

SCHEDULE “I” – ACCESS AND PRIVACY CODE

HOME CONSTRUCTION REGULATORY AUTHORITY

1 Overview

- 1.1 The Home Construction Regulatory Authority (HCRA) is a not-for-profit corporation without share capital that, if designated by the Lieutenant Governor in Council, would be the regulatory authority under the *New Home Construction Licensing Act, 2017* and be responsible for licensing of Ontario’s new home builders and vendors. This document establishes policy and practices regarding information in the custody and control of the HCRA, including:
- a) Access to information contained in existing documents collected or maintained by the HCRA in the administration of its anticipated statutory mandate, including personal information;
 - b) The protection of personal information;
 - c) The collection, use and disclosure of personal and other information by the HCRA in the administration of its anticipated statutory mandate; and
 - d) Effective and timely procedural remedies concerning the handling of personal and other information collected by the HCRA in the administration of its anticipated statutory mandate.
- 1.2 Although the Freedom of Information and Protection of Privacy Act does not apply to the HCRA, the HCRA is committed to the principles of promoting transparency and accountability of its regulatory activities, while also ensuring the privacy of personal and sensitive business information.
- 1.3 If designated, the HCRA will be required under the New Home Construction Licensing Act to share information, including personal information and other sensitive business information, with the Minister, Tarion and other prescribed persons. If designated, effective sharing of information between the HCRA and Tarion will be essential to the fulfillment of their respective mandates and to consumer protection. The access to information procedures in this Policy do not apply to the HCRA’s sharing of information with the Minister, Tarion and other prescribed entities. Procedures regarding information sharing between these organizations will be set out in information sharing agreements between these organizations.

2 Purpose

- 2.1 The purposes of this Policy are:

- a) To provide a right of access to information under the control of the HCRA in accordance with the principles that,
 - i) information should be available to the public, and
 - ii) exemptions from the right of access should be limited and specific; and
- b) To protect the privacy of individuals with respect to personal information about themselves held by the HCRA and to provide those individuals with a right of access to that information.

3 Application – Regulatory Activity

3.1 This Policy applies to information including *personal information* collected, used or disclosed by the HCRA in the course of the HCRA’s anticipated statutory mandate.

4 Definitions

4.1 In this Policy:

<i>access</i>	means access by an individual or an organization to a <i>record</i> of information in the custody of HCRA and under the control of the HCRA.
<i>bulk data</i>	means <i>records</i> requested in bulk or selective form that do not contain personal information and may have commercial value.
<i>CEO</i>	means the Chief Executive Officer of the HCRA.
<i>control</i>	means the power or authority to make a decision about the use or disclosure of the <i>record</i> .
<i>custody (of a record)</i>	means the keeping, care, watch, preservation or security of the <i>record</i> for a legitimate business purpose.
<i>enforcement</i>	means: <ul style="list-style-type: none"> a) policing; b) complaints, inspections, deliberations or investigations that lead or could lead to proceedings in a court or tribunal of the HCRA or other provincial and federal enforcement bodies; c) compliance with regulatory requirements; or d) the conduct of proceedings referred to in clause (b)
<i>frivolous and vexatious (requests)</i>	means any request for information instituted, for example, without any reasonable ground; whose purpose is not legitimate, but is designed to harass or to accomplish some other objective unrelated to the process being used; is a repeat request for the purpose of revisiting the previously addressed issue; or is made in bad faith; or, a speculative

