreement or any other document which substitutes, in whole or in part, for the same from time to time; and
- 1.5.1.2 reference in this Agreement to any enactment, including, without limitation, any statute, law, by-law, regulation, rule, ordinance or order, shall be deemed to include reference to such enactment as re-enacted or amended from time to time and to any enactment in substitution therefor.

### **1.6 Currency**

1.6.1 Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian currency.

### **1.7 Gender and Number**

1.7.1 In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

### **1.8 Invalidity of Provisions**

1.8.1 Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision or part hereof. To the

1.8.2 extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

## **1.9 No Conditions Precedent**

1.9.1 This Agreement is effective on the Effective Date.

## **1.10 Amendment, Waiver**

1.10.1 No amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

## **1.11 Governing Law, Attornment**

1.11.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the Builder hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of Ontario.

## **ARTICLE 2 REPRESENTATIONS AND WARRANTIES**

### **2.1 Representations and Warranties**

2.1.1 The Builder represents and warrants to Tarion as follows:

- 2.1.1.1 the Builder has authority to enter into this Agreement;
- 2.1.1.2 if the Builder is other than a natural person, it has been duly formed and is existing and correspondingly licensed or otherwise authorized to carry on business under the laws of the Province of Ontario;
- 2.1.1.3 this Agreement has been duly executed and delivered by and on behalf of the Builder;
- 2.1.1.4 this Agreement constitutes a legal, valid and binding obligation of the Builder, enforceable against it in accordance with its terms subject however to the application of general equitable principles and/or any discretionary remedies and equitable relief that may be invoked by a court of competent jurisdiction, and also subject to bankruptcy, insolvency, reorganization, arrangement, winding-up, moratorium and other similar laws of general application which may limit the enforcement of creditors' rights generally;
- 2.1.1.5 the entering into of this Agreement and the performance by the Builder of its obligations hereunder does not and will not contravene, breach or result in any default under the constating documents or other organizational documents of the Builder or any applicable law;
- 2.1.1.6 no authorization, consent or approval of, or filing with or notice to, any person or official body is required in connection with the execution and delivery of this Agreement by the Builder or the performance of this Agreement by the Builder;

- 2.1.1.7 except as disclosed in writing to Tarion, there is no court, administrative, regulatory or similar action (whether civil, quasi-criminal, or criminal), arbitration or other dispute settlement procedure, investigation or inquiry, or any similar matter or action against or involving the Builder, whether in progress or threatened, which, if determined adversely to the Builder, would materially adversely affect its ability to perform any of the provisions of this Agreement;
- 2.1.1.8 the Builder will not act as a vendor under the ONHWP Act unless the Builder obtains a licence as a vendor under the NHCL Act and executes a vendor agreement with Tarion;
- 2.1.1.9 the Builder holds all licences, permits and government approvals needed in order to offer to construct, agree to construct and to build the Homes; and
- 2.1.1.10 the Builder has not omitted to disclose anything that could have a material adverse impact upon the risk assessment associated with the QFE Confirmation or Enrolment Confirmation.

## **2.2 Survival of Representations and Warranties**

The representations and warranties of the Builder set forth in Section 2.1 may be relied upon by Tarion, and shall continue in full force and effect, so long as any Builder Obligations remain outstanding.

## **ARTICLE 3 AGREEMENTS OF BUILDER**

### **3.1 Builder to Preserve Status**

- 3.1.1 The Builder acknowledges, consents and agrees:
  - 3.1.1.1 if it is an entity other than a natural person that it shall at all times maintain and preserve its existence as such entity; and
  - 3.1.1.2 if it is an entity other than a natural person, that it shall not change its name or change the jurisdiction of its chief executive office or principal place of business (as such terms are used in the PPSA from time to time) without written notice to Tarion at least fifteen (15) days prior to such change.

### **3.2 Builder to Furnish Information to Tarion**

3.2.1 The Builder represents and warrants that the information set forth in its application(s) for QFE or Enrolment, and in other documents furnished by the Builder or its representatives to Tarion in connection with such application or otherwise, is true and correct in all material respects and does not omit to communicate any fact, circumstance or information that could reasonably affect Tarion's assessment and determination of the QFE or Enrolment, the ability of the Builder to fulfill its obligations under this Agreement and the ONHWP Act, or the risk assessment undertaken (or to be undertaken) in connection with the granting of the QFE or Enrolment.

