

OBC Information Link - Terms Of Use

IMPORTANT - PLEASE READ CAREFULLY: This is an agreement between you and Tarion, the not for profit corporation responsible for administering the Ontario New Home Warranties Plan Act, (Ontario) (together with all regulations and amendments to the foregoing, the "**Act**").

BACKGROUND:

A. Tarion owns and operates a webpage where it shares certain information it gathers with respect to new homes relating to Ontario Building Code deficiencies, information it gathers in the course of its conciliation of warranty claims ("OBC InfoLink"). The website and all services, applications, resources and other content, information, text, images, data, code, tools, correspondence and materials available through the tarion.com domain or the OBC InfoLink (collectively "**OBC InfoLink™**").

B. OBC InfoLink is a self-serve environment for municipal building officials and other authorized persons that enables them to, among other things:

- access select information made available by Tarion for informational and educational purposes, including certain information about OBC deficiencies in newly constructed homes
- participate in such other matters as Tarion may, in its sole discretion, permit to be conducted via OBC InfoLink from time to time.

(collectively "**OBC InfoLink Activities**").

C. You wish to access and use OBC InfoLink for your purposes where "you," "your" and similar expressions in these terms of use (the "Terms of Use") refer to both:

By clicking the "I Agree" button, or using and/or accessing OBC InfoLink, you signify your agreement to both these **Terms of Use** and Tarion's [privacy policy](#) (the "**Privacy Policy**") (collectively, the "**Use Agreement**"). If you do not agree to all the terms and conditions of this Use Agreement, do not click the "I Agree" button or use or access OBC InfoLink in any way. Tarion may, in its sole discretion, modify or revise this Use Agreement in whole or in part at any time by posting the modified or revised version on OBC InfoLink. It is your responsibility to periodically review the most up-to-date version of this Use Agreement available on OBC InfoLink and you agree to be bound by all modifications and revisions to this Use Agreement immediately when they are posted. This Use Agreement was last revised as of the date first noted above.

1. IDENTIFICATION AND AUTHORIZATION. You hereby represent, warrant and covenant that the information you provide regarding your identity is true and complete in all materials respects.

2. LIMITED PERMITTED USE. Subject to the terms of this Use Agreement, Tarion hereby grants to you a limited, personal, non-transferable, non-exclusive right to access and use OBC InfoLink (including any updates, enhancements or modifications to OBC InfoLink made available by Tarion to you from time to time) on an as-available basis via the Internet, for the purpose of carrying out your or your OBC InfoLink Activities (the "**Authorized Purpose**"). Your right to use OBC InfoLink is limited to those rights expressly set out in this Use Agreement.

3. RESTRICTIONS ON USE. You shall: (a) not use OBC InfoLink for any purpose other than the Authorized Purpose or alter, damage or destroy OBC InfoLink or any data or information contained therein or other component(s) thereof; (b) not reproduce OBC InfoLink except to download, print and/or store such reasonable copies of the content available on OBC InfoLink as may be required for the Authorized Purpose; (c) not assign this Use Agreement or rent, sell, publish, distribute, communicate, transfer, lease, export or grant a sublicense to use OBC InfoLink unless expressly permitted to do so by Tarion in writing; (d) not modify, translate, reverse engineer, decompile, disassemble or make derivative works of OBC InfoLink (e) not use OBC InfoLink to operate a service bureau, drive traffic to your or any third party website for personal or commercial gain or otherwise use OBC InfoLink except as authorized herein; (f) not network OBC InfoLink or otherwise access OBC InfoLink from more than one computer, per user ID or password, at any one time; (g) not use OBC InfoLink for any tortious or unlawful purpose, including accessing any other system or network without authorization or transmitting any material (I) in violation of applicable laws (including copyright and privacy laws), (II) constituting unauthorized use or disclosure of a trade secret or (III) reasonably interpretable as threatening, libelous, offensive, pornographic, profane or obscene; (h) observe all security features on OBC InfoLink and not disable, bypass, defeat or circumvent (or permit a third party to disable, bypass, defeat or circumvent) any such security features; (i) not submit and/or post any content, information or other materials that contain a virus, Trojan horse, worm, bad link or other harmful or disruptive component or otherwise use OBC InfoLink in any way that might, in Tarion's sole discretion, subvert or conflict or interfere with the integrity, reputation, security or operation of OBC InfoLink any component(s) thereof or the system(s) from which OBC InfoLink is being made available; (j) not use any robots, bots, spiders, web crawlers, data or text, mining software or other automated tools or data gathering or extracting applications to collect data or information other than your information from OBC InfoLink . Any evidence of the foregoing may be disclosed by Tarion to law enforcement authorities and result in criminal prosecution under the laws of Canada and/or such other jurisdictions as may apply.

