

Ontario One Call By-Law #1

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Board Approved June 20, 2024

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ONTARIO ONE CALL
(the “Corporation”)
BY-LAW NUMBER 1

Recitals

WHEREAS Ontario One Call (the “Corporation”) is a not-for-profit corporation presently governed by the *Ontario Underground Infrastructure Notification System Act, 2012*, (“**OUINSA**”) and the *Not-for-Profit Corporations Act, 2010* (Ontario) to the extent that it does not conflict with the *Ontario Underground Infrastructure Notification System Act, 2012*;

AND WHEREAS it is intended that all organizations who own or operate underground infrastructure and are responsible to ensure delivery of “locates” based on requests conducted through the Corporation are or become Members of the Corporation;

~~**AND WHEREAS** five broad membership groups have been identified and include the Gas and Oil Pipeline Industry, the Electricity Industry, the Telecommunications and Cable Industry, the Municipalities and Government Industry, and a category of other owners or operators of underground infrastructure (“Others”), and that those organizations are or must become voting members in the Corporation with rights as prescribed by statute, or such other groups as may be identified in the Act or Regulations;~~

~~**AND WHEREAS**, subject to OUINSA, the MOU, the Act and Regulations, it is intended to structure the Board and the voting members to ensure equal representation from each of the first four above voting member groups and to allocate one Board representative for the Others category and two Board representatives to be reserved for suppliers of services to underground infrastructure (e.g. Excavators) so as to provide for a representative and workable governance model;~~

AND WHEREAS, in accordance with OUISNA and the Minister’s orders (as may be updated from time to time), the Corporation’s board is comprised of a total of twelve (12) board members.

NOW THEREFORE this By-Law is hereby enacted as By-Law No. 1 and supersedes all prior general by-laws.

ARTICLE 1. DEFINITIONS

1.01 DEFINITIONS

In this By-law, unless the context otherwise requires, the following capitalized terms have the following meanings:

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- (a) “**Act**” means the *Not-for-Profit Corporations Act* (Ontario) and, where the context requires, includes the regulations made under it;
- (b) “**Appointed Directors**” means those persons appointed a Director by the Minister pursuant to the MOU and OUIINSA;
- (c) “**Auditor**” means a person permitted to conduct an audit under the *Public Accounting Act, 2004*;
- (d) “**Board**” means the board of directors of the Corporation;
- (e) “**Board Exclusive Responsibility**” means each specific decision identified by section 36(2) of the Act that cannot be delegated by the Board to a committee or management, being:
 - (i) To submit to the Members any question or matter requiring the approval of the Members.
 - (ii) To fill a vacancy among the Directors or in the position of Auditor.
 - (iii) To appoint additional Directors.
 - (iv) To issue debt obligations except as authorized by the Board.
 - (v) To approve any financial statements under section 83 of the Act.
 - (vi) To adopt, amend or repeal by-laws.
 - (vii) To establish contributions to be made, or dues to be paid, by Members under section 86 of the Act;
- (f) “**By-laws**”, unless otherwise specified, means the by-laws of the Corporation;
- (g) “**CEO and President**” means the person engaged by the Board to manage and administer the day-to-day affairs of the Corporation and holding the title of Chief Executive Officer and President;
- (h) “**Chair of the Board**” means the Director elected as chair of the Board or appointed by the Minister as such;
- (i) “**Committee**” means any committee created by the Board or pursuant to the By-laws;