3.2.2 The Builder shall, upon request of Tarion and at the expense of the Builder, within such time as Tarion specifies, furnish Tarion with the following information and/or documentation, and Tarion shall safeguard said documentation and/or information in accordance with Tarion's Access to Information and Privacy Policy:

- 3.2.2.1 financial information or documents, including without limitation: financial statements, statements of net worth, bank statements, driver's licenses, birth certificates, articles of incorporation, corporate bylaws, other constating and organizational documents, sample signatures, and such other financial information or documents including electronic records as Tarion may reasonably require for the purpose of processing the QFE or Enrolment.
- 3.2.2.2 copies of construction contracts, insurance contracts, budgets, workplans, business plans, project schedules, construction reports, or any other records (electronic or otherwise) relating to the Homes.
- 3.2.2.3 information and documents, including updates and supplements to that referred to above, for the purpose of reviewing the status of the QFE or Enrolment, and consideration of risk for Tarion and the guarantee fund provided for under the ONHWP Act in respect of the Homes.
- 3.2.2.4 any other information or documents Tarion may reasonably require from time to time, including updates and supplements to any information previously provided to Tarion.

3.2.3 The Builder shall provide Tarion with information satisfactory to Tarion that the Builder and any other interested persons are qualified and suited for the work they will do in connection with the Homes having regard to prior conduct, including history of claims made, claims resolved, claims paid by Tarion, chargeable conciliations and after-sales service.

3.2.4 The Builder shall, upon request of Tarion, at any time or times provide a written update confirming the identity of interested persons, principals, officers, directors, employees, persons providing financial contribution and persons providing guarantees of the Builder's obligations and promptly advise Tarion when any of those persons who are significant to the Builder's operations are no longer employed or associated with the Builder.

3.2.5 The Builder shall make representatives of the Builder available to Tarion for interviews during normal business hours, and provide reasonable access to information, documents, things, books, records (including electronic records), plans and other materials, for the purpose of confirming matters relating to the Builder Obligations.

3.2.6 The Builder shall, from time to time, at the Builder's expense, furnish to Tarion any information, documents, things, and records relating to the eligibility of the Homes for warranty coverage, work done or other steps taken to resolve warranted claims and otherwise the status of warranty coverage of the Homes and authorizes Tarion to share such information with:

- 3.2.6.1 The purchasers of such Homes who have entered into a purchase agreement with the vendor of the Homes.
- 3.2.6.2 The owners of such Homes who have entered into a Construction Contract with the Builder.

3.2.6.3 The owners of such Homes to whom a vendor has transferred title to the Home.

3.2.7 The Builder shall permit representatives of Tarion to inspect a Home that is the subject of an application for QFE or Enrolment at any time after the Builder has commenced construction.

### **3.3 Change in Circumstance**

3.3.1 The Builder shall, on request, advise Tarion of any incident involving the Builder that involves fraud or misappropriation of funds.

3.3.2 The Builder shall provide prompt written notice to Tarion if there is a Material Change.

3.3.3 The Builder shall provide prompt written notice to Tarion of any proposal: (i) to reorganize, amalgamate, merge, consolidate or otherwise enter into any form of business combination with any person; and/or (ii) to liquidate, dissolve or wind up or take any steps or proceedings in connection therewith.

### **3.4 Consent and Authorization Regarding Credit Checks**

3.4.1 The Builder hereby authorizes and consents to Tarion procuring and utilizing, from time to time, credit information in respect of the Builder, its affiliates and guarantors.

### **3.5 Conditions; Specified Terms and Conditions**

3.5.1 If Tarion's notice of proposal to approve a QFE Confirmation or Enrolment Confirmation includes from time to time any terms, conditions or provisions with which the Builder must comply ("**Specified Terms and Conditions**") then , unless the Specified Terms of Conditions are successfully appealed under section 10.6 of the ONHWP Act the Builder acknowledges and agrees that the Specified Terms and Conditions are incorporated by reference herein and are binding as if set out in full in this Agreement.

3.5.2 The Builder agrees to duly and diligently perform and/or comply with the Specified Terms and Conditions.

3.5.3 The Builder agrees to use reasonable commercial efforts to satisfy any conditions set out in a QFE Confirmation and included pursuant to paragraphs 10.3(5)(b) and 10.3(6)(b) of the ONHWP Act.

