

COMPLIANCE REVIEW/EVALUATION OF THE OFFICE OF THE NEW HOME OMBUDS

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Background Information on the New Home Ombuds Office

Mandate of the New Home Ombuds

The mandate of the New Home Ombuds Office is to receive complaints from homeowners who believe that they have been treated unfairly, or improperly, or outside the “intent and spirit” of the Ontario New Home Warranties Plan Act, and/or its Regulations.

The New Home Ombuds:

Receives, investigates and resolves complaints from homeowners about Tarion’s conduct and whether it accords with Tarion’s own practices and procedures. The Ombuds may make recommendations to Tarion and/or Board of Directors relating to specific homeowner cases.

Acts as a source of information, referral and education to assist homeowners in accessing existing channels of assistance and redress within Tarion.

Identifies complaint trends, policy matters and systemic issues and makes recommendations for improvements. The Ombuds may make recommendations about any rule, policy, regulation or procedure which he/she deems appropriate.

Source: Section 1 of the “Terms of Reference for the New Home Ombuds” (Terms of Reference) December 2020) See Appendix A for the Terms of Reference in their entirety.

Eligible Users

The Ombuds Office may only address complaints from homeowners. Tarion employees and builders may not bring complaints forward for investigation.

Staff Complement for the New Home Ombuds Office

There are three (3) full-time positions currently, namely, an Early Resolution Officer who handles the majority of the incoming calls and emails; an Advisor who does fairness assessments, in-depth file reviews and investigations; and the Ombuds who is responsible for all aspects of the New Home Ombuds Office as well as providing front-line service on an as needed basis.

Historical Information

The Ombudsperson Office was first established in 2008 in order to provide homeowners with a means for seeking recourse when Tarion acted unfairly and to assist with encouraging a customer service focus within Tarion. The name change to New Home Ombuds Office along with updates to the Terms of Reference were made in 2019.

Purpose and Scope of the Evaluation/Compliance Audit

This external evaluation was designed to determine whether for the calendar years of 2019 and 2020:

- 1) the New Home Ombuds is fulfilling its obligations as outlined in the “New Home Ombuds Office Terms of Reference” ¹
- 2) Whether the New Home Ombuds’ complaint handling processes are consistent with the Forum of Canadian Ombudsman “Statement of Ethical Principles” ² and the criteria detailed in the Ombudsman Association’s “Guide to Principles on Good Complaint Handling” ³

The Evaluation Framework

The evaluation framework chosen for the compliance audit/evaluation of the New Home Ombuds Office included:

- 1) **Comparison to the ethical principles as defined by the Forum of Canadian Ombudsman “Statement of Ethical Principles” as follows:**

INDEPENDENCE

The Ombuds should be clearly and visibly independent in purpose, administration and decision-making, from the institution / organization/ government administration about which it has the mandate to receive complaints. An Ombuds should serve only in this one capacity within the institution / organization/ government administration and should not have any decision-making role therein. Information regarding the Ombuds’ mandate, sources of funding, method of appointment and reporting rules shall be publicly-available.

IMPARTIALITY

The Ombuds reviews all information in an objective manner and without bias. He/she remains impartial and unaligned, in fact and perception and acts only to identify and address fairness concerns. An Ombuds shall not engage in any activity which could possibly lead to a possible conflict of interest. If any such situation arises, the Ombuds

¹ “New Home Ombuds Terms of Reference” (2020) online: [Home | New Home Ombuds](#).

² Forum of Canadian Ombudsman “Statement of Ethical Principles” (2015) online: http://www.ombudsmanforum.ca/en/?page_id=157/.

³ The Ombudsman Association (previously The British and Irish Ombudsman Association) “Guide to Principles on Good Complaint Handling” (2007) online: <http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf>.

shall immediately declare it and refrain from intervening in any way with regard to the situation or file.

FAIRNESS

The Ombuds' conduct is rooted in the principles of fairness and natural justice and he/she shall act accordingly. The Ombuds considers fairness to be a factor of process, interpersonal relations and outcome. He/she pursues resolution of conflict using the approach that is appropriate to the circumstances, taking into account the relevant law and regulations, the general principles of good administration and good practice, professional standards and any relevant Code of conduct that may apply.

CONFIDENTIALITY

The Ombuds shall hold in confidence all private communications, documents and other information received in the course of his/her interventions subject, however, to the needs of the investigation/intervention and the requirements of the law. The extent and limits of his/her confidentiality duty shall be clearly explained. The Ombuds shall take all reasonable steps to safeguard such confidentiality. He/She shall vigorously resist attempts to compel disclosure of such information, in any judicial or administrative hearing or inquiry.

CREDIBILITY

The Ombuds shall act in good faith. His/Her behaviour and mode of operation shall be such as to strengthen the integrity and effectiveness of the Ombuds' process. The Ombuds shall act so as to be recognized and respected by other members of the Ombuds community including the Forum of Canadian Ombudsman and by the constituents who are served. The Ombuds reports on its activities and on how the resolution of disputes is undertaken in whatever forum is appropriate given the circumstances, so as to promote transparency and accountability.

2) Comparison to the “Principles of Good Complaint Handling” as defined by The Ombudsman Association:

Clarity of Purpose: The role of the Office is clearly stated with respect to intent and scope.

Accessibility: The service is free, open and available to all who need it.

Flexibility: Procedures are used which are responsive to the needs of the individuals.

Openness and Transparency: Information about the Office demystifies the role of the Ombudsman.

Proportionality: The complaint handling process used and the resolution achieved is appropriate to the complaint received.

Efficiency: The service demonstrates effective administration, i.e., effective use of resources.

Quality outcomes: Complaint resolution leads to positive changes.

3) Comparison to the “Terms of Reference for the New Home Ombuds Office”.

See: On-line at: [Home | New Home Ombuds](#)

These materials are also available in their entirety at Appendices A, B and C, respectively.

Methodology & Limitations

Input from Homeowners

The evaluation framework was designed on the basis of a structured randomized selection of one hundred (100) case files with the following characteristics:

- Within the jurisdiction of the Ombuds Office,
- Proportionately representative of the various areas of complaint handling, (e.g., early resolution (80 files) and fairness review/investigation (20 files) and
- Received in the calendar years of 2019 and 2020.

The randomly selected one hundred (100) case files were to be assessed by reviewing the processes followed and actions taken to determine whether the steps taken were consistent with: 1) the Ombuds Office's 'Complaint Process' as described in its Terms of Reference, 2) the Forum of Canadian Ombudsman Statement of Ethical Principles, i.e., **independence, impartiality, fairness, confidentiality and credibility** and 3) The Ombudsman Association's seven (7) principles underlying good complaint handling.

This approach was chosen as a randomly selected sample, that includes files that are proportionately representative of the different categories of work undertaken, is the best means for achieving the highest level of validity.