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- (j) **“Conflict of Interest”** may be more particularly described in the MOU between the Ministry and the Corporation and includes any situation that impairs or interferes with (or appears to impair or interfere with) a Director’s ability to vote objectively and in the best interests of the Corporation including, without limitation, the following types of circumstances that may give rise to a conflict of interest for any Director of the Corporation:
- (i) Financial interest – a Director has a financial interest in a decision when the Director, through a family or business relationship, stands to gain by that decision, either in the form of money, gifts, favours, gratuities or other special considerations that have value;
 - (ii) Competing interest – a Director has a competing interest with the Corporation when the Director has an affiliation with another entity that could be impacted by a decision before the Corporation; or
 - (iii) Adverse interest – a Director has an adverse interest to the Corporation when the Director is a party to a claim, application or proceeding that is adverse in interest to the Corporation or its interests; or
 - (iv) Material Interest – pursuant to the Act, a Director has a material interest if they are a director or officer of, or have a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the Corporation;
- (k) **“Corporation”** means Ontario One Call, a not-for-profit corporation governed by OUISA;
- (l) **“Director”** means a member of the Board, whether an Appointed Director or an Elected Director;
- (m) **“Electricity Industry Members”** means the members of the Electricity Industry as determined by the Human Resources, Governance and Nomination Committee and the CEO and President.
- (n) **“Excavator”** means any individual, partnership, corporation, public agency or other person or entity that digs, bores, trenches, grades, excavates, moves or breaks earth, rock or other materials in the ground, and “excavation” has a corresponding meaning;
- (o) **“Excluded Person”** means:
- (i) Any employee of the Corporation;

- (ii) Any individual who has been within the preceding 12 month period an employee of the Corporation;
- (iii) Any person who is an immediate family member of an employee of the Corporation, including a spouse, parent, child, sibling or other person who has an economic dependence on the employee; and
- (iv) Any person who is an employee of a trade association representing the interests of one of the subcategories of Members;
- (p) **“Gas and Oil Pipeline Industry Members”** means the members of the Gas and Oil Pipeline Industry as determined by the Human Resources, Governance and Nomination Committee and the CEO and President.
- (q) **“Majority”** means a number or percentage equaling more than half of the total;
- (r) **“Member”** means a member of the Corporation;
- (s) **“Members”** means all of the voting members and consisting of the five sub-categories of voting members being (1) Electricity Industry Members; (2) the Gas and Pipeline Industry Members; (3) the Municipal and Government Industry Members; (4) the Telecommunications and Cable Industry Members; and (5) Others.
- (t) **“Minister”** means the person who is the Minister of the Ministry;
- (u) **“Ministry”** means the Ministry of Public and Business Service Delivery in Ontario, or its successor from time to time;
- (v) **“MOU”** means the Memorandum of Understanding entered into between the Corporation and ~~Her~~His Majesty ~~The Queen/the~~ King in Right of Ontario as represented by the Minister of Public and Business Service Delivery as the same may be amended or replaced from time to time and includes all Schedules attached in the MOU;
- (w) **“Municipalities and Government Industry members”** means the members of the Municipal and Government Industry sectors as determined by the Human Resources, Governance and Nomination Committee and the CEO and President.
- (x) **“Officer”** means those officers of the Corporation set out in section 11.01;
- (y) **“Ordinary Resolution”** means a resolution passed by a Majority of the votes cast on that resolution;

- (z) **OUINSA**” means the *Ontario Underground Infrastructure Notification System Act*, 2012 as amended or replaced from time to time and includes the regulations made under it;
- (aa) **“Policies”** means written directives approved by the Board affecting Members and Excavators referred to in the Rules.
- (bb) **“Registered Office”** means the civic address of the head office of the Corporation;
- (cc) **“Regulations”** means Regulations made under OUINSA or the Act, as may be updated from time to time.
- (dd) **“Rules”** means the Rules created by the Corporation and posted on its website accessible to Members and Excavators
- (ee) **“Special Resolution”** means a resolution that is submitted to a special meeting of the Members duly called for the purpose of considering the resolution and passed at the meeting, with or without amendment by at least two thirds (2/3) of the votes cast, or consented to by each Member entitled to vote at a meeting of the Members. A complete list of Special Resolutions required by the Act is set out in Appendix A.
- (ff) **“Telecommunication and Cable Industry Members”** means the members of the Telecommunication and Cable Industry as determined by the Human Resources, Governance and Nomination Committee and the CEO and President.
- (gg) **“Voluntary Members”** means persons who are not required under the OUINSA to become Members but choose to voluntarily do so and are admitted to Membership by the Board.