### **3.6 Due Performance of Obligations**

3.6.1 The Builder shall duly and diligently perform:

3.6.1.1 all of the Builder Obligations,

3.6.1.2 its obligations to owners under Construction Contracts for the Homes,

3.6.1.3 Its obligations under any construction contract with a vendor of new homes,

3.6.1.4 its obligations to owners under the ONHWP Act and NHCL Act, including obligations to attach a Warranty Information Sheet or other required supplement to Construction Contracts, conduct proper pre-delivery



inspections, address deposit monies, and service and attend to statutory warranties and protections in accordance with applicable law and relevant contractual provisions,

- 3.6.1.5 all obligations under the NHCL Act, Condominium Act and Building Code Act, and all regulations under those Acts, insofar as such obligations relate in any way to Tarion, and
  - 3.6.1.6 all obligations under other applicable law insofar as such obligations relate in any way to Tarion.
- 3.6.2 Following a risk-based inspection by Tarion of a Home, Tarion may issue to the Builder a list of deficiencies in the construction of a Home that must be resolved to bring the Home into compliance with the ONHWP Act. The Builder upon receipt shall resolve the deficiencies according to its obligations under the ONHWP Act within a reasonable period of time, failing which the unresolved items will be treated as warranty claims and any rights to challenge the assessment of the deficiencies as determined by Tarion (e.g. Builder Arbitration Forum) and possible sanctions for the Builder (e.g. chargeable conciliation) will apply.
- 3.6.3 The Builder shall comply with all conditions applicable to the Homes including the requirement that the Builder,
- 3.6.3.1 shall not commence to construct Homes in excess of the maximum number permitted to be constructed,
  - 3.6.3.2 shall not commence to construct homes of any class for which the construction is restricted,
  - 3.6.3.3 shall replace one form of Security previously provided to Tarion with another, as required,
  - 3.6.3.4 shall provide Security to Tarion in addition to that already provided, in the amount and in the form determined by Tarion, and
  - 3.6.3.5 shall promptly fulfil any term and condition imposed upon the Builder by Tarion in connection with the release by Tarion of the whole or any part of any Security provided to Tarion by the Builder.
- 3.6.4 If the Builder acts as a vendor without executing a vendor agreement with Tarion, then the Builder shall indemnify and save Tarion harmless from and against all losses, claims, costs, damages and/or liabilities whatsoever heretofore or hereafter suffered or incurred by Tarion resulting from, or arising out of, any failure to perform or fulfil the obligations that the Builder would have been obliged to fulfil had the Builder executed a vendor agreement with Tarion.
- 3.6.5 The Builder agrees to have the appropriate persons who are associated persons of the Builder complete written or oral interviews, tests or exams with respect to any matters that are relevant to the Homes and the construction, financing, completion and after-sales service of the Homes.

3.6.6 The Builder shall, on request, furnish to Tarion proof that it has complied with its obligation to attach a Warranty Information Sheet to Construction Contracts and collect and furnish Tarion with owner contact information pursuant to Ontario Regulation 892

3.6.7 The Builder shall preserve all assignable rights and claims that the Builder may have against manufacturers, suppliers, vendors, builders, contractors, sub-contractors and others in respect of any breach of warranty or other defect in respect of the Homes, and shall, forthwith upon the request of Tarion, assign and transfer all such rights and claims to and in favour of Tarion, or as it may direct, and shall execute and deliver such assignments and other instruments and do such acts and things as Tarion may reasonably require in order to enable Tarion or its designate to prosecute and enforce such rights and claims as fully and effectually as the same could be prosecuted and enforced by the Builder subject however to the overriding provisions of any assignment of such rights, claims and/or interests involving any manufacturers, suppliers, builders, contractors and/or sub-contractors heretofore or hereafter made by the Vendor to and in favour of the lender(s) providing construction financing for the Homes, and which assignment to the construction lender(s) shall take priority over any such assignment by the Vendor to and in favour of Tarion, regardless of when same have been respectively created [and Tarion shall correspondingly execute a financing change statement under the PPSA to evidence and confirm said postponement and subordination to and in favour of the construction lender(s)], and following any such assignment to the construction lender Tarion shall not pursue nor enforce any rights and/or claims under or pursuant to any such assignment so granted by the Vendor to Tarion whatsoever.

3.6.8 The Builder shall co-operate with Tarion in connection with requests for construction status, and inspections under the ONHWP Act.

3.6.9 The Builder shall upon request pay all such fees as are permitted under the ONHWP Act and communicated in writing to the Builder in any manner, including in a Registrar Bulletin or other advisory.

3.6.10 The Builder shall pay to Tarion an administration fee equivalent to fifteen per cent (15%) (or such other per cent as may be stipulated from time to time by regulation under the ONHWP Act) of each amount paid out by Tarion to any owner(s) or third party contractor(s)/consultant(s) in respect of the Builder Obligations.

3.6.11 The Builder shall pay to Tarion interest on any amounts owed to Tarion by the Builder, due to any non-compliance with the Builder Obligations, which interest shall accrue at the rate of 1.5 per cent (1.5%) per month, calculated daily (or such other interest rate as may be stipulated from time to time by regulation under the ONHWP Act). The Builder shall make the interest payment referenced above on the first day of each month following the date of default in repaying the amounts owed until the amounts owed are repaid in full.