Unfortunately, this sampling method could not be implemented as designed for two reasons:

- 1) It was not possible to select a random sample of complaint files. The reason this approach was not feasible is that the complaint files are held in the Ombuds Office database by name and there was no means for separating the complainant's name from the file. As a result, it was not possible to randomly select the requisite one hundred (100) files without seeing the complainants' names. As the confidentiality of the complainants' identities had to be maintained, it was arranged that the Ombuds would send an invitation to all complainants who contacted the Office and for whom the Office had email or postal mail addresses on file, to invite them to participate in the compliance audit/evaluation. The homeowners were then asked to contact the Evaluator directly by email or telephone to indicate their interest in contributing to the compliance audit/evaluation. By taking this approach only the Evaluator would know the identities of the homeowners who participated in the evaluation. The plan was then to randomly select one hundred (100) files for review from all those who responded to the invitation.
- 2) As only fifty-eight percent (58%) of the complainants had provided their contact information the invitation to participate (see Appendix D) in the evaluation was sent out to 580 complainants, either by email or postal mail. In the end, as the

number of homeowners who responded to the invitation to participate in the evaluation was forty-one (41) in total it was not possible to select a random sample of a proper size from this small number. As a result, all of the homeowners who indicated they were interested in participating were invited to provide their input. As all of the forty-one (41) potential participants who responded positively to the invitation initially did not maintain their interest, ultimately only twenty-nine (29) homeowners were interviewed and gave permission for their files to be reviewed.

It is important to reiterate that the number of complaints and concerns brought to the attention of the New Home Ombuds Office by homeowners during the calendar years of 2019 and 2020 totals 1,001. Ultimately, slightly less than three (3) percent of this complainant group gave permission for their case files to be reviewed and volunteered to provide their input through an interview. When calculating the response rate based on twenty-nine (29) respondents to 580 invitations it is only five (5) percent of complainants that provided their input. In addition, when these case files were reviewed it was apparent that they were not representative of the work done by the Office, (i.e., very few of the files reviewed included a fairness assessment, a file review, or when an inquiry or intervention was made). For these reasons, it was not possible to use the data collected through the interviews with complainants and the case file reviews as originally planned. However, in order to make good use of the valuable feedback provided by homeowners through the interviews and the insights gained from reviewing their case files, this information will be discussed with the New Home Ombuds Office staff, in a non-identifying way. The Ombuds has agreed to make use of this input to learn from the experiences of these twenty-nine (29) homeowners and to inform their case handling practices.

The evaluation plan also included provision for complainants to provide their input via the completion of an anonymous on-line survey. In this instance, it was only possible to contact forty-nine (49) percent of the 1001 individuals who contacted the Ombuds Office in 2019 and 2020 as not all addresses held on file proved to be functional. The letter of invitation sent to 489 complainants is shown at Appendix E. In this instance, five (5) percent of the 1001 individuals who contacted the Office completed the on-line survey.

When calculating the survey response rate based on fifty-four (54) respondents to 489 invitations this results in an overall response rate of eleven (11) percent. Unfortunately, many of the surveys were not completed in their entirety such that not all of the questions were answered that related to each of the criteria being assessed. This approach resulted in the number of responses per question coming in at a much lower rate for multiple questions than the overall eleven (11) percent response rate. Unfortunately, both the overall response rate and the lower response rate by question is below the level needed to provide for a valid assessment. However, the valuable feedback provided through the anonymous on-line survey will be discussed with the New Home Ombuds staff so they can take into account these homeowners'

perspectives when interacting with complainants and undertaking file reviews and fairness assessments.

As a result, I am providing a more limited assessment of the operations of the New Home Ombuds Office using the information I collected which is not dependent on the availability of complainants' input. This included a review of all of the Ombuds' annual reports as well as special reports that did not contain identifying information, in conjunction with the Ombuds' policies and procedures and the Terms of Reference for the Office. In addition, relevant Tarion policies as well as the Administrative Agreement between Tarion and the Ministry of Consumer and Government services were reviewed.

Input from Tarion Employees

The design of the compliance audit/evaluation also provided for collection of feedback from Tarion staff as they are also stakeholders. The methodology used included the following components:

Interviews

Fifteen (15) employees were randomly selected by the Evaluator from a list of seventy-five (75) Tarion employees whose areas of responsibility are such that they would likely have had contact with the Ombuds Office. The letter of invitation that was sent to these employees by the Evaluator is shown at Appendix F. The CEO of Tarion and the Director of Information Technology (IT) were also interviewed given their specialized knowledge.

Anonymous On-line Survey

The number of invitations sent to Tarion employees to complete the anonymous on-line survey is approximately three hundred (300). An exact number cannot be confirmed as the invitations were sent out by internal Tarion email by the Human Resources Department using Tarion employee lists and this is the most accurate number they are able to provide. The number of surveys completed by Tarion employees was eighty-eight (88) and this is an acceptable response rate of twenty-nine percent (29%). The letter of invitation is shown at Appendix G.

Key Informants

The evaluation design also included conducting interviews with the following individuals:

The Board of Directors of Tarion

The Chair of the Stakeholder Committee (previously titled the Consumer Committee) was interviewed as the Stakeholder Committee approves the budget for the New Home Ombuds Office and conducts the performance review of the Ombuds.

New Home Ombuds Office Staff

All members of the Ombuds Office were interviewed, specifically, the Advisor, the Early Resolution Officer and the Ombuds.

Consumer Advocacy Groups

The solicitation of input from consumer advocacy groups was not included when designing the evaluation framework. However, two (2) representatives from two (2) different consumer advocacy groups contacted the Evaluator and provided their views on the operation of and effectiveness of the Ombuds Office in writing and their input was considered.

Summary on the Use of Data Collected from Homeowners and Tarion Employees

An evaluation of this nature is designed to provide for the collection and assessment of information obtained through the review of case files; the data collected via interviews and anonymous surveys from all stakeholders, i.e., in this instance, both homeowners and Tarion employees; along with a review of relevant documents. All of this data is then compared to the criteria set out in the evaluation framework and synthesized to found the Evaluator's opinion.

Unfortunately, as explained earlier, there is insufficient information from homeowners to found any conclusions that are dependent on homeowner input. Conversely, there is sufficient data from Tarion employees to do so. However, as the Tarion employee input is representative of the perspective and experiences of only one group of stakeholders, it is not taken into account either in this analysis as it does not reflect the full spectrum of perspectives on the evaluation criteria. For ease of reference, the key criteria include: 1) whether the New Home Ombuds Office is fulfilling its obligations as described in the 'Terms of Reference' for the Office or 2) whether its complaint handling practices are consistent with the 'Forum of Canadian Ombudsman Ethical Principles' and the 'Ombudsman Association 'Principles on Good Complaint Handling'.

