

Note: This form of Deposit Trust Agreement (DTA) is intended for situations where: i) the vendor is subject to a security requirement from Tarion; ii) the vendor meets Tarion's risk assessment requirements to be afforded the possibility of a deposit trust agreement to satisfy their security conditions in lieu of providing a bond or letter of credit; and iii) consequently, the DTA will continue after the Early Termination Conditions are satisfied or waived to fulfill the security requirement unless replaced by other acceptable security.

Instrument No.: \_\_\_\_\_

### Deposit Trust Agreement Freehold Project

**This agreement** made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**Between:**

TARION WARRANTY CORPORATION  
("Tarion")

OF THE FIRST PART

- and -

[VENDOR]

(the "Vendor")

OF THE SECOND PART

- and -

[ESCROW AGENT]

(the "Escrow Agent")

OF THE THIRD PART

**Whereas:**

- A. The Vendor intends to construct and develop xxx# freehold homes in a single location, either at the same time or consecutively, as a single coordinated undertaking, which freehold homes arise out of the Vendor's Notice of Proposal of Conditions of Qualification for Enrolment and/or Enrolment issued by Tarion on xxx date of NOP

under ID# xxx (the “**Freehold Project**”) on lands and premises situated in the city town of xxx. To the extent that legal description(s) are available at the time of executing this Agreement, the Freehold Project is more particularly described as the xxx# freehold homes that the Vendor intends to construct and develop on the lands and premises under legal description(s):

Legal Description: xxx

- B. Each purchaser (a “Purchaser”) of a home in the Freehold Project (a “**Home**” or collectively referred to as the “Homes”) has paid or will pay directly to the Escrow Agent in trust deposit monies, including any sums for upgrades and extras (a “Deposit” and collectively referred to as the “**Deposits**”) pursuant to the provisions of the agreement of purchase and sale in connection therewith (the “**Purchase Agreement**” and collectively referred to as the “**Purchase Agreements**”);
- C. The Purchase agreements will include conditions (“**Early Termination Conditions**”) described in subparagraphs 1(b) (i) or 1(b) (ii) of Schedule A to the mandatory addendum form (the “**Addendum**”) required to be attached pursuant to Regulation 165-08 under the Ontario New Home Warranties Plan Act, R.S.O. 1990, c. 0.31, as amended, and all regulations enacted thereunder (the “**ONHWP Act**”) thus pursuant to Section 1(c)(iv) of Schedule A to the Addendum the Deposits are required to be held in trust (the “**Purchaser Trust**”) by the Vendor’s lawyer (Escrow Agent) pursuant to the Addendum and subject to the interest of Tarion pursuant to a deposit trust agreement in form specified by Tarion or secured by other security acceptable to Tarion and arranged in writing with Tarion. This Agreement is the afore-mentioned deposit trust agreement.
- D. Subject to the contractual trust requirements – the Purchaser Trust - under Schedule A to the Addendum the Deposits are to be held in trust with the Escrow Agent until Tarion determines, in accordance with this Agreement, that the Deposit Funds can be released upon and subject to the terms of this Agreement;
- E. The Escrow Agent has agreed to hold all of the Deposits received by it from time to time pursuant to the provisions of the Purchase Agreements and this Agreement and to place and invest same in a separate, designated and segregated trust account at, account no. (the “**Bank Account**”), and to hold and monitor same in trust for Purchasers and Tarion in accordance with the terms and provisions of this Agreement. Interest accruing on all Deposits held in the Bank Account shall remain in the Bank Account and may only be released from and after the Purchaser Trust Termination Date

to the Vendor upon the production of replacement security satisfactory to Tarion or upon Tarion's written confirmation that security in respect of the Deposits is no longer required hereunder, and under those circumstances contemplated in Section 5.2 hereof same shall be paid or remitted to Tarion;