3.6.12 The Builder covenants and agrees that it shall not advertise or publish an QFE Confirmation or Enrolment Confirmation that the Builder does not have (or that does not exist). The Builder acknowledges and agrees that a breach of this provision shall entitle the Registrar to obtain and enforce a court order to enjoin and/or restrain such activities.

3.6.13 The Builder acknowledges and agrees that any QFE Confirmation or Enrolment Confirmation given to the Builder is not assignable or transferable in whole or in part, whether by way of power of attorney, declaration of trust, sale, assignment, or otherwise. Any amalgamation

or other corporate reorganization that would vest the Builder's assets in a new or successor entity by operation of law shall be subject to the prior written consent of Tarion, such consent not to be unreasonably withheld or delayed. Such consent may require an assumption agreement acceptable to the parties each acting reasonable. The Builder shall not state or hold out that a home has QFE Confirmation or Enrolment Confirmation if it does not.

### 3.7 Use of Information

3.7.1 The Builder authorizes Tarion to: (a) report on the Builder's performance and/or compliance status relating to homes in respect of which the Builder acted as Builder (or that were enrolled by the Builder) in any publication whether print, electronic or otherwise; (b) disclose information to the general public concerning the Builder's ability to build homes and carry out any requisite after sales service and warranty work, where Tarion believes it advisable to do so in furtherance of the ONHWP Act; and (c) disclose as necessary any information required by law and in particular required to support the Ontario Builder Directory (or any successor directory) maintained under NHCL Act..

3.7.2 The Builder authorizes Tarion to provide the name and contact information of the Builder from time to time, and to anyone desiring to contact the Builder.

3.7.3 The Builder acknowledges that Tarion will collect, use, disclose and retain information obtained from the Builder in accordance with Tarion's Access to Information and Privacy Policy published on tarion.com.

### 3.8 Security

3.8.1 The Builder shall, upon request of Tarion at any time and from time to time, and at the expense of the Builder:

3.8.1.1 furnish Tarion with such cash collateral, letters of credit, surety bonds, deposit trust agreements, guarantees, indemnities, covenants not to encumber, undertakings, declarations, collateral charges, and/or other security or other assurances as Tarion may require to secure and assure the performance of the Builder Obligations, and to address risk for Tarion and the guarantee fund under the ONHWP Act ("**Security**"): (a) in respect of the Homes; and (b) in the aggregate having regard to the obligations owed to Tarion and owners in respect of all homes of the Builder and its affiliates constructed under the ONHWP Act; and

3.8.1.2 supplement, increase, modify, and/or update the said Security and assurances.

3.8.2 If the results of an examination or interview by Tarion or an inspection by Tarion demonstrate that the Builder does not have the necessary skills, qualifications, technical expertise or experience to build the Homes that are the subject of the application for QFE or Enrolment to which this Agreement relates, Tarion may require the Builder or builder to,

3.8.2.1 post additional Security or assurances with Tarion, or

3.8.2.2 successfully complete a course of study that Tarion specifies.

3.8.3 The Builder agrees that unless the Security instrument or other written statement from Tarion states otherwise (e.g. project specific or limited to defined Homes) then any Security provided to Tarion by or on behalf of the Builder shall secure Builder Obligations of the Builder in respect of the: (i) Homes; and (ii) any other homes hereafter constructed by the Builder unless specifically released by Tarion in writing. Despite the foregoing, in connection with an Application for QFE Confirmation or Enrolment Confirmation in respect of a condominium project, the Security provided in connection with the condominium project shall be limited to the such condominium project (including both residential units and common elements) unless the Security instrument provides otherwise.

3.8.4 For clarity, the Builder agrees that unless the Security instrument or other written statement from Tarion states otherwise then any Security provided to Tarion by or on behalf of the Builder and expressly described as *blanket security* ( as opposed to expressly described as project-specific security) shall secure the Builder Obligations of: (i) the Builder in respect of the Homes; and (ii) any other associated persons of the Builder unless and until specifically released by Tarion in writing.

3.8.5 The Builder agrees that if the Security is in the form of cash collateral then any monies paid to Tarion may be held in the name and on account of Tarion as Security according to Section 3.8 and the Builder hereby assigns, transfers and sets over a security interest in such sums to and in favour of Tarion as general and continuing collateral security for the Builder Obligations in accordance with subsections 3.8.3 and 3.8.4. The Builder consents to Tarion taking any steps it deems necessary to better assure such security interest. If the Security so provided by the Builder is not expressly described as blanket security, then any financing statement so registered by or on behalf of Tarion in connection therewith shall specifically confirm that the Security (and any and all proceeds derived therefrom) are related to the specific project or the specific Homes for which the Security was originally provided by the Builder.