	and/or indiscriminate demand for information without any reasonable grounds to identify an expected outcome.
<i>Minister</i>	means the Minister of Government and Consumer Services or any other member of the Executive Council to whom the responsibility for the administration of the <i>NHCLA</i> is assigned under the <i>Executive Council Act</i> .
<i>NHCLA</i>	means the <i>New Home Construction Licensing Act, 2017</i> , S.O. 2017, c. 33, Sched. 1 and the regulations under that Act, as amended from time to time.
<i>ONHWPA</i>	means the <i>Ontario New Home Warranties Plan Act</i> , R.S.O. 1990, c. O.31 and the regulations under that Act, as amended from time to time
<i>personal information</i>	means a <i>record</i> of information about an identifiable individual or by which an individual's identity could be deduced, but does not include the name, title, business address or telephone number of an officer/director or employee of an organization, or a person acting in a business capacity.
<i>public Information</i>	means a <i>record</i> that the HCRA has published on its website or HCRA has otherwise determined is necessary to make available to the public in order to carry out its administration of the <i>NHCLA</i> .
<i>record</i>	means any <i>record</i> of information, however recorded, in the custody and control of HCRA as a result of administration of the <i>NHCLA</i> by the HCRA.
<i>Registrar</i>	means the Registrar as that term is defined in the <i>NHCLA</i> .
<i>Tarion</i>	means Tarion Warranty Corporation, the corporation designated under the <i>ONHWPA</i> .

5 Accountability

- 5.1 The *CEO* (and upon designation, the *Registrar*) shall have accountability for all decisions to release or not release *records* and for the administration of this Policy.
- 5.2 The *CEO* may delegate some or all of their powers and responsibilities under this Policy to a privacy officer or other designate. Any decision of any such delegated person shall be deemed to be a decision of the *CEO*.
- 5.3 The ongoing collection and processing of information may be the responsibility of other individuals within the HCRA.
- 5.4 Although the HCRA takes reasonable steps to ensure the accuracy of the information provided under this Policy, it does not warrant or otherwise guarantee that the information is complete, accurate and/or up-to-date.

6 Statutory Duty of Confidentiality

- 6.1 The HCRA is committed to openness and transparency about its regulatory activities.
- 6.2 If designated, the HCRA will also have a statutory duty under section 80 of the *NHCLA* to maintain confidentiality over information that is obtained in the course of exercising a power or carrying out a duty related to the administration of the *NHCLA*, subject to exceptions. Where permitted under the *NHCLA*, the HCRA will provide access to information in accordance with this policy.

7 Access to Records

- 7.1 Subject the *NHCLA* and the exemptions in this Policy, every person has a right of access to:
 - (a) His or her own personal information in the custody and control of the HCRA,
 - (b) Public information that is in the custody and control of the HCRA, and
 - (c) Information that may be communicated under section 80 of the *NHCLA*.

8 Access Requirements and Procedure – Public Information

- 8.1 The HCRA will ensure that the public has ready access to *public information*, including the information that is required to be public under the *NHCLA*. The HCRA will make *public information* available on the HCRA's website and in other ways determined by the *CEO* in accordance with the *NHCLA*.
- 8.2 The HCRA will promote access to information by communicating *public information* as is required and relevant to its administration of the *NHCLA*.

9 Access Requirements and Procedure – Other Records

- 9.1 Requests for access to information shall be made in writing and addressed to the HCRA's *CEO*. The written request shall include sufficient information to allow the HCRA to identify and authenticate the identity of the requester.
- 9.2 Within a reasonable period of time of receipt of a written request, having regard to the nature of the information requested, the HCRA shall, subject to the exemptions and provisions of the *NHCLA* and of this Policy, provide the person with access to the records requested or with written reasons for refusing access.
- 9.3 Where a person requests access to records that pertain to individuals or organizations other than the requester, this is considered a third party request for information.
- 9.4 Where a third party requests access to information that includes personal information, the HCRA will seek the affected individual's consent prior to providing access to the third party. The HCRA will only provide access to information that

includes personal information to a third party where the affected individual consents or where the access is otherwise permitted by section 80 of the *NHCLA*.

- 9.5 Before proceeding with any access request the HCRA will provide the requester with the approximate cost, if any, of responding to the request, and then confirm whether the requester still wishes to proceed with the access request, or whether the request is to be withdrawn.

10 Exceptions to Access

- 10.1 Mandatory Exceptions: Subject to section 10.3 of this Policy, the HCRA shall refuse a person access to a *record* where the *record* or part of the *record*:

- a) could reveal *personal information* about another individual, unless the affected individual consents to the access, and/or
- b) could reveal confidential financial information of a licensee (or an officer, director or interested person of a licensee) or of an applicant for a licence (or an officer, director or interested person of an applicant),

unless access is required by law, the information is already public, access is appropriate in litigation or regulatory proceedings, or with the consent of the individual or entity to which the information relates.