- F. The Deposits (together with all prescribed interest earned or accrued thereon, less any amounts released in accordance with the provisions of this Agreement) (the "**Deposit Funds**") placed or invested in the Bank Account shall constitute continuing security for the payment of the present and future indebtedness and/or liability of the Vendor (the "**Secured Obligations**") to Tarion in regard to the Freehold Project, arising out of or otherwise relating to (a) this Agreement; (b) an agreement between the Vendor and Tarion with respect to the obligations of the Vendor (the "Vendor/Builder Agreement"); and/or (c) the ONHWP Act: and
- G. After the provisions of Section 1(c)(iv) of Schedule A to the Addendum no longer apply and the contractual trust for the Deposits no longer applies (the "**Purchaser Trust Termination Date**"), the parties have agreed that the sum of [ xxx \$ per home] the "**Tarion Security Amounts**") shall be maintained in trust for Tarion as security for the obligations of the Vendor in regard to the Freehold Project, arising out of or otherwise relating to (a) this Agreement; or (b) an agreement between the Vendor and Tarion with respect to the Secured Obligations and from and after the Purchaser Trust Termination Date the term Deposits is deemed to be a reference to the amounts referred to in this paragraph G.

**Now therefore this agreement witnesseth that** in consideration of the sum of Ten (\$10.00) Dollars of lawful money of Canada now paid by each of the parties hereto to the other, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby confirm the veracity of the foregoing recitals (and acknowledge and agree that same shall form an integral part of this Agreement), and further covenant and agree, to and with each other, as follows:

## Section 1 – Interpretation

### 1.1 Definitions

In addition to the defined terms set forth in this Agreement, the following words or terms shall have the respective meanings in this Agreement as ascribed to them below:

(a) “Agreement” means this agreement and any other agreement in supplement, amendment or confirmation hereof.

### 1.2 Gender and Number

This Agreement shall be read and construed with all changes of gender and/or number as may be required by the context.

### 1.3 Headings

The headings of sections or subsections are provided for convenience of reference only, and do not define, limit or enlarge the construction or interpretation of this Agreement.

### 1.4 Currency

All references to monetary amounts are references to Canadian Dollars.

## Section 2 – Security Interest

### 2.1 Creation of Security Interest

To secure the payment or performance, as the case may be, in full of the Secured Obligations, the Vendor hereby grants to Tarion a security interest in, and pledges and assigns to Tarion, its successors and assigns, all right, title and interest of the Vendor in, to and under the Deposit Funds (collectively, the “Collateral”).

### 2.2 Control of Bank Account

Subject to the trust in favour of Purchasers, the Escrow Agent may comply with any and all lawful instructions originated by the Vendor with respect to the Collateral until such time as Tarion delivers a notice (a “Default Notice”) to the Vendor and the Escrow

Agent indicating that an Event of Default (as defined in section 4.4 hereof) has occurred and is continuing and Tarion is thereby exercising exclusive control over the Collateral and from and after receipt by the Vendor and the Escrow Agent of such written notice (and until the Escrow Agent receives from Tarion a written withdrawal of such notice) neither the Vendor nor any person acting through or under the Vendor shall have any access to the Collateral and the Escrow Agent shall not comply with any instructions originated by the Vendor directing disposition of the Collateral.

### **2.3 Escrow Agent**

The Escrow Agent shall make no claim against or exercise any right of set-off in respect of the Collateral.

## **Section 3 – Representation and Warranties**

### **3.1 Representations of the Vendor**

The Vendor hereby represents and warrants to Tarion and the Escrow Agent that, as of the date hereof:

- a) it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has the corporate power and capacity to own its properties and assets and to carry on its business;
- b) it has the power and capacity to enter into this Agreement and to do all acts and things as are required or contemplated hereunder to be done, observed and performed by it;
- c) it has taken all necessary action to duly authorize the execution, delivery and performance of this Agreement;
- d) the execution and delivery of this Agreement and the performance by it of its obligations hereunder (i) do not and will not contravene, breach or result in any default under any of its constating documents or under any mortgage, lease, agreement or other legally binding instrument, licence, permit or laws to which it is a party or by which it or any of its properties or assets may be bound; and (ii) will not oblige it to grant any lien or security interest in respect of the Collateral to any person;