3.8.6 The Builder agrees not to seek injunctive or other relief to prevent Tarion from drawing upon, using, demanding upon or otherwise realizing upon the Security or assurances provided. In the event the Builder seeks such relief, this provision may be relied upon by Tarion as a complete defence or response in order to defeat the seeking of such relief.

3.8.7 The Builder has no right to assert set-off as a basis to prevent Tarion from drawing upon, using, demanding upon or otherwise realizing upon the Security or assurances provided. Any claim by the Builder against Tarion shall be asserted as a claim for damages only.

### **3.9 Use of Tarion Forms**

3.9.1 The Warranty Information Sheet referred to in Regulation 892 shall be attached to every Construction Contract entered into on or after February 1, 2021.

3.9.2 The vendor of a project as applicable shall ensure every agreement of purchase and sale shall have the appropriate Addendum attached to it in accordance with the requirements set out in Regulation 892.

3.9.3 The Builder's use of the Warranty Information Sheet shall be subject to the following requirements and terms of use. Howsoever the builder obtains such forms Builder shall be responsible for the following requirements and terms of use:

- 3.9.3.1 The source document shall be in the forms supplied by Tarion on its website - tarion.com.
- 3.9.3.2 The Builder shall not amend or alter the format, logos or text of the Warranty Information Sheet.
- 3.9.3.3 The Warranty Information Sheet is to be retained as a separately identifiable document.
- 3.9.3.4 The Builder shall not modify or amend the Warranty Information Sheet in any way and shall not create any derivative works that incorporate or make use of the Warranty Information Sheet in whole or in part, without the express prior written consent of Tarion.
- 3.9.3.5 The Builder shall be responsible for any improper changes whatsoever made to the Warranty Information Sheet before it is attached to the Construction Contract.
- 3.9.3.6 The Warranty Information Sheet and template may be changed from time to time by government directive or by Tarion, and Tarion's sole obligation is to advise the Builder is to send an advisory to the new home building industry and post the new forms on its website. Tarion will use best efforts to provide at least 90 days prior notice of the introduction of a new template, recognizing that the time may be less in extraordinary circumstances but in no event (other than in circumstances beyond Tarion's reasonable control) shall there be less than 30 days prior notice.

## **ARTICLE 4** **INDEMNITY**

### **4.1 Indemnity**

4.1.1 The Builder shall fully indemnify and save Tarion harmless from and against any losses, costs, claims, damages and/or liabilities which may arise resulting from or by virtue of:

- 4.1.1.1 the failure of the Builder to perform or fulfill any of the Builder Obligations;
- 4.1.1.2 the performance or fulfillment, by Tarion in its sole judgment, of any of the Builder Obligations; and/or
- 4.1.1.3 the payment or satisfaction, by Tarion in its sole judgment, in whole or in part of any claim asserted by any party pursuant to the ONHWP Act in respect of, or otherwise related in any manner to, any Home which the Builder offered to build, agreed to build or built.

Provided that the Builder shall have no obligation under this Agreement to indemnify Tarion for any losses or costs incurred related to matters that are not warranted or compensable by the Builder under the ONHWP Act, but this exclusion does not affect Tarion's subrogation rights, or rights under an assignment of any cause of action from another person.

(all of the foregoing collectively, the "**Indemnified Amounts**").

## **4.2 Continuing Indemnity**

4.2.1 The indemnity herein shall be a continuing indemnity for the payment of all Indemnified Amounts and shall apply to and secure any ultimate balance thereof due or remaining unpaid to Tarion. The indemnity herein shall not be considered as wholly or partially satisfied by the intermediate payment or satisfaction at any time of all or any part of the Indemnified Amounts. All payments received by Tarion from the Builder or any other person in respect of the Indemnified Amounts shall be applied as payments in gross without any right on the part of the Builder to claim the benefit of any such payments until payment in full of all Indemnified Amounts.

## **4.3 Reinstatement**

4.3.1 The indemnity herein shall be reinstated if at any time any payment of any Indemnified Amounts is rescinded or must otherwise be returned by Tarion upon any Insolvency Proceeding of or affecting the Builder or for any other reason whatsoever, all as though such payment had not been made. Tarion may concede or compromise any claim that such payment ought to be rescinded or otherwise returned, without discharging, diminishing or in any way affecting the liability of the Builder hereunder or the effect of this Section.