The very useful input received from both homeowners and Tarion employees will be utilized to good effect as it will be provided to the Ombuds, in a non-identifying manner. The Ombuds has agreed to make use of this feedback to learn from both homeowners and Tarion staff experiences and perspectives and to inform their case handling practices.

Evaluator's Opinion:

Compliance with the Forum of Canadian Ombudsman (FCO) 'Statement of Ethical Principles' and the New Home Ombuds 'Terms of Reference'

As the definitions provided in the FCO 'Statement of Ethical Principles' and the New Home Ombuds 'Terms of Reference' are very similarly written I am reporting on them in concert rather than separately.

INDEPENDENCE

While the New Home Ombuds role is not established by a stand-alone statute, which provides for the highest degree of structural independence, the *Ontario New Home Warranties Plan Act* (the Act) was amended by the Government of Ontario as of February 1, 2021, at Section 5.7 stating that an Ombudsperson must be available to inquire into, respond to and make recommendations regarding the administration of the Act. This inclusion means that Tarion can not eliminate the Ombuds role if there is disagreement with recommendations made or actions taken in fulfilling the role as stipulated in the Terms of Reference. In addition, the recently established Administrative Agreement in place between Tarion and the Ministry of Consumer and Government Services (the Ministry) provides for additional elements of structural independence. Specifically, it is stated unequivocally that the Ombuds can not be terminated by the Tarion Board of Directors as reprisal for recommendations or criticisms made; and that no reprisal can be made against complainants or individuals who participate in any way in an investigation of the Ombudsperson. It is also stated that if the Board of Directors is contemplating termination of the Ombudsperson or reducing their compensation, the Chair of the Board must provide written notice to the Ministry at least thirty (30) days before terminating the Ombudsperson or reducing their compensation, absent exceptional circumstances.

It is also clearly stated in the Administrative Agreement that the budget for the Ombuds Office is proposed by the Ombudsperson and is subject to approval by the Board of Directors and that the performance appraisal of the Ombudsperson is the sole

responsibility of the Board of Directors. This is a best practice. It is worthy of comment that it is specifically stated that Tarion 'management' must abstain from any role or involvement in the appraisal process. As a result, the Stakeholder Committee of the Board, which is composed entirely of members of the Board of Directors, has been assigned responsibility for managing the performance review process. This Committee is now seeking the advice of an external corporate governance consultant to assist with the preparation of a new approach for conducting a fair and comprehensive framework for the performance review process. The ultimate goal of this undertaking should be to provide for a performance appraisal process that is robust while not impinging on the independence required of the Ombuds role.

In addition, the Ombuds Office has adopted a parallel 'Business Code of Conduct' (Code of Conduct) which describes how to raise allegations of conflicts of interest and the investigation process to be used to address them. The Code of Conduct for the Ombuds Office' is currently an internal document only so it is not included in the appendices to this report. While this initiative is a worthwhile step, in my view, this Code of Conduct requires further review and clarification in order to accurately represent the actual work performed by the Ombuds Office. In addition, the wording of this Code must also ensure that allegations are seriously considered and that they are handled in such a manner that there is no encroachment on the independence of the Ombuds Office. Toward that end, I am recommending that investigations of conflict of interest against the Ombuds be conducted by an external third-party investigator and that the investigator's report be provided to the Chair of the Stakeholder Committee for first review. In addition, the manner in which allegations of conflict of interest made against Ombuds staff will be handled by the Ombuds should be more clearly defined. As soon as the Code of Conduct is revised and finalized, it must be posted on the Ombuds website so it is easily accessible to all concerned.

While not addressed in the Administrative Agreement with the Ministry, a standard expectation for an Ombuds is that they would not fulfill any decision-making role for Tarion (the Corporation). From what I have observed and been told it appears to me

that the New Home Ombuds does not serve in any decision-making role for the Corporation. However, to ensure that there is no potential for confusion, I am recommending that it be specifically noted in the Terms of Reference that if the Ombuds provides information to a Committee or planning group that is developing new policy or procedure, the Ombuds and/or staff do so only as a resource person as an expert in fairness. The Ombuds should also make the nature of the role they are fulfilling very clear, that is, as an independent resource person, when they are invited to attend meetings to provide advice on the fairness of new policies and procedures that are under development or existing policies that are being reviewed.

The complete section of the Administrative Agreement devoted to the Ombudsperson role is attached at Appendix H. By way of further explanation, the Ombuds stated that she proposed some of the additions to the Administrative Agreement directly to the Ministry as a means to provide for greater structural independence for the Ombuds role, regardless of who is occupying the position.

In summary, the structural independence of the New Home Ombuds Office is very high and would be considered to be a best practice for an Ombuds role that is not established by legislation.

I am also recommending that a brief listing of these indicia of structural independence be readily accessible on the New Home Ombuds website and on the Tarion website so that potential users of the Ombuds role have easy access to this information prior to interacting with the Ombuds Office.

It is also imperative that in addition to the elements of structural independence that are established through the Terms of Reference for the Ombuds Office and the Ministry's Administrative Agreement, the Ombuds and the staff of the Ombuds Office must also take responsibility for and demonstrate the highest degree of personal independence and impartiality.

CONFIDENTIALITY

The arrangements in place for protecting the identity and concerns of complainants and maintaining confidentiality of communication with complainants will be addressed on a point-by-point basis.

Firstly, the database containing all of the case files created by the Ombuds Office is hosted by an external vendor and Tarion IT staff have no access to this database. In the past, Tarion hosted the encrypted Ombuds Office database and back up on its internal system and only the Ombuds Office had the encryption code. Secondly, the email system used by the Ombuds Office is now hosted by an external vendor as well and Tarion IT personnel have no ability to access this system. In the past, prior to setting up an account with an external vendor, the Ombuds emails were hosted by Tarion. As a precautionary measure, the system was configured so that if anyone other than the Ombuds Office staff tried to access the Ombuds email account, an alert would be sent to the Ombuds advising of this attempt. The Ombuds has advised that she had never received such an alert. The arrangement that is now in place with external vendors provides for a high level of security and confidentiality for both the case file data base and email communication. These arrangements are consistent with best practice for a small Ombuds Office.

The Ombuds Office demonstrates great precision in determining what level of information the homeowner is allowing them to share (or not) with Tarion. The 'Permission Form' used by the Ombuds Office is designed for complainants to authorize the Ombuds staff to access the Tarion file (or not) and discuss the details of the complaint with Tarion staff (or not); or to discuss the details of the complaint with specific limitations; or to state that the Ombuds Office is **not** allowed to access the Tarion file or to discuss the complaint with Tarion staff. Seeking permission in writing in a detailed and comprehensive manner is a good practice. The means for the homeowner to provide this type of permission can be improved by providing a fillable form that can be completed by the complainant on-line and then submitting it through

the Ombuds secure portal. In urgent cases, or where homeowners are not comfortable with submitting an on-line form, it is also expected that the Ombuds would accept permission verbally and confirm the level of permission given to the Ombuds via immediate return email to the homeowner, to ensure there is no miscommunication as to the homeowners' expectations.