- e) this Agreement constitutes, or upon execution and delivery will constitute, a valid and binding obligation of it, enforceable against it in accordance with its terms, subject only to bankruptcy and insolvency laws affecting the enforcement of creditors' rights generally and the availability, in the discretion of a court of competent jurisdiction, of equitable remedies;
- f) it has obtained or made formal application to Tarion to obtain confirmation of qualification for enrolment of the homes (as defined in the ONHWP Act) in the Freehold Project under the ONHWP Act;
- g) no creditor of the Vendor has (or will have) any security interest or other claim in the Collateral ranking prior to the interests of Tarion created by virtue of this Agreement, and the Vendor covenants to obtain and deliver to Tarion, upon Tarion's request, all such acknowledgements or postponements, in form and substance satisfactory to Tarion, from any or all creditors of the Vendor evidencing that any security interests or other claims of such creditors do not attach to the Collateral, or such security interest(s) rank behind the interests of Tarion in and to the Collateral; and
- h) the Vendor has (or will have) rights in and to the Collateral, prior to the delivery thereof by the Vendor to the Escrow Agent.

### **3.2 Representations of the Escrow Agent**

The Escrow Agent hereby represents and warrants that it meets Tarion's requirements for firms acting as escrow agents as communicated in writing to the Escrow Agent by Tarion on or before the date of this Agreement.

### **3.3 Survival of Warranties**

The representations and warranties contained in Section 3.1 and Section 3.2 hereof shall survive and continue in full force and effect for the benefit of Tarion until this Agreement is terminated in accordance with the provisions hereinafter set forth.

## **Section 4 – The Escrow Account**

### **4.1 Vendor's Responsibilities With Regard to Deposit Funds**

The Vendor covenants and agrees with Tarion that:

- a) all Deposit Funds held by the Escrow Agent shall be (a) held in trust for the Purchaser pursuant to the Addendum; and (b) subject to the trust referred to in (a), held in trust for Tarion and subject to Tarion's security interest pursuant to this Agreement;
- b) each of the Purchase Agreements shall provide and stipulate that all Deposits payable on account of the purchase price of any Home shall (prior to the Purchaser Trust Termination Date) be made payable to the Escrow Agent in trust, and as soon as the Vendor has received any funds representing Deposits, the Vendor shall within fifteen (15) business days after receipt of such funds deliver same to the Escrow Agent to be deposited in the Bank Account and held in accordance with the terms of the Addendum and this Agreement; and
- c) Purchasers shall not be permitted to use New Home Deposit Bonds (or other similar instruments) to secure the payment of Deposit monies.

#### **4.2 Escrow Agent Responsibilities**

The Escrow Agent covenants and agrees with Tarion that:

- a) the Escrow Agent shall register a financing statement evidencing Tarion's security interest in the Collateral (as noted in 2.1 above) for a term of 5 (five) years under the Personal Property Security Act (Ontario) ("PPSA"), and shall provide a legal opinion to Tarion in a format specified by Tarion confirming that, among other things, a security interest was created in the Collateral in favour of Tarion and Tarion's security interest in the Collateral ranks ahead of all other creditors of the Vendor;
- b) the Escrow Agent shall renew the term of the financing statement referred to above for a further five (5) year period on the date that is 30 (thirty) days prior to the 5th (fifth) anniversary of the registration made pursuant to paragraph (a) above (the "**Renewal Date**") if, on such Renewal Date, this Agreement has not been terminated;
- c) as soon as the Escrow Agent has received any funds representing a Deposit delivered to it by or on behalf of the Vendor in accordance with Section 4.1(b) hereof, the Escrow Agent shall forthwith deposit such funds into the Bank Account;