- 10.2 Discretionary Exemptions: Subject to section 10.3 of this Policy, the HCRA may refuse access to a *record* where giving access to the *record* or part of the *record*:

- a) may violate a legally recognized privilege such as solicitor-client privilege, litigation privilege or settlement privilege or may have been prepared by or for counsel in giving or seeking legal advice or in contemplation of litigation;
- b) may derive from or may compromise an inspection, investigation or *enforcement* activity of the HCRA, including where access may be refused under the exemptions described in section 14 of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, Chapter F.31 if that Act applied to the HCRA
- c) may contain *bulk* data, or other sensitive aggregate data that may identify a specific person;
- d) may have been generated in the course of a dispute resolution process, including the handling of complaints;
- e) may not be in the public interest or could reasonably be expected to threaten the life, health or security of an individual;
- f) may reveal commercial, scientific, proprietary, technical, financial or human resources information of the HCRA or of any individual, entity or third party that has supplied the *records* to the HCRA in confidence, whether explicitly or implicitly;
- g) may reveal the substance of deliberations by one or more of the following:

the HCRA's Board of Directors (including its committees, sub-committees and task forces), the HCRA's Committees (including its Discipline Committee and Appeals Committee), the *CEO*, or other HCRA management. Exempt information may include, but is not limited to: agenda, minutes, notes of participants, policy options and analysis, advice from staff or an external consultant, and advice to and from government;

- h) may be unreasonably costly to provide, taking into account the nature of the request and the volume of documents requested;
- i) may be for a frivolous or vexatious purpose;
- j) may reasonably endanger the security of a building or of a system, including an information system or procedure established for the protection of a building or information for which protection is reasonably required;
- k) may be a report or other information supplied by a government, regulatory or enforcement body to the HCRA in confidence, whether explicitly or implicitly; or
- l) may reveal procurement information, including information submitted to the HCRA in response to a procurement process.

10.3 Where information that is exempted from an *access* request can be reasonably severed or redacted from a *record*, the HCRA may sever or redact the exempted information and provide the requester with access to the remaining part of the *record* that is otherwise not the subject of any exemption.

10.4 The *CEO* may refuse to confirm or deny the existence of a *record* to which subsections 10.2 (a), (b), (d), (e), (g), (i), (k) or (l) apply.

11 Collection and Privacy of Personal Information

11.1 The HCRA shall limit the collection of *personal information* to that which is necessary to carry out the HCRA's anticipated administration of the *NHCLA* and to fulfill its anticipated consumer protection and regulatory mandate.

11.2 The HCRA collects *personal information* from new home purchasers, new home owners and other members of the public in relation to complaints made and concerns raised about licensees. The primary purposes of collecting this information are to assess whether a person has a valid complaint or has raised a valid concern about a licensee, to provide information regarding the person's rights and responsibilities, and to handle or resolve the complaint or concern.

11.3 The HCRA collects *personal information* from applicants for a licence and from licensees (including officers, directors, interested persons, and associated persons of applicants and licensees). The primary purposes of collecting this information are to determine if the person is entitled to a licence or renewal of a licence under the *NHCLA* and to ensure compliance with the *NHCLA*.

11.4 The HCRA collects information, which may include *personal information*, from Tarion

regarding the warranty plan administered under the *ONHWPA* and regarding historical registration information for the purposes of assessing whether a person is entitled to or remains entitled to a licence and to ensure compliance with the *NHCLA*.

- 11.5 The HCRA may collect information from vendors, builders and other prescribed persons as required by the *NHCLA*, including for the purpose of providing that information to Tarion.
- 11.6 By providing the HCRA with *personal information*, an individual consents to its use and disclosure in accordance with this Policy. As well, such consent may be implied through the individual's conduct with the HCRA.
- 11.7 Subject to the exception set out in section 11.8 of this Policy, where the HCRA collects *personal information*, it shall,
- a) Only collect *personal information* directly from the individual to whom the information relates, unless the individual authorizes another manner of collection; and
 - b) Explain to the individual the purpose for collecting the *personal information* and, at or before the time of collection, obtain their consent for its collection, use and disclosure by the HCRA for that purpose.
- 11.8 Where it is necessary for the administration of the *NHCLA*, the HCRA may collect *personal information* without the knowledge or consent of the individual to whom the information relates, and/or without communicating the purpose of the collection.