4. THIRD PARTY SERVICE PROVIDERS. You are fully responsible for the activities of any

third party software vendor(s) or other service provider(s) that you engage to facilitate your access to and/or use of OBC InfoLink ("Third Party Service Providers") and for their compliance with this Use Agreement.

5. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS. You acknowledge that Tarion and its licensors are the owners of all intellectual property rights in OBC InfoLink, its constituent parts, and any materials, logos, names and other supporting materials provided to you by Tarion in connection with OBC InfoLink. No title to the intellectual property rights in OBC InfoLink, or any supporting materials provided to you by Tarion in connection with OBC InfoLink, is transferred to you or any third party by this Use Agreement. You agree not to display, use or reproduce in any manner the Tarion or third party trade-marks, trade names, logos, product names, service names or icons featured on OBC InfoLink (the "Marks"), which are the property of their respective owners. Without limiting the generality of the foregoing, the display of the Marks on OBC InfoLink does not convey or create any licence or other rights in the Marks and any unauthorized use of the Marks is strictly prohibited. The display of any third party Marks on BuilderLink™ does not imply any relationship or license between Tarion and such third party or any endorsement by Tarion of such third party's wares, services or business.

6. LINKS. OBC InfoLink may contain links to third party websites, web apps or interactions with third party apps or services, as well as links to websites owned and/or operated by you ("**Links**"). The inclusion of any Links does not imply approval, endorsement or recommendation of such Links or any component(s) thereof or any association with its owners or operators by Tarion. Your use of any Links is entirely at your own risk. Among other matters, it is your responsibility to ensure that you review and approve of the terms and conditions of any Links before using it.

7. INFORMATIONAL PURPOSES, ONLY. Services, data, resources and other information and materials provided by OBC InfoLink (collectively, "**OBC InfoLink Resources**") are not intended as a source of educational, professional, administrative, legal or other advice. OBC InfoLink Resources are for informational purposes only and are not intended to be a substitute for professional advice, assessment and evaluation. You agree that you must evaluate, and bear all risks associated with, the use of any OBC InfoLink Resources, including any reliance on the availability, accuracy, completeness, timeliness, usefulness or appropriateness of same. This includes the following: (a) unsolicited information of a general or educational nature; and (b) data and information generated in response to transactions or searches by you or other users of OBC InfoLink

8. NO WARRANTY. OBC InfoLink is provided "as is" and "as available" without any representation, warranty or condition of any kind, including but not limited to the implied warranties or conditions of merchantable quality, fitness for a particular purpose, non-infringement of third party rights and those arising by statute or otherwise in law or from a

course of dealing or usage of trade. The entire risk as to the quality, accuracy, completeness and performance of OBC InfoLink is with you. Without limiting the generality of the foregoing, Tarion does not warrant that: (a) OBC InfoLink will be accurate, complete or up-to-date; (b) defects or errors in OBC InfoLink will be corrected; (c) there will be no modification, disclosure or destruction of, or unauthorized access to, OBC InfoLink ; or (d) the operation of OBC InfoLink will be timely, uninterrupted or error-free. Among other matters, OBC InfoLink or any part thereof may be periodically unavailable to allow for maintenance.

9. NO LIABILITY. In no event shall Tarion be liable, whether in contract (including fundamental breach and breach of a fundamental term), tort (including negligence) or otherwise, for damages (including direct, indirect, incidental, consequential, special, punitive, exemplary and aggravated damages and damages for loss of use, profits or revenue or failure to realize expected savings) or any other remedy relating to this Use Agreement or OBC InfoLink.

10. TERMINATION, MODIFICATION OR SUSPENSION.

(a) This Use Agreement may be terminated by Tarion immediately at any time without notice to you. (b) Upon the termination of this Use Agreement, you shall immediately cease to access and use OBC InfoLink .