- d) all Deposit Funds held by the Escrow Agent are (i) held in trust for the Purchaser pursuant to the Addendum; and (ii) subject to the trust referred to in (i), held in trust for Tarion and subject to Tarion's security interest pursuant to this Agreement;
- e) within 10 (ten) days of depositing any such monies into the Bank Account the Escrow Agent shall, on behalf of the Vendor and in accordance with the provisions of the Addendum and this Agreement, provide to the person or persons who paid the Deposit written evidence that such amounts are held in trust as required by the Addendum; and
- f) the Escrow Agent shall not release any Deposit Funds (together with all prescribed interest earned or accrued thereon) to the Vendor or any other person except in strict compliance with the provisions of the Addendum and this Agreement.

#### **4.3 Tarion Consent**

Tarion hereby consents to the Escrow Agent placing the Deposits in the Bank Account and investing said Deposits in accordance with the joint direction of Tarion and the Vendor.

#### **4.4 Trust**

- a) The Escrow Agent hereby agrees with Tarion to retain and hold all Deposit Funds (arising from Deposits received) in trust for Tarion, subject to the overriding trust provisions of the Purchaser Trust and Tarion agrees that the Escrow Agent shall only be required to retain and hold the Deposit Funds so received in accordance with the Addendum and this Agreement.
- b) Without limiting the generality of the foregoing, the Vendor and the Escrow Agent agree with Tarion that if any of the following events (each an "Event of Default") occur:
  - (i) Tarion determines on any date prior to the termination of this Agreement, that the Vendor is in breach of any of its obligations arising under (a) this Agreement; (b) the Vendor/Builder Agreement; and/or (c) the ONHWP Act;
  - (ii) the interest of the Vendor in the Project is at any time seized or taken in execution by any creditor of the Vendor;



(iii) the Vendor commits any act of bankruptcy or otherwise becomes bankrupt or insolvent, or makes a general assignment for the benefit of its creditors, or purports to liquidate, or wind up its operations; or

(iv) a receiver or receiver and manager is appointed to administer all or any substantial portion of the Vendor's property or assets;

then at the option of Tarion, all Deposit Funds held in the Bank Account shall, on written notice to the Vendor and the Escrow Agent, be forthwith released to Tarion or disbursed in accordance with the written direction of Tarion, as and when Tarion deems appropriate, and without prejudice to either or both of Purchaser claims and/or Tarion's claims upon or against the Vendor for any deficiency, and the Escrow Agent may rely on such written direction without inquiring as to the authority of Tarion to give such direction under this subparagraph. Any funds so received by Tarion prior to the Purchaser Termination Date shall as applicable be held in trust for the applicable Purchasers.

- c) The Vendor shall not be entitled to withdraw any funds from the Bank Account by cheque or otherwise.
- d) Save and except in those circumstances provided in Sections 5.1 and 5.3 below, the Escrow Agent shall not pay or withdraw any funds from the Bank Account without the prior written consent (or direction) of Tarion.
- e) The interests of Tarion in the Collateral created by this Agreement shall be in addition to (and without prejudice to) any other security now or hereafter held by Tarion in connection with the Freehold Project.

#### **4.5 Signing Authority**

The Escrow Agent shall have the sole signing authority for withdrawals or cheques drawn on the Bank Account.

#### **4.6 The Purchaser Trust**

Notwithstanding anything hereinbefore or hereinafter provided to the contrary, it is expressly understood and agreed that no withdrawal of funds shall be directed by Tarion which would render the Escrow Agent liable to any of the Purchasers for a breach of the Purchaser Trust.