It is expected that Ombuds roles that are not established by statute and do not have statutory immunity from those who are attempting to access information contained in Ombuds files, will have strong comparable measures in place that are defined through their Terms of Reference. The New Home Ombuds Terms of Reference are explicit in this regard in that it is clearly stated that the Office will not divulge information provided by complainants without their consent, except in cases of imminent danger or as compelled by law. It is also stated that all files are to be held securely and access is limited to Ombuds Office staff only. This is the proper set up. It is also important to note that Tarion has indicated in its *Access to Information and Privacy Code* at Section 7.1 under the title of 'Mandatory Exceptions' that Tarion will refuse to provide access to any record or part of a record that is held under the custody and control of the Ombuds Office and that anyone seeking those records must contact the Ombudsperson Office directly. The inclusion of this exception in the Tarion policy further reinforces that all of the Ombuds' complaint files are held under the sole care, custody and control of the Ombuds Office.

As there are occasions when Tarion is a party to litigation or receives a summons or Court Order that requires the disclosure of relevant documents it has developed a protocol for how it will respond given the independence of the Ombuds Office and the fact that Tarion has no access to Ombuds' files. It is stated in the protocol that as the Ombuds Office is independent and Tarion has no access to the Ombuds files, the Law Department shall not request copies or make any inquiry about Ombuds files. This is a best practice. Therefore, when implementing this protocol, when Tarion is obligated to provide its own disclosure of information, it will indicate in the required 'Affidavit of Documents' that the enclosed affidavit does not include documents that may be in the

possession, control or power of the New Home Ombuds Office. The Tarion protocol also requires that it be stated further that the Ombuds Office is an independent and confidential office that handles homeowner complaints relating to fairness and that Tarion does not have access to the New Home Ombuds Office's files or database. Information is also provided on how to contact the Ombuds Office directly.

Concurrently, in the Terms of Reference for the Ombuds Office, it is stated that the Office will 'assert privilege' which means it will resist any order to testify in any internal proceedings, Licence Appeal Tribunal proceedings or external legal process. It is also indicated that this assertion is not yet recognized in law. This is both a standard inclusion for Ombuds that are not established by statute and is also an ethical requirement as described in the FCO Ethical Principles as: "He/She shall vigorously resist attempts to compel disclosure of such information, in any judicial or administrative hearing or inquiry." ⁴

CREDIBILITY

It is expected that an Ombuds would act in good faith and in a manner that strengthens the integrity and effectiveness of the Ombuds' process. One of the ways for increasing credibility is to publish comprehensive and meaningful annual and special reports so as to demonstrate both accountability and transparency. It is readily apparent that the Ombuds Office does post its annual reports on its website. This posting is done after tabling the annual report with the Stakeholder Committee and the Board of Directors of Tarion. In February 2021, the Ombuds also made a verbal presentation to both the Stakeholder Committee and the full Board of Directors. This is a best practice and should be maintained. In order to ensure Tarion staff also have the opportunity to review the Annual Report with the Ombuds, all staff should also be invited to receive a presentation about the role of the Ombuds and the recommendations made in the Annual Report on an annual basis. Similarly, provision should be made to advise Tarion staff, in smaller groups, on a regularly scheduled basis, about the trends and topics in

⁴ *Supra*, Note 2 and Appendix B.

the complaints the Ombuds Office is receiving so that emerging issues can be addressed promptly. Similarly, I am also recommending that the Ombuds provide an accessible forum for homeowners to learn about the role of the Ombuds along with the recommendations made in the Annual Report after it has been tabled with the Board of Directors and posted on the Ombuds' website.

The format of the Annual Report related to the presentation of the Ombuds' recommendations is set up as it should be in that both the Ombuds' recommendations and the Tarion responses to them are presented together. As a result, it is readily evident to all concerned whether Tarion has accepted the recommendations, and if so, the plan that is being put in place for effective implementation. Going forward, my recommendation is that greater attention be paid to providing more detailed information documenting how and when progress has been made on these implementation plans on a year-over-year basis in the Annual Report. For systemic recommendations which may take multiple years to implement and require extensive resources, a detailed status update or progress report should be included for the fulfillment of each recommendation every year. For recommendations that are 'ever-green' in nature, the Ombuds Office should be assessing progress made on a regular basis, i.e., every two years, to ensure that recommendations made and fulfilled at one juncture, are still being implemented as agreed to at the time of their acceptance. This method also provides the opportunity for modifying the implementation plan if circumstances change.

As is expected, the Ombuds Office provides statistics on the number and subject matter of complaints received as well as how the complaints are handled by category. In order to provide a better understanding of how complaints are handled on a day-to-day basis it would be useful to provide definitions for some of the statistics provided. For example, under the heading of 'Actions Taken' it would be helpful to know what a 'File Review' entails. Similarly, it would be useful to state what actions are taken under the heading of 'Intervention'. It would also be useful to know what is meant by 'No Action'. For instance, does this category mean the complainant abandoned the concern or is there some other rationale for not taking action. Under the title of 'Outcome' it would also be

useful to define what is meant by and the difference between ‘Early Resolution’ and ‘Facilitated Resolution’.

In previous Annual Reports, ending in 2017, a year-over-year comparison was included in relation to the number and type of complaints received and how they were resolved for a four-year (4) period. I would recommend reinstating year-over-year comparisons for future reports as it assists the reader to identify areas of growth or reduction in certain types of complaints.

Another indicator of credibility is the availability of a complaint process for complaints about the Ombuds Office. This mechanism is outlined at Section 5 in the Terms of Reference for the Ombuds Office and provides for the Stakeholder Committee of the Board of Directors to handle this type of complaint. The protocol for handling this type of complaint is shown at Sections 5.2 to 5.4 in Appendix A. This is a best practice.

In conducting this compliance review I interviewed the staff of the New Home Ombuds Office and the Ombuds to assess their understandings of the ethical principles and complaint handling practices associated with this evaluation. In addition, I confirmed that all three of these practitioners have extensive experience with dispute resolution within regulatory bodies or commissions and in two instances, lengthy experience in conducting mediations. In addition, it has been established that none of the Ombuds’ Office employees worked at Tarion before joining the Ombuds Office and they have affirmed that they have no previous professional relationships with Tarion staff. The Ombuds and staff have also affirmed that they have no social relationships or friendships with any Tarion staff.