(c) Without limiting the generality of the foregoing, Tarion reserves the right at any time and from time to time to modify or suspend, temporarily or permanently, OBC InfoLink or any part thereof (including your access thereto) without notice to you. In the event and for the duration of any suspension, you shall cease to access and use OBC InfoLink, or the part(s) of OBC InfoLink subject to such suspension.

(d) Tarion shall not be liable to you or any third party for any modification or suspension of OBC InfoLink or any part thereof (including your access thereto), or any termination of this Use Agreement. All sections of this Use Agreement other than Section 2 shall survive any such termination, modification or suspension.

11. NOTICE. Any notice or other communication required or permitted to be given or made hereunder shall be in writing and shall be well and sufficiently given or made if delivered by email to Tarion at []@tarion.com and to you at the email address provided when submitting the application to access OBC InfoLink . Any notice or other communication given or made in accordance with the foregoing shall be deemed to have been given or made and to have been received on the day of sending thereof, if sent during Business Hours on a Business Day and, if not, then on the first Business Day after the sending thereof.

"Business Day" means any day from Monday to Friday inclusive, other than New Year's Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day and any special holiday proclaimed under federal or provincial authority ; and "Business Hours" means the hours of 8:00 am to 5:00 p.m. (EST) on a Business Day, unless the context otherwise reasonably requires based on the nature of the communication.

Either party may from time to time change its email address for notice by giving notice to the other party in accordance with this Section.

12. FURTHER ASSURANCES. You agree that you will do all such acts and execute all such further documents and the like and will cause the doing of all such acts and the execution of all such further documents as are within your power to cause the doing or execution of, as Tarion may from time to time reasonably request, in writing, and as may be necessary or desirable to give effect to this Use Agreement.

13. FORCE MAJEURE. Tarion shall be excused from performance under this Use Agreement to the extent and for the period of time that Tarion or is prevented from so performing by reason of any cause beyond its reasonable control.

14. ASSIGNMENT. Tarion may, at any time, without your consent, novate this Use Agreement, or any of its rights and/or obligations hereunder, in whole or in part, to any third party. You may only assign this Use Agreement, or any of your rights hereunder, in whole or in part, to a third party with the prior written consent of Tarion which may be arbitrarily withheld or delayed. This Use Agreement shall inure to the benefit of and be binding upon each of the parties and their respective successors and permitted assigns.

15. GOVERNING LAW. InfoLink is provided by Tarion from its offices in Toronto, Ontario, Canada. The parties agree that all matters relating to this Use Agreement shall be governed by and construed in accordance with the laws of Ontario and federal laws of Canada applicable therein, without regard to conflict of law rules. The parties submit to the non-exclusive jurisdiction of the courts of Ontario. The parties hereby expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods. Tarion makes no representation that OBC InfoLink is appropriate or available for use in locations outside of Ontario, Canada and accessing OBC InfoLink from locations where OBC InfoLink is illegal is prohibited. If you choose to access and/or use OBC InfoLink from a location outside of Ontario, Canada, you do so on your own initiative and are responsible for compliance with local laws.

16. CHOICE OF LANGUAGE. You confirm that you prefer that this Use Agreement and any related documents be written in English. Vous confirmez préférer que cette convention et les documents s'y rattachant soient rédigés en anglais.

17. MISCELLANEOUS. This Use Agreement, including the Terms of Use and the Privacy Policy, is the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior or collateral oral or written representations or agreements relating to such subject matter. Any conflict or inconsistency between the Terms of Use and the Privacy Policy shall be resolved in favour of the Terms of Use. Tarion may, in its sole discretion, revise this Use Agreement at any time without notice to you. In the event any provision of this Use Agreement is found to be invalid the invalidity of any provisions of this Use Agreement shall not affect the validity of this Use Agreement as a whole or in part, unless such invalid provisions are held to be a material part of this Use Agreement such that it may be reasonably assumed that the parties would not have entered into this Use Agreement without such provisions in place. A waiver by either party hereto of any of its rights hereunder or of the performance by the other party of any of its obligations hereunder shall be without prejudice to all of the other rights hereunder of the party so waiving and shall not constitute a waiver of any other rights or, in any other instance, of the rights so waived, or a waiver of the performance by the other party of any of its other obligations hereunder or of the performance, in any other instance, of the obligations so waived. No waiver by either party of any of its obligations hereunder shall be effective or binding upon such party unless same shall be expressed in writing.

You hereby agree to be bound by all of the provisions of this Use Agreement by clicking the "I Agree" button.