#### 4.7 Monthly Reporting

- a) The Vendor shall, on a monthly basis, within fifteen (15) business days after the end of each calendar month, provide to the Escrow Agent the following:
- (i) A written report ("**Sales and Deposits Report**") confirming the particulars of each and every Home sale transaction for the Freehold Project for which Deposits have been received including: the relevant Purchaser(s) name; Deposit Amount; date Deposit was received; Home address or legal description; date of Purchase Agreement; the outside date for satisfaction or waiver of any Early Termination Conditions; total number of Homes sold; and number of sales terminated (if any) in the month; total amount of Deposits required under Purchase Agreements required to be paid for the month; and the aggregate dollar amount of all Deposits received by the Vendor during the preceding month; and the aggregate of all Deposits received to date by and on behalf of the Vendor and remitted to the Escrow Agent;
  - (ii) A true copy of a statutory declaration of a senior officer of the Vendor (in form approved by Tarion) (the "**Vendor's Declaration**") confirming:
    - A. In the calendar month \_\_\_\_\_, 20\_\_\_\_, the Vendor or Escrow Agent received Deposits totaling \$\_\_\_\_\_.
    - B. All of the Deposits referred to [above] received by the Vendor have been delivered to the Escrow Agent.
    - C. The Purchaser Trust Termination Date is \_\_\_\_\_.
- b) The Escrow Agent shall, on a monthly basis, within fifteen (15) business days after the end of each calendar month, provide Tarion with:
- (i) A true copy of the Vendor's Declaration;
  - (ii) A true copy of a statutory declaration by the Escrow Agent containing the following provisions:
    - A. I have received and attach hereto a copy of the Vendor Declaration for the calendar month \_\_\_\_\_, 20\_\_\_\_\_.

- B. I have reviewed the bank records for the Bank Account and declare that the aggregate amount of Deposits (excluding interest and excess deposits that are not Deposits) held in the Bank Account and subject to the terms of the Deposit Trust Agreement as of \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is \$\_\_\_\_\_.
- C. Without having undertaken any independent investigation or inquiry with respect thereto, other than reviewing: the Vendor Declaration; and the files in the possession of (and the bank accounts in the control of) the law firm of which I am a partner, associate or employee, I do hereby declare that I have no knowledge of any facts or circumstances which would render this Declaration untrue or inaccurate.
- c) The signed and sworn Vendor's Declaration and Escrow Agent's Declaration shall be scanned and sent to Tarion by email at [security@tarion.com](mailto:security@tarion.com) (or such other address as Tarion may specify in writing). The scanned attachments shall be sent as a PDF or such other format as Tarion may designate from time to time in writing.
- d) Tarion may waive all or part of the above-noted reporting requirements by written notice to the Vendor and Escrow Agent.
- e) Upon written request from Tarion, the Vendor and/or Escrow Agent shall also provide a copy of the Sales and Deposit Report.

## Section 5 – Release of Funds

### 5.1 Disbursement of Deposits

Upon the delivery of a written notice from the Vendor to the Escrow Agent (with a copy to Tarion) stating that a Purchaser is entitled to a refund of their Deposits, for example such funds are due to the Purchaser because:

- (a) the Purchaser has exercised a purchaser condition;
- (b) the Vendor is in default and is required at law to return deposits;

(c) the Vendor and Purchaser have entered into a settlement agreement which calls for repayment;

(d) it is so ordered by Court Order; or

(e) an Early Termination Condition is not satisfied or waived in accordance with the Purchase Agreement,

the Escrow Agent is hereby authorized and directed by Tarion and the Vendor to thereupon issue a cheque drawn on the Bank Account payable to the named Purchaser (or to whomsoever the said Purchaser may in writing so direct) in the amount of his or her Deposits, together with all prescribed interest earned or accrued thereon.

The Vendor acknowledges that in connection with any return to a Purchaser or Purchasers of Deposits that unless Tarion agrees in writing otherwise, the Vendor shall immediately provide to Tarion alternate performance security satisfactory to Tarion for that portion of the returned Deposit that constitutes the Tarion Security Amount.

If the Vendor and Purchaser enter into a termination and settlement agreement which provides for the return of deposits to the Vendor or any third party (not including the Purchaser), then the Escrow Agent shall provide Tarion with a true copy of the settlement agreement and obtain Tarion's written consent prior to disbursing the deposits in accordance with the termination and settlement agreement.