ACCESSIBILITY

Accessing the New Home Ombuds Office website is very easy if you know what an Ombuds is and the name and existence of this particular Ombuds role. As many homeowners may not have this knowledge, greater effort should be placed on taking

the steps that are needed in order to promote the existence of and the role of the New Home Ombuds Office. For example, the Ombuds should request that Tarion refine the 'search' function for the Tarion website so that when homeowners use search terms like 'how to make a complaint' or 'fairness' the link to the New Home Ombuds Office comes up for their reference. In addition, the Ombuds Office should work with its website host to ensure its website appears when specific search terms are used by new homeowners when searching on-line for assistance. In addition, the Ombuds should seek alternate means for making new homeowners aware of its existence and the role it plays in addressing fairness issues, beyond the use of its own website.

As explained previously, it is not possible to provide an opinion on whether the Ombuds Office is operating in a manner that is consistent with the ethical principles of impartiality and fairness and the principles of 'good complaint handling' of clarity of purpose, openness and transparency, proportionality, efficiency and quality of outcomes, as there is insufficient input available from case file reviews and homeowners to do so.

Appendices

Appendix A: “New Home Ombuds Office Terms of Reference”

1) Mandate

The mandate of the New Home Ombuds Office is to receive complaints from homeowners who believe that they have been treated unfairly, or improperly, or outside the “intent and spirit” of the Ontario New Home Warranties Plan Act, and/or its Regulations.

The New Home Ombuds:

Receives, investigates and resolves complaints from homeowners about Tarion’s conduct and whether it accords with Tarion’s own practices and procedures. The Ombuds may make recommendations to Tarion and/or Board of Directors relating to specific homeowner cases.

Acts as a source of information, referral and education to assist homeowners in accessing existing channels of assistance and redress within Tarion.

Identifies complaint trends, policy matters and systemic issues and makes recommendations for improvements. The Ombuds may make recommendations about any rule, policy, regulation or procedure which he/she deems appropriate.

2) Operating Principles

2.1) Independence

- i) The New Home Ombuds Office (The Office) is independent of all other Tarion departments. The Ombuds holds no other position within Tarion which might compromise his/her independence. The Ombuds cannot have membership in any consumer advocacy or building industry organizations.
- ii) The Ombuds strives to be impartial, fair and objective in the treatment of people and the consideration of complaints. The Ombuds advocates for fair processes and does not advocate on behalf of any individual or organization.
- iii) The Ombuds exercises sole discretion over whether or how to act regarding an individual’s concern, a trend, or concerns of multiple individuals over time.
- iv) The Ombuds may, on his or her own initiative, identify, investigate and make recommendations on case-related or systemic issues within Tarion.
- v) The Ombuds reports to the Board of Directors through the Stakeholder Committee on a quarterly basis. The budget for the Ombuds Office is negotiated through the Stakeholder Committee. The Ombuds will select staff and manage the budget and operations of the Office.
- vi) The Ombuds will have private and confidential *In Camera* sessions with the Stakeholder Committee of the Board of Directors quarterly. The Ombuds has direct

access to the Board of Directors and can request *In Camera* sessions with the Board.

- vii) Communications to the Office will not be considered as notice to Tarion for any of its warranty processes, including Warranty Form submission, requests for conciliation inspection, or requests for a decision letter. This information will be prominent on the website, literature and communication from the Ombuds.

2.2) Impartiality

- i) The Ombuds reviews all information in an objective manner and without bias. He/she remains impartial and unaligned, in fact and perception and acts only to identify and address fairness concerns.

2.3) Confidentiality

- i) The Office will not divulge information provided by complainants without their consent, except in cases of imminent danger or as compelled by law. The Office will seek consent to divulge information necessary to work to resolve a complaint and to report on the resolution to Tarion. In cases where the consent is not given, the complaint will be kept confidential.
- ii) Complaints to the Ombuds will be kept confidential if the complainant requests confidentiality. Under these circumstances the scope of the investigation will be limited to that information that can be obtained in a confidential manner. Reporting to complainants may also be limited as a result.
- iii) Communications between the Office and others are intended to be privileged. This privilege belongs to the Ombuds and the Office, not to any other party including the complainant.
- iv) The Ombuds and staff will assert privilege to avoid testifying in any internal process, before the Licence Appeal Tribunal, in any external legal process unless compelled by law. (Such privilege is not yet recognized as law and may or may not be accepted.)
- v) The Office makes every effort to protect information collected by it. As such, all files are secured, and access is limited to the Office's staff only.

2.4) Informality & Accessibility

- i) The Ombuds functions informally. The Ombuds seeks to resolve complaints in a timely and effective manner, at the most immediate level within Tarion.
- ii) The Ombuds will make recommendations regarding a complaint to appropriate officials, ideally at the most immediate level within Tarion. If a recommendation is not acted upon to the Ombuds' satisfaction, the Ombuds may escalate the recommendation through management, or the board of directors.
- iii) The Ombuds has access to all information and all individuals in Tarion.

- iv) The Ombuds does not replace any formal complaint processes. Use of the office is voluntary and is not a required step in any complaint process.
- v) The Ombuds does not make warranty decisions, mandate policies, or formally adjudicate issues for Tarion.
- vi) The Office has the authority to investigate complaints and make recommendations; however, it may also be used if an individual needs assistance in identifying how to resolve a complaint; would prefer to discuss a problem with an impartial third party; or has already gone through established channels without satisfaction.
- vii) Complainants and individuals who participate in any way in an investigation will be free from reprisals, and will not be denied any rights, privileges or benefits because of such actions.

2.5) Fairness

- i) The Ombuds promotes and protects fairness within Tarion.
- ii) The concept of fairness can be complex. It does not necessarily mean that everyone is treated equally and may require that standards of equity are reconsidered. The test of fairness used by the Ombuds encompasses three aspects:
 - (1) Procedural Fairness
 - (2) Relational Fairness
 - (3) Substantive Fairness

The Ombuds will ensure that the office conducts its work in a fair way. It will respect the right to fairness of those who complain, and those responding to complaints. During a review or investigation and in making recommendations, the Office will observe the principles of natural justice, and administrative and procedural fairness.

2.6) Reports

- i) The Ombuds shall publish an annual report outlining cases handled, general trends in caseload, recommendations issued and any other relevant information concerning the activities of the Office. The published report shall be publicly available.
- ii) The Ombuds will periodically provide reports and statistical summaries to Management and the Board of Directors. Reports may include statistics, case studies of complaints, investigation reports, summaries of recommendations made by the Office, and Tarion's response to recommendations.
- iii) The Ombuds may issue reports to Tarion and the Board of Directors, concerning any investigation, on the implementation of any recommendations, or any other matter within the mandate of the Ombuds.