## **ARTICLE 5 ENFORCEMENT**

### **5.1 Demand**

5.1.1 Upon the occurrence and during the continuance of a breach of this Agreement, the Builder shall, on demand being made by Tarion, forthwith pay to Tarion, or perform or cause the performance of all Builder Obligations for which such demand was made. All Indemnified Amounts shall be payable by the Builder to Tarion, forthwith upon demand being made by Tarion.

### **5.2 Right to Immediate Payment or Performance**

5.2.1 Tarion shall not be bound to make any demand on or to seek or exhaust its recourse against the Builder or any other person or to realize on any Security or assurances held by Tarion in respect of the Indemnified Amounts before being entitled to demand payment from or performance by the Builder and enforce its rights under this Agreement and the Builder hereby renounces all benefits of discussion and division.

### **5.3 Tarion's Statement**

5.3.1 A statement in writing of Tarion as to the amount of the Builder Obligations, the Indemnified Amounts, and all other amounts payable hereunder shall be binding upon the Builder and conclusive against it in the absence of manifest error.

## **ARTICLE 6 APPROPRIATION AND SET-OFF**

### **6.1 Appropriation by Tarion**

6.1.1 Tarion shall be at liberty to appropriate or to refrain from appropriating any payment made by, or monies received by Tarion from, the Builder or others to any portion of the Indemnified Amounts and from time to time to revoke or alter any such appropriation, all as

Tarion may from time to time in its sole and sole and absolute discretion determine but excluding for greater certainty the HCRA Licensee fees if collected by Tarion.

## **6.2 Set-Off by Tarion**

6.2.1 Tarion may, at any time and from time to time, upon prior notice where practicable set off, appropriate and apply:

6.2.1.1 any and all Security or monies furnished by the Builder and held by Tarion in any capacity, general or special, matured or unmatured, and/or

6.2.1.2 any indebtedness or liability of Tarion to the Builder, matured or unmatured,

against and on account of the Builder's liability hereunder in such order of application as Tarion may from time to time elect in its sole and absolute discretion. If the amounts being set-off are not payable in the same currency, Tarion may convert either amount into the other currency on the day as of which that set-off is being effected, or if that day is not a business day then on the business day preceding the day as of which that set-off is being effected.

## **6.3 No Set-Off by Builder**

6.3.1 All amounts payable by the Builder under this Agreement shall be paid without set-off or counterclaim and without any deduction or withholding whatsoever unless and to the extent that the Builder shall be prohibited by law from doing so, in which case the Builder shall pay to Tarion such additional amount as shall be necessary to ensure that Tarion receives the full amount it would have received if no such deduction or withholding had been made.

## **ARTICLE 7 PROTECTION OF TARION**

### **7.1 Defects in Creation of Builder Obligations do Not Undermine the Indemnity**

7.1.1 Tarion shall not be concerned to see or required to enquire into the capacity and powers of the Builder or, as applicable, its directors, officers, partners, employees, or agents acting or purporting to act on its behalf. All obligations, liabilities and indebtedness purporting to be incurred by the Builder in favour of Tarion shall be deemed to form part of the Builder Obligations and/or Indemnified Amounts even though the Builder may not be a legal entity or the incurring of such obligations, liabilities or indebtedness was irregularly, defectively or informally effected or in excess of the capacity or powers of the Builder or its directors, officers, partners, employees or agents and notwithstanding that Tarion has specific notice of the capacity and powers of the Builder or its directors, officers, partners, employees or agents.

### **7.2 Liability of the Builder is Absolute**

7.2.1 The liability of the Builder hereunder shall be absolute and unconditional and shall not be discharged, diminished or in any way affected by:

7.2.1.1 any amalgamation, merger, consolidation, or reorganization of the Builder;

7.2.1.2 any change in the name, business, objects, capital structure, ownership, constating documents, by-laws, resolutions, licensing status or licence number of the Builder, including without limitation any transaction (whether by way of transfer, sale or otherwise) whereby all or any part of the undertaking, property and assets of the Builder becomes the property of any other person;

- 7.2.1.3 if applicable, any change in the membership of the Builder due to the removal or introduction of one or more partners;
- 7.2.1.4 any Insolvency Proceeding of or affecting the Builder or any other person and any court orders made or action taken by the Builder or any other person under or in connection with those Insolvency Proceeding;
- 7.2.1.5 any defence, counterclaim or right of set-off available to the Builder;
- 7.2.1.6 by Tarion's actions or omissions, including: non-compliance with any of its agreements, with requirements of the ONHWP Act, or failure to give notice; and/or
- 7.2.1.7 any other circumstance which might otherwise constitute in whole or in part a defence available to, or a discharge of, the Builder or any other person in respect of the Indemnified Amounts (otherwise than by reason of the payment of those Indemnified Amounts to Tarion).