## **5.2 Tarion's Ability to Direct Funds Out of Bank Account**

Subject to the overriding trust provisions of section 4.6 hereof, if, at any time prior to the termination of this Agreement, Tarion deems it appropriate, in its sole and unfettered discretion whether before or after an Event of Default, to direct the Escrow Agent to withdraw monies from the Bank Account to pay and/or reimburse Tarion for any costs it has (or may) incur under its mandate, in connection with the Freehold Project, or for any payments now or hereafter made by Tarion to any of the Purchasers in the Freehold Project, in connection with the return/refund of their respective Deposits; or after the Purchaser Trust Termination Date failure by the Vendor to comply with the Secured Obligations, then the Escrow Agent shall immediately honour and comply with any such direction, **without inquiring into the right of Tarion to make such direction**, and the Vendor hereby concurs with same.

## **5.3 After the Purchaser Trust Termination Date**

The Vendor shall advise Tarion and the Escrow Agent in writing when the Purchaser Trust Termination Date has occurred with evidence that all Deposits owing to

Purchasers whose Purchaser Agreement was terminated pursuant to an Early Termination Condition have received a full refund of Deposits as contemplated by section 5.1 above.

The parties also acknowledge that the Tarion Security Amounts shall after the Purchaser Trust Termination Date be held by the Escrow Agent in trust for and subject to the security interest of Tarion and otherwise upon and subject to the terms of this Agreement. For greater certainty from and after the Purchaser Trust termination Date none of the Tarion Security Amounts shall be released by the Escrow Agent without the express written consent of Tarion.

#### **5.4 Payment to the Vendor/Termination of Agreement**

Notwithstanding anything hereinbefore or hereinafter provided to the contrary, it is understood and agreed by the parties hereto that save and except for the indemnity of the Escrow Agent by the Vendor, as set forth in section 6.8 hereof, this Agreement (and all liabilities and obligations of the Vendor and the Escrow Agent to Tarion hereunder) shall automatically be terminated on the last to occur of the following:

- (a) Purchaser Trust Termination Date;
- (b) after the Purchaser Trust Termination Date upon Tarion's written notification that it has received security satisfactory to Tarion for Tarion Security Amounts; and
- (c) upon Tarion's written notification to the Vendor and the Escrow Agent that the Vendor's Secured Obligations have been satisfied.

whereupon Tarion shall:

- (i) confirm to the Escrow Agent that the foregoing has occurred;
- (ii) authorize and direct the Escrow Agent to release all Deposits to the Vendor (or to whomsoever the Vendor shall designate in writing); and
- (iii) authorize the Escrow Agent to register a PPSA financing change statement evidencing and confirming the discharge of Tarion's security interest in the Collateral.

## Section 6 – General

### 6.1 Further Assurances

Vendor, the Escrow Agent and Tarion shall hereafter do, make and execute all such documents, acts, matters, and things as may be required in order to give effect to this Agreement.

### 6.2 Notices

Any notice or other communication to be given hereunder (a “Notice”) shall be in writing and may be effectively given by delivering the same by courier or personally at the addresses hereinafter set forth, or by sending the same by prepaid registered mail to the parties at such addresses or by transmitting by electronic means (including email and through BuilderLink portal). All Notices delivered personally, by courier, or by electronic means before 5:00 p.m. on a business day shall be deemed to have been received on that day. Any Notice so mailed shall be deemed to have been received on the third business day (i.e. excluding Saturdays, Sundays and statutory holidays) next following the mailing thereof, provided the postal service is in operation during such time. During any interruptions of postal service, all Notices shall be delivered by courier, personally, or by electronic means. Any notice delivered after 5:00 p.m. shall be deemed to have been received on the next business day following the date of such delivery. The addresses of the parties for the purposes hereof shall respectively be:

**Vendor:**

Attention:  
Phone No.:  
Email:

**Tarion:**

Tarion Warranty Corporation  
5160 Yonge Street, 7th Floor  
TORONTO ON M2N 6L9  
Attention:  
Phone No.:  
Email:

### **Escrow Agent:**

Attention:  
Phone No.:  
Email:

Any party hereto may from time to time notify each of the other parties hereto, in accordance with the provision hereof, of any change of address which thereafter, until changed by like Notice, shall be the address of such party for all purposes of this Agreement.