2.7) Limits

- i) The Ombuds shall not pursue any matter where the subject matter of the complaint is involved in legal proceedings with Tarion and/or his/her builder including proceedings in court, the Licence Appeal Tribunal, or other formal dispute resolution forum.
- ii) The *Ontario New Home Warranties Plan Act* enforces specific warranties deemed to be given by the builder on new homes. If a complaint relates to requests for relief outside of the Warranty Plan, it is outside the mandate of the Ombuds.
- iii) Complaints that relate to privacy concerns regarding Tarion will be directed to the Tarion Privacy Officer.
- iv) Allegations of Tarion employee impropriety will be directed the Tarion Human Resources department.

3) Ombuds Complaint Process

Each complaint will be assessed when it is received to determine how and where the complaint can best be addressed. Generally, complaints fall into one of three categories.

- Complaints outside the Ombuds mandate
- Complaints within the Ombuds mandate, but premature
- Complaints within the Ombuds mandate and not premature

i) **Complaints outside the Ombuds Mandate**

When complaints are outside the mandate, the office will inform the complainant, and where possible refer complainants to an appropriate resource.

ii) **Complaints within the Ombuds mandate, but premature.**

The Office requires that complainants try first to resolve the complaint by working within Tarion's complaint process. Complaints received by the Office under these circumstances are redirected to the appropriate manager.

(a) Items not addressed by the department

If a complainant has already been to a manager, but they did not specifically address one or more of the concerns, the Office may ask the department to address them first.

(b) New issues raised by the complainant

If a new issue is raised, then the Office will assess the complaint, and determine the most appropriate process to resolve the concern.

(c) Obvious Errors

If there is an obvious error, the Office will contact the department to make the correction.

Premature complaints may be resubmitted to the Ombuds if complainants are dissatisfied with the department's handling of the concerns.

iii) Complaints within the Ombuds mandate and not premature.

(1) Fairness Review

- (a)** Fairness review involves intake and documentation of complaints, identification and clarification of issues, research and analysis. It includes review of Tarion documents and interviews with Tarion staff. Fairness issues identified may be resolved using a variety of conflict resolution techniques and strategies. If appropriate, the Office will use a fairness review process to deal with complaints that can be resolved without a formal investigation.
- (b)** The Ombuds may decide not to act upon a complaint if:
 - (i) The subject-matter of the complaint is trivial;
 - (ii) The complaint is frivolous, vexatious or is not made in good faith;
 - (iii) The complainant does not have sufficient personal interest in the subject-matter of the complaint.
 - (iv) Too much time has passed between the alleged unfairness, and submission of the complaint.
 - (v) During the course of the investigation it appears that:
 - 1. The complainant has an adequate remedy or right of appeal under the *Ontario New Home Warranties Plan Act*
 - 2. That having reviewed all the circumstances of the case, further investigation is unnecessary.
- (c)** The Office may request that information from the homeowner, and or Tarion departments, to assess whether an investigation is warranted.
- (d)** The Ombuds Office will review the information available and determine if the complainant has been treated fairly. If the complainant has been treated fairly, then the Ombuds office will communicate the findings to the complainants, and no further investigation will be done.

(2) Investigation

- (a)** The Ombuds may investigate a complaint using all the information available – including information provided by the homeowner, and Tarion. The Ombuds may gather additional information or evidence required to make a finding. The objective of the investigation is to resolve issues and improve Tarion's processes and policies, not to lay fault.
- (b)** The Ombuds will determine the scope and methodology of the investigation. During the investigation, all potentially relevant issues, evidence, documentation and witnesses should be identified and pursued. Analysis of the material gathered in the investigation will be objective and based on the facts.
- (c)** If, after investigating, the Ombuds finds the subject-matter of the investigation was:

- (i) Contrary to the *New Home Warranties Plan Act*;
- (ii) Contrary to Tarion's own policies and procedures;
- (iii) Based wholly or partly on a mistake of law or fact; or
- (iv) Based on improper exercise of discretionary power
- (v) Otherwise unfair

the Ombuds will, subject to confidentiality and privacy requirements, communicate the findings, their reasons for the findings, and any recommendations to the complainant, and the relevant Tarion department. .

(3) Procedure after investigation

- (a) The Ombuds shall report his/her findings, and the reasons, to Tarion, and may make appropriate recommendations. The Ombuds may request that Tarion notify him/her, within a specified time, of the steps that it proposes to take to give effect the recommendations.

(b) Ombuds report and recommendations

If the Ombuds finds that a situation is unfair, the Ombuds can make the following recommendations:

- i. Suspending or postponing an action;
- ii. Reconsidering or changing a decision;
- iii. Reducing delays;
- iv. That Tarion provide an apology or financial restitution;
- v. Improving communication;
- vi. Making changes to services;
- vii. Providing reasons for decisions;
- viii. Making changes to policies or general practice.
- ix. Other recommendations as they considered appropriate

4) Terms of Reference

- 4.1) The Ombuds is responsible for ensuring the office operates in a manner consistent with the Terms of Reference for the Office.
- 4.2) The Ombuds will review the Terms of Reference for the Office with the Stakeholder Committee of the Board on an annual basis.

5) Complaints about the Ombuds

- 5.1) The Ombuds has developed a complaint policy for the Ombuds office, which is clearly posted on the website for the office.
- 5.2) The Ombuds will report on complaints about the office to the Stakeholder Committee of the Board of Directors.

Allegations of impropriety in respect to the Ombuds shall be brought to the attention of the Chair of the Stakeholder Committee of the Board of Directors by emailing stakeholdercmtechair@tarion.com and putting “confidential” in the subject line of the email.

- 5.3) Each allegation shall be investigated. The means and methods of the investigation shall be at the discretion of the Chair.
- 5.4) The allegation and the results of the investigation will be disclosed to the Ombuds, who shall be given the opportunity to respond to the allegation and the results of the investigation within a reasonable time established by the Chair. The matter will be taken before the Stakeholder Committee, who will make a recommendation to the Board of Directors on the disposition of the matter.

(Approved December 2020)

Appendix B: Forum of Canadian Ombudsman (FCO) “Statement of Ethical Principles”

The purpose of this document is to confirm the key principles and values to which Ombuds/man/person (Ombuds) should adhere and to provide ethical guidance to FCO members who occupy an Ombuds role or work in an Ombuds Office.

INTRODUCTION

In the exercise of their role, Ombuds shall promote and abide by the values of justice, fairness, equity, respect, empathy, honesty, rigour and transparency. The Ombuds shall hold him/herself to the highest standards in the areas of independence, impartiality, fairness, confidentiality and credibility.

INDEPENDENCE

The Ombuds should be clearly and visibly independent in purpose, administration and decision-making, from the institution / organization/ government administration about which it has the mandate to receive complaints.

An Ombuds should serve only in this one capacity within the institution / organization/ government administration and should not have any decision making role therein. Information regarding the Ombuds’ mandate, sources of funding, method of appointment and reporting rules shall be publicly-available.