### **7.3 Dealings by Tarion do Not Change the Indemnity**

7.3.1 Tarion may from time to time in its sole and absolute discretion without discharging, diminishing or in any way affecting the liability of the Builder hereunder:

- 7.3.1.1 make or continue to make any accommodation available to the Builder constituting or relating to the Builder Obligations or the Indemnified Amounts;
- 7.3.1.2 permit any increase or decrease, however significant, of the Builder Obligations or otherwise supplement, amend, restate or substitute, in whole or in part, however significant, the Builder Obligations or any other agreement relating to any of the foregoing or, in whole or in part, terminate the availability of any agreement relating to, or demand repayment of any Builder Obligations; enforce or take action under or abstain from enforcing or taking action under the ONHWP Act, this Agreement or any other agreement;
- 7.3.1.3 receive, give up, subordinate, release or discharge any Security; supplement, amend, restate, substitute, renew, abstain from renewing, perfect or abstain from perfecting or maintaining the perfection of any Security; enforce, take action under or realize in any manner or abstain from enforcing, taking action under or realizing any Security; deal with or abstain from dealing with all or any part of the undertaking, property and assets covered by any Security or allow or abstain from allowing the Builder or other persons to deal with all or any part of such undertaking, property and assets;
- 7.3.1.4 renew all or any part of the Builder Obligations or grant extensions of time or any other indulgences to the Builder or to any other person liable directly or as surety for all or any part of the Builder Obligations;
- 7.3.1.5 accept or make any compositions or arrangements with or release, discharge or otherwise deal with or abstain from dealing with the Builder or any other person liable directly or as surety for all or any part of the Builder Obligations;



- 7.3.1.6 in whole or in part prove or abstain from proving a claim of Tarion in any Insolvency Proceeding of or affecting the Builder; and
- 7.3.1.7 agree with the Builder or any other person liable directly or as surety for all or any part of the Builder Obligations and/or Indemnified Amounts to do anything described in this Section 7.3;

whether or not any of the matters described in this Section 7.3 occur alone or in connection with one or more other such matters.

7.3.2 No loss of or in respect of any Security or additional covenant relating to the Builder Obligations, the Indemnified Amounts, or any part thereof, whether occasioned through the fault of Tarion or otherwise, shall discharge, diminish or in any way affect the liability of the Builder hereunder. Neither Tarion nor any of its directors, officers, employees or agents, or any receiver or receiver-manager appointed by it or by a court, shall have any liability, whether in tort, contract or otherwise, for any neglect or any act taken or omitted to be taken by Tarion or by any of such other persons (other than its own negligence or willful misconduct) in connection with the Builder Obligations and/or Indemnified Amounts or any part thereof, or any Security or other covenant relating to the Builder Obligations or any part thereof including without limitation any of the matters described above in this Section 7.3.

#### **7.4 No Waiver**

7.4.1 No delay on the part of Tarion in the exercise of any right, power or remedy hereunder or otherwise shall operate as a waiver thereof, and no single or partial exercise by Tarion of any right, power or remedy shall preclude other or further exercise thereof or the exercise of any other right, power or remedy. No action of Tarion permitted hereunder shall in any way impair or affect its rights, powers or remedies under this Agreement.

#### **7.5 No Personal Liability**

The protections against personal liability set out in section 2.10 of the ONHWP Act are incorporated by reference and apply with necessary modifications to any matters in connection with this Agreement.

### **ARTICLE 8** **TERM AND TERMINATION**

#### **8.1 Term**

8.1.1 This Agreement shall be in full force and effect from the Effective Date until all Builder Obligations have been duly discharged and all Indemnified Amounts have been paid to Tarion. None of the expiry, suspension or revocation of a licence in respect of the vendor or builder nor the refusal, suspension or revocation of a QFE Confirmation or Enrolment Confirmation will affect the validity or enforceability of the Agreement.

**ARTICLE 9**  
**MISCELLANEOUS**

**9.1 Payment of Costs and Expenses**

9.1.1 The Builder shall pay to Tarion on demand all reasonable costs and expenses (on a full indemnity basis) of Tarion, its officers, employees and agents and any receiver or receiver-manager appointed by it or by a court in connection with this Agreement, including, without limitation, in connection with:

9.1.1.1 any actual or proposed amendment or modification hereof or any waiver hereunder and all instruments supplemental or ancillary thereto; and

9.1.1.2 the defence, establishment, protection or enforcement of any of the rights or remedies of Tarion under this Agreement including, without limitation, all costs and expenses of establishing the validity and enforceability of, or of collection of amounts owing under this Agreement;

and further including, without limitation, all of the reasonable fees, expenses and disbursements of Tarion's lawyers, on a full indemnity basis, incurred in connection therewith and all sales or value-added taxes payable by Tarion (whether refundable or not) on all such costs and expenses.