12 Use and Disclosure of Personal Information

- 12.1 Subject to the exceptions set out under subsection 12.2 of this Policy, the HCRA shall use *personal information* only for the purposes for which it was collected and/or shall disclose such *personal information* with the consent of the individual to whom the information relates.
- 12.2 The HCRA may use or disclose *personal information* without the consent of the individual, or for purposes other than those for which it was collected, if:
- a) the information is shared with the Minister, Tarion, or a prescribed entity in accordance with the *NHCLA*;
 - b) the information is used or disclosed for purposes related to ongoing licensing, inspection, investigation or *enforcement* activity of HCRA pursuant to the *NHCLA*;
 - c) it is required in connection with a proceeding under the *NHCLA* or in connection with the administration of the *NHCLA*;
 - d) it is requested by a ministry, department or agency of a government engaged in the administration of legislation similar to *NHCLA* or legislation that protects consumers or to any other entity to which the administration of legislation similar to *NHCLA* or legislation that protects consumers has been assigned;

- e) it is authorized under the *Regulatory Modernization Act, 2007*;
- f) it is requested by an entity or organization prescribed under the *NHCLA*, if the purpose of the communication is consumer protection;
- g) it is requested by a law enforcement agency;
- h) it is requested by the counsel of the person to whom the *personal information relates*;
- i) the information is subject to an agreement the HCRA has entered into with a third-party consultant or service provider to manage or use the HCRA *records* on its behalf, if such agreement requires the third party to comply with this Policy and have in place security safeguards comparable to those used by the HCRA;
- j) if required by law or pursuant to a court order;
- k) it is disclosed for the purpose for which it was obtained or for a consistent purpose;
- l) it is disclosed to the HCRA's counsel; or
- m) the information is publicly available.

13 Retention and Security of Personal Information

- 13.1 The CEO shall ensure that reasonable measures respecting records containing personal information are developed and put into place to preserve personal information in its custody and control.
- 13.2 Having regard to the level of sensitivity of the particular information, the HCRA shall take all reasonable steps to ensure that *personal information*, contained in both paper and electronic records, is kept secure from loss and theft.
- 13.3 The HCRA shall adopt administrative and security mechanisms to prevent the unauthorized access, disclosure, use, copying or modification of *personal information* under its *custody* and *control*, including:
- a) Taking reasonable steps to prevent theft, loss or misuse of *personal information* and *records*, and protect them from unauthorized access, modification or destruction;
 - b) Implementing physical and organizational protections for paper records;
 - c) Implementing technological protections for electronic records;
 - d) Ensuring that all employees, the Board of Directors, Committee members, and all consultants or contract workers employed or retained by the HCRA have received adequate training to comply with this Policy; and
 - e) Ensuring that any consultant or service provider retained by the HCRA to manage or use the HCRA records on its behalf agrees to have security safeguards in place comparable to those used by the HCRA.
- 13.4 The HCRA will retain information for as long as is necessary to fulfill the purpose for which it was collected or for its use in accordance with this Policy, and for 12 months thereafter in order to provide an opportunity for the individual to access

their own personal information. A record of personal information may be retained beyond this time period in the following circumstances:

- a) Another law requires or authorizes the retention;
- b) The record is reasonably required for the HCRA's future regulatory actions;
or
- c) The record is transferred to storage or archives for historical research or permanent preservation, provided it is made anonymous of personal information.

13.5 For all records that have fulfilled the purposes for which they were collected or further use and are not to be further retained, the record will be destroyed in a manner that is appropriate given its medium:

- a) A paper record of personal information, and all copies, shall be shredded before it is destroyed.
- b) Electronic data containing personal information is to be deleted from hardware that hosted the data.
- c) Before hardware that hosted electronic data is discarded or destroyed, all electronic data containing personal information is to be deleted

13.6 Ongoing access to *personal information* under the control of the HCRA shall be restricted to appropriate HCRA staff.