IMPARTIALITY

The Ombuds reviews all information in an objective manner and without bias. He/she remains impartial and unaligned, in fact and perception and acts only to identify and address fairness concerns.

An Ombuds shall not engage in any activity which could possibly lead to a possible conflict of interest. If any such situation arises, the Ombuds shall immediately declare it and refrain from intervening in any way with regard to the situation or file.

FAIRNESS

The Ombuds’ conduct is rooted in the principles of fairness and natural justice and he/she shall act accordingly. The Ombuds considers fairness to be a factor of process, interpersonal relations and outcome. He/she pursues resolution of conflict using the approach that is appropriate to the circumstances, taking into account the relevant law and regulations, the general principles of good administration and good practice, professional standards and any relevant Code of conduct that may apply.

CONFIDENTIALITY

The Ombuds shall hold in confidence all private communications, documents and other information received in the course of his/her interventions subject, however, to the needs of the investigation/intervention and the requirements of the law. The extent and limits of his/her confidentiality duty shall be clearly explained.

The Ombuds shall take all reasonable steps to safeguard such confidentiality. He/She shall vigorously resist attempts to compel disclosure of such information, in any judicial or administrative hearing or inquiry.

CREDIBILITY

The Ombuds shall act in good faith. His/Her behaviour and mode of operation shall be such as to strengthen the integrity and effectiveness of the Ombuds’ process. The Ombuds shall act so

as to be recognized and respected by other members of the Ombuds community including the Forum of Canadian Ombudsmen and by the constituents who are served. The Ombuds reports on its activities and on how the resolution of disputes is undertaken in whatever forum is appropriate given the circumstances, so as to promote transparency and accountability.

(Approved by the Membership at the Annual General Meeting, June 2014)

Appendix C: The Ombudsman Association (previously, the BIOA) “Guide to Principles of Good Complaint Handling”.

Full text available at

<https://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf>



Guide to principles of good complaint handling

Firm on principles, flexible on process

Clarity of purpose

Accessibility

Flexibility

Openness and transparency

Proportionality

Efficiency

Quality outcomes

Appendix D: Letter of invitation to complainants who approached the Ombuds Office in 2019 and 2020 to participate in a file review and interview. This letter was sent out in early November 2020 and early January 2021.

Dear X,

The New Home Ombuds office (previously called the New Home Ombuds Office) has contracted with an external Evaluator, Nora Farrell, to conduct a compliance audit/evaluation of the office. You are being contacted in conjunction with this evaluation because you used the services of the New Home Ombuds office within the past two years. The evaluation will be reporting on:

- whether the New Home Ombuds Office is fulfilling its obligations as outlined in the Terms of Reference for the Office and
- whether the New Home Ombuds' complaint handling processes are consistent with the Forum of Canadian Ombudsmen "Statement of Ethical Principles" and The Ombudsman Association's "Guide to Principles of Good Complaint Handling".

The Evaluator has served as an Ombudsperson in the private, public and not-for-profit sectors for many years. In addition, as both an employee and an independent consultant, she has conducted evaluations of organizational effectiveness within the not-for-profit, public and private sectors.

As one part of this evaluation, the external Evaluator will be reviewing 100 closed files, if possible, that have been randomly selected and arranging telephone interviews with the people who brought forward these complaints. As all of the information you provided as part of the complaint process is confidential to the New Home Ombuds' Office, we are unable to provide it to the Evaluator without your consent. Therefore, if you are willing to have your case reviewed and/or have a telephone interview with the Evaluator, please contact her directly to provide your consent. Please contact her prior to November 27, 2020 (or January 27, 2021) or as soon as possible. She can be reached at:

No one from the New Home Ombuds Office or Tarion will have access to your correspondence with the Evaluator or be able to link interview responses to anyone personally. In addition, the Evaluator will hold all of the information she reviews in confidence and the New Home Ombuds and the Consumer Committee of Tarion's Board of Directors will receive only an anonymous summary of her work.

Thank you for your consideration of this request.

Jill Moriarty
New Homes Ombuds

These are the links to the documents referred to above if you would like to read them:

New Home Ombuds Terms of Reference:

https://www.newhomeombuds.ca/sites/default/files/2020-04/NewHomeOmbuds_TOR.pdf

Forum of Canadian Ombudsman Statement of Ethical Principles:

http://www.ombudsmanforum.ca/en/?page_id=157/

Ombudsman Association Guide to Principles of Good Complaint Handling:

<https://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf>

Appendix E: Letter of invitation to Complainants for completion of online survey

Good afternoon,

As you may remember from my earlier letter, an independent Evaluator has been retained to conduct a comprehensive evaluation of the New Home Ombuds Office (formerly known as the New Home Ombuds Office). I am writing to you again to invite you to provide your input by completing **an on-line survey**. You are receiving this invitation as all of the individuals who contacted the Ombuds in 2019 and 2020 are being asked to provide their input. Also, please note that this survey is different from the survey you may have completed when your Ombuds case was closed.

The reason why this invitation is coming from the New Home Ombuds Office is that we are required to keep all of the information we have received from you confidential. Therefore, I am not able to provide the Evaluator with your contact information so that she can reach out to you directly. However, please be assured that my Office will not have any access to your individual response to the survey

No one from the New Home Ombuds Office or Tarion will know if you completed a survey. Only the Evaluator will have access to the individual survey results as they are coming in directly to her own Survey Monkey account. Her report will present a non-identifying summary of the input provided.

The background to this opportunity to provide feedback is:

The New Home Ombuds Office has retained an external Evaluator, Nora Farrell, to conduct a compliance audit/evaluation of the office and to report on:

- whether the New Home Ombuds Office is fulfilling its obligations as outlined in the Terms of Reference for the Office and
- whether the New Home Ombuds' complaint handling processes are consistent with the Forum of Canadian Ombudsmen "Statement of Ethical Principles" and The Ombudsman Association's "Guide to Principles of Good Complaint Handling".

The Evaluator has served as an Ombudsperson in the private, public and not-for-profit sectors for many years. In addition, as both an employee and an independent consultant, she has conducted evaluations of organizational effectiveness within the not-for-profit, public and private sectors. If you have any questions about the survey please contact the Evaluator directly at:

Your contribution to this evaluation process is very much appreciated. Please note that the survey will be available until February 5, 2021.