**9.2 Additional Security**

9.2.1 This Agreement shall be in addition to, shall not in any way be prejudiced by, and shall not prejudice: (i) any other Security now or hereafter held by Tarion; and (ii) the endorsement by the Builder of any notes or other documents, and Tarion's rights under this Agreement shall not be merged in any such other Security or endorsement.

**9.3 Entire Agreement**

9.3.1 This Agreement cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between Tarion and the Builder with respect to the subject matter hereof except as expressly set forth herein and in the legislation, agreements and other documents that set out the Builder Obligations.

**9.4 Successors and Assigns**

9.4.1 This Agreement shall be binding on the Builder and its successors and shall enure to the benefit of Tarion and its successors and assigns. This Agreement may be assignable by Tarion but the Builder may assert as against a successor or assign any set-off, counter-claim or equities between the Builder and Tarion, and any claim or defence that the Builder has against Tarion. The Builder may not assign its obligations under this Agreement.

**9.5 Notices**

9.5.1 All notices and other communications under this Agreement are to be in writing; are to be delivered by hand, by courier, registered mail or email; will be deemed to have been received on the business day following the date of delivery; and are to be addressed to the party at the address as set forth on the title page of this Agreement. Each party may establish a new address including

email address from time to time by written notice to the other given in accordance with this Section, provided however, that no such change of address will be effective until written notice thereof is actually received by the party to whom such change of address is sent.

9.5.2 The Builder hereby consents and reaffirms its agreement to receive and accept service of all Notices of Proposal of conditions of Qualification for Enrolment, and all Notices of Proposal of conditions of Enrolment that are issued by Tarion pursuant to section 10.6 of the ONHWP Act, in an electronic document format via BuilderLink™ or any successor portal maintained by Tarion

## **9.6 Further Assurances**

9.6.1 The Builder must at its own expense from time to time do, execute and deliver, or cause to be done, executed and delivered, all such financing statements, further assignments, documents, acts, matters and things as may be reasonably requested by Tarion for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties and covenants herein contained.

## **9.7 Electronic Signing and Delivery**

9.7.1 This document may be executed by any of the parties in an electronic format, by way of an electronic signature in accordance with the provisions of the *Electronic Commerce Act, 2000*, S.O. 2000, as amended, including an electronic signature manifested or undertaken by or through DocuSign, E-Sign or other electronic signing platform or application, on the express understanding and agreement that: (a) as and when this document is so executed by way of an electronic signature, it shall thereupon be deemed to be valid, binding and enforceable upon the party or parties so executing the document electronically; and (b) if and when any of the parties execute this document by or through an electronic signing format or application, then such party or parties shall be obliged to forthwith provide the other party or parties with a certificate of completion produced or issued by the signing platform or application or any similar certificate issued by other secure electronic platform or application which confirms, verifies and/or validates the electronic signature of the party or parties so executing this document electronically.

9.7.2 A photocopy or a scanned and e-mail copy of this executed document may be relied upon (and correspondingly enforced) to the same extent as if it were an original hard copy executed version.

## **9.8 Electronic Delivery**

9.8.1 Delivery of the executed Agreement by electronic medium shall be as effective as delivery of a manually executed copy of this Agreement.

# **ARTICLE 10 UNDERSTANDING OF OBLIGATIONS**

## **10.1 Independent Legal Advice**

10.1.1 The Builder acknowledges having received independent legal advice with respect to this Agreement or having expressly chosen not to do so.

**10.2 Review of Materials**

10.2.1 The Builder acknowledges and confirms that the Builder and its legal counsel have been given an opportunity by Tarion to review the ONHWP Act and the Registrar Bulletins issued by Tarion to the date hereof (as well as any agreement(s) between the Builder and Tarion in existence as of the date hereof).

**10.3 Review and Understand the Agreement**

10.3.1 The Builder acknowledges and confirms having read and understood the terms and provisions hereof before having executed this Agreement.

**10.4 Tarion Bound**

10.4.1 Tarion is bound by the terms of this Agreement as of the Effective Date provided there have been no changes to the form and content of this Agreement as evidenced by Tarion’s execution below.

**IN WITNESS WHEREOF the Builder has duly executed this Agreement.**

**BUILDER NAME:**

\_\_\_\_\_  
(please print legibly)

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the entity.

**IN WITNESS WHEREOF Tarion has duly executed this Agreement.**

**TARION WARRANTY CORPORATION**

Per: “Peter Balasubramanian”

Name: Peter Balasubramanian

Title: President and Chief Executive Officer