14 Correction of Personal Information

14.1 Where an individual disagrees with the accuracy of *personal information* about themselves held by the HCRA, the individual has the right to challenge the accuracy and have it addressed as follows:

- a) Individuals requesting corrections to their own *personal information* in order to ensure its accuracy and/or completeness shall send their requests in writing to the HCRA's CEO. The request must include sufficient detail to identify the applicable personal information and the correction being sought.
- b) The HCRA shall respond in writing to a request for correction(s) or amendment(s) to *personal information* within a reasonable number of days after receiving the request, unless there are special circumstances.

14.2 Where the HCRA agrees to correct or amend a *record of personal information*:

- a) Amendments or corrections to *personal information* received from the individual to whom it relates shall be recorded by the HCRA as soon as practically possible, and
- b) The HCRA will provide written notice to every third party to whom the original *record* was provided within the previous twelve (12) months, unless to do so is impractical or would reasonably interfere with the regulatory activities of the HCRA.

- 14.3 If an individual's request for a correction or amendment is refused, the HCRA shall provide the reasons for such refusal in writing to the individual to whom the information relates, and the HCRA will file with the *record* a brief statement of disagreement provided by the individual if requested, unless to do so is impractical or would reasonably interfere with the regulatory activities of the HCRA.
- 14.4 The HCRA may be unable to make a requested correction, due to circumstances that include, but are not limited to the following:
- a) the fact that the statement was made, whether it is correct or not, is relevant to the regulatory activities of the HCRA;
 - b) The HCRA determines that it does not have sufficient knowledge, expertise or authority to make the correction;
 - c) correction or amendment may reasonably interfere with a regulatory process of the HCRA including, but not limited to, an inquiry, inspection, investigation or hearing;
 - d) correction or amendment may reasonably interfere with the regulatory or enforcement activities of another statutory regulatory body or a law enforcement agency;
 - e) correction or amendment may alter an original document that belongs to someone else and will eventually be returned to that person; or
 - f) correction or amendment is prohibited by a law.

15 Fees

- 15.1 *Personal information* shall be made available to the person to whom the information relates at a reasonable cost.
- 15.2 *Records*, other than *bulk data*, shall be made available to a requester at a cost which reflects the total cost of providing the information. The cost of providing *bulk data* will be determined on a case-by-case basis. In determining fees, the HCRA will make efforts to be consistent and base costs on publicly available criteria.

16 Complaints and Remedies

- 16.1 Complaints about the HCRA's handling of *personal information*, access to information or correction to *records* shall be made in writing to the HCRA's *CEO* and shall describe the issue the complainant wishes to have reviewed. The *CEO* will review all complaints and endeavour to respond within 30 days of receipt of the complaint. If the *CEO* is unable to respond within 30 days, the HCRA will advise the complainant of the date a response can be expected. If a complaint is found to be justified, the HCRA shall take appropriate measures to rectify the problem, including where necessary, amending its procedures and practices.

17 Administration

- 17.1 The HCRA shall implement policies and practices required to give effect to this Policy, as soon as practicable, including those relating to,
- a. advising Board members, management and staff about the Policy, and providing appropriate training to ensure compliance with the Policy's provisions; and
 - b. the development of documentation describing this Policy and its related procedures and practices.

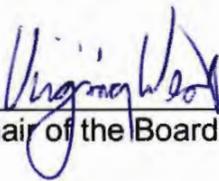
18 Interpretation

- 18.1 In the event that this Policy conflicts with the *NHCLA* and any other applicable legislation, the *NHCLA* and applicable legislation shall prevail.

19 Effective Date and Review

- 19.1 This Policy comes into effect on February 1, 2021 and applies to records received by or created by the HCRA after that date.
- 19.2 The HCRA shall initiate from time to time a review of this Policy and related policies and practices. If changes are made to this procedure, they will be posted on the HCRA's website.

**Home Construction Regulatory
Authority**


Chair of the Board

Date: Oct. 30, 2020

**Her Majesty the Queen in right of
Ontario**


Minister of Government and Consumer
Services

Date: November 2, 2020