Jill Moriarty

New Home Ombuds

These are the links to the documents referred to above if you would like to read them:

New Home Ombuds 'Terms of Reference'

https://www.newhomeombuds.ca/sites/default/files/2020- /NewHomeOmbuds_TOR.pdf

Forum of Canadian Ombudsman 'Statement of Ethical Principles'
http://www.ombudsmanforum.ca/en/?page_id=157/

The Ombudsman Association 'Guide to Principles of Good Complaint Handling'
<https://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf>

Appendix F: Letter of Invitation to randomly selected Tarion employees seeking an interview

Good Afternoon,

I am writing to request an interview with you for an independent compliance audit/evaluation being conducted on the effectiveness of the New Home Ombuds Office. I have been retained as an external Evaluator to report on:

- whether the New Home Ombuds' complaint handling processes are consistent with the Forum of Canadian Ombudsmen "Statement of Ethical Principles" and The Ombudsman Association's "Guide to Principles of Good Complaint Handling".

By way of self-introduction, I have served as an Ombudsperson in the private, public and not-for-profit sectors for many years. In addition, as both an employee and a contract consultant, I have conducted evaluations of organizational effectiveness within the not-for-profit, public and private sectors.

As one component of this evaluation I will be interviewing fifteen (15) Tarion employees who have responded to Ombuds' inquiries or file reviews and you have been randomly selected as one of these fifteen employees. No one from the New Home Ombuds Office or Tarion will know who has been invited for an interview. Our conversation will be confidential, and in the evaluation results you will not be identified by your position, or any information you provide or views that you express.

Your participation is extremely important to this undertaking. As you may know, random selection of interviewees provides the best assurance of accurately reflecting views and experiences in a large organization. By contributing your valuable time and experience, you strengthen my ability to conduct a thorough evaluation. Could you let me know a few times in the weeks ahead, ideally prior to November 23, 2020, that you would be available for a telephone interview, please? Due to our current public health situation we are not able to conduct interviews in person. Please contact me via email or by telephone to arrange a time for a thirty (30) minute interview at:

Thank you for your consideration of this request and if you are able to participate, I look forward to speaking with you.

Nora Farrell, Evaluator

Ph.D., LL.M. (Osgoode), M.Ed. (UBC)

These are the links to the documents referred to above if you would like to read them:

New Home Ombuds 'Terms of Reference' <https://www.newhomeombuds.ca/sites/default/files/2020- /NewHomeOmbuds TOR.pdf>

Forum of Canadian Ombudsman 'Statement of Ethical Principles'http://www.ombudsmanforum.ca/en/?page_id=157/

The Ombudsman Association 'Guide to Principles of Good Complaint Handling'<https://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf>

Appendix G: Letter of Invitation to all Tarion Staff to complete online survey

Good afternoon,

As you will have read in today's "Tarion This Week", the Ombuds office has retained an outside consultant to conduct a compliance audit/evaluation of our office. The Evaluator, Nora Farrell, has served as an Ombudsperson in the private, public and not-for-profit sectors for many years. In addition, as both an employee and an independent consultant, she has conducted evaluations of organizational effectiveness within the not-for-profit, public and private sectors. Nora will be reporting on:

- whether the New Home Ombuds Office is fulfilling its obligations as outlined in the Terms of Reference for the Office and
- whether the New Home Ombuds' complaint handling processes are consistent with the Forum of Canadian Ombudsman "Statement of Ethical Principles" and The Ombudsman Association's "Guide to Principles of Good Complaint Handling".

As one component of this evaluation, she has posted an on-line survey that is being made available to all Tarion employees. This email is to invite you to complete this on-line survey about your experience with, or impressions of, the New Home Ombuds Office. I ask you to please take a few moments to participate. Even if you have had no direct contact with the Ombuds, your impressions can be valuable.

No one from the Ombuds Office or Tarion will know if you completed a survey and no one will be able to link the survey responses to anyone personally. Only the Evaluator will have access to the individual survey results and her report will present a non-identifying summary of the input provided. Also, this on-line survey is hosted through the Evaluator's own account and cannot be accessed by Tarion or the New Home Ombuds Office.

You can access the survey by clicking on this link:

<https://www.surveymonkey.com/r/RKD37YD>

Your input will be very much appreciated and will be a very valuable contribution to this robust evaluation process. The on-line survey will be available until December 31, 2020.

Jill Moriarty

New Home Ombuds

Tel: 416-229-3828 Toll free: 1-877-880-3828

5160 Yonge Street, 12th floor, Toronto, ON M2N 6L9

newhomeombuds.ca

Appendix H: Excerpt from Administrative Agreement between Tarion and the Ministry of Consumer and Government Services (MCGS)

This is the section of the ‘Administrative Agreement’ between MCGS and Tarion describing the requirements for the role of the Ombudsperson, i.e., the New Home Ombuds.

8. Ombudsperson

- 1) In this section, any reference to the office of the Ombudsperson includes any employees within the office, as applicable.
- 2) The Corporation shall make available an Ombudsperson and fill any vacancy of the position as soon as reasonably possible.
- 3) The Corporation will not terminate the position of the ombudsperson as a reprisal for recommendations or criticisms made by the Ombudsperson to the Corporation or Board.
- 4) The Corporation shall, in consultation with the Ombudsperson, establish and maintain a Terms of Reference (“TOR”) for the Ombudsperson that is consistent with the Act and the Agreement. 14
- 5) The Corporation shall jointly review the TOR with the Ombudsperson on an annual basis or such other time that the Corporation and the Ombudsperson deem appropriate to ensure that the TOR remains current and consistent with the Act and the Agreement. The Corporation remains ultimately responsible for maintaining the TOR.
- 6) The Corporation shall clearly communicate to the public about the role, mandate, scope, and how to access or contact the Ombudsperson.
- 7) The Corporation will publish on its website the progress it has made in responding to any recommendations the Ombudsperson has published in any report.
- 8) In providing the Ombudsperson, the Corporation shall comply with the following requirements:
 - a) the Ombudsperson and their office must operate independently of all other departments in the Corporation;
 - b) the files and records of the Ombudsperson and their office shall not be accessed by anyone else within the Corporation;
 - c) the Ombudsperson and their office has access to all information and all individuals in the Corporation;
 - d) the Ombudsperson will report only to the Board;
 - e) the Corporation shall respond to the recommendations made from the Ombudsperson within a reasonable time;

- f) the Corporation shall not prejudice or reprise against complainants or individuals who participate in any way in an investigation of the Ombudsperson;
- g) the Ombudsperson will select staff and manage the budget and operations of their office;
- h) the budget for the Ombudsperson and their office will be set by the Ombudsperson subject to the approval of the Board;
- i) the Corporation will ensure the Ombudsperson has direct access to the Board and any of its meetings;
- j) the Board shall review the performance of the Ombudsperson and management must abstain from any role or involvement in evaluating or reviewing the performance of the Ombudsperson or any employee within the Ombudsperson's office; and
- k) except in exceptional circumstances, the Chair must provide written notice to the Minister at least 30 days before terminating the Ombudsperson, appointing a new Ombudsperson, or reducing the salary or benefits of the Ombudsperson.

Effective February 26, 2021.