### **6.3 Successors, etc.**

Subject, in the case of the Escrow Agent only, to Section 6.9 hereof, this Agreement shall be binding upon, and enure to the benefit of each of the parties hereto and their respective successors and assigns, provided however, that the Vendor may not assign its rights or interest hereunder, without the prior written consent of Tarion which consent may be arbitrarily withheld.

### **6.4 Governing law**

This Agreement, the transactions referred to herein and all other documents delivered hereunder shall be construed and interpreted in accordance with the laws of Ontario.

### **6.5 Time**

Time shall be of the essence of this Agreement and the transactions contemplated herein.

### **6.6 No Partnership Created**

Nothing herein shall be construed so as to make Tarion, the Escrow Agent and/or the Vendor the partner(s) of one another.

### **6.7 Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and, except as herein stated and in the documents to be executed and delivered pursuant hereto, contains all of the representations, undertakings or agreements of the respective parties. There are no verbal

representations, undertakings or agreements of any kind between the parties hereto with respect to the subject matter hereof except as stated herein. This Agreement may not be modified or amended except with the written consent of all parties hereto.

#### **6.8 Reliance by Escrow Agent**

The Escrow Agent shall be entitled to rely upon any written confirmation, notice, request, direction or other instrument (hereinafter collectively referred to as an "Instrument") furnished to it by any other party to this Agreement, without inquiring into the due authorization, execution or delivery of such Instrument, or the authority of the person delivering such Instrument to it, or the correctness of the matters set out therein. Provided that if the Escrow Agent acts honestly, in good faith and not negligently, and in strict accordance with the provisions of this Agreement, it shall not be liable for any costs, damages, liabilities, actions or causes of action arising from the carrying out of its duties hereunder, and the Vendor hereby agrees to indemnify and save the Escrow Agent harmless in respect of all of the foregoing, which indemnity shall survive the termination of this Agreement.

#### **6.9 Resignation of the Escrow Agent**

The Escrow Agent may resign and be discharged from any further duties or liabilities hereunder by giving thirty (30) days written notice to the Vendor and Tarion (or such shorter notice as they may accept) provided that a successor Escrow Agent, acceptable to both Tarion and the Vendor, is approved prior to the effective date of such resignation, and provided further that the successor Escrow Agent confirms in writing to both Tarion and the Vendor that it shall be liable for the performance and fulfillment of all covenants and obligations imposed upon the Escrow Agent as set forth in this Agreement, and shall be bound thereby as if the successor Escrow Agent had been originally named and appointed as Escrow Agent herein.

#### **6.10 Paramountcy**

The parties hereto agree that the terms and conditions of this Agreement shall at all times be subject to the overriding Purchaser Trust provisions.

#### **6.11 Electronic Signatures**

This Agreement may be executed by any or all of the undersigned parties in wet-ink, or by way of an electronic signature in accordance with the provisions of the Electronic



Commerce Act, 2000, S.O. 2000, c. 17, as amended, and a photocopy or a scanned and e-mailed copy of this executed Agreement (whether signed in wet-ink or electronically) may be relied upon and enforced to the same extent as if it were an original executed version.

SAMPLE

**IN WITNESS WHEREOF** the parties hereto have duly executed this Agreement as of the date first above-mentioned.

**TARION WARRANTY CORPORATION**

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

Name:

Title:

I have authority to bind the Corporation.

**[VENDOR]**

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

Name:

Title:

I/We have authority to bind the Corporation.

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

Name:

Title:

I/We have authority to bind the Corporation.

**[ESCROW AGENT]**

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

Name:

Title:

I have authority to bind the Corporation.