ARTICLE 2. INTERPRETATION

2.01 RULES FOR INTERPRETING THIS BY-LAW

- (a) Words importing the singular number include the plural and vice versa, and words importing persons include individuals, corporations, partnerships, trusts and unincorporated organizations.
- (b) The headings used in this By-law are inserted for reference purposes only and are not to be considered or taken into account in construing the terms or provisions thereof or to be deemed in any way to clarify, modify or explain the effect of any such terms or provisions.

- (c) Any references in this By-law to any law, by-law, rule, regulation, order or act of any government, governmental body or other regulatory body shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.
- (d) Except where specifically stated otherwise, references to actions being taken “in writing” or similar terms shall include electronic communications and references to “address” or similar terms shall include electronic mail addresses. It is the intent of the Corporation to use electronic communications whenever possible so long as the recipient has expressly consented to receive notices in such a manner.

ARTICLE 3. MEETING RULES OF THE BOARD AND MEMBERS

3.01 ELECTRONIC PARTICIPATION IN MEETINGS

- (a) Any Member, Director, or Committee member may participate in a meeting of the Members, the Board, or a Committee (as applicable) by means of telephonic or electronic means that permit all persons participating in the meeting to communicate adequately with each other during the meeting, and a person so participating in a meeting is deemed, for the purposes of the Act and this By-law, to be present at the meeting.
- (b) Any meeting of the Members, Board or Committee may be held entirely by telephonic or electronic means, or by any combination of in-person attendance and by one or more electronic means, as the Board shall determine, and that permits all participants to communicate adequately with each other during the meeting.
- (c) A notice of a meeting of the Members, the Board or a Committee to be held entirely or partially by telephonic or electronic means must include instructions for attending and participating in such meetings by telephonic or electronic means at the meeting, including, if applicable instructions on how to vote at such meeting.

3.02 VOTING RULES

- (a) Business arising at any meeting of the Members, the Board or any Committee shall be decided by Ordinary Resolution, unless otherwise required by the Act.
- (b) Except as provided in this By-law and in particular sections 5.02 and 5.03, each Member, each Director and each Committee member shall be entitled to one (1) vote at any meeting of the Members, Board or Committee, respectively.

- (c) Members shall be entitled to appoint a proxy to attend and vote at a meeting of the Members, and the proxyholder must be an individual senior employee appointed from that Member or alternatively, the Chair of the Board of the Corporation. A proxy, in the form approved by the Board and included with the annual meeting notice, must be submitted to the Secretary by a deadline fixed by the Board, which deadline (in accordance with the Act) shall not exceed forty-eight (48) hours (excluding Saturdays, Sundays and holidays) in advance of the Members' meeting.
- (d) No individual Director or Committee member may vote by proxy at a meeting of the Board or a Committee, respectively.
- (e) Votes at a meeting of Members shall be by ballot instead of a show of hands. In the event of a tie, the motion is lost. Meetings held in whole or in part through telephonic or electronic means will have votes taken in a way that the method of voting and the result of the voting is clearly communicated to all participants.
- (f) An abstention shall not be considered a vote cast.
- (g) An entry in the minutes of a meeting to the effect that the chair of the meeting declared a resolution to be carried or defeated after the ballots are counted is, in the absence of evidence to the contrary, proof of the fact without further proof of the number or proportion of the votes recorded in favour of or against such resolution.

3.03 WRITTEN RESOLUTION EQUALLY VALID

A by-law or resolution in writing signed by all the Members, Directors, or Committee members entitled to vote on that by-law or resolution at a meeting of Members, Board, or Committee, respectively, is as valid as if it had been passed at a meeting of Members, Board or Committee, respectively.

3.04 MINUTES

Minutes shall be kept for all meetings of the Members, the Board or any Committee, and shall be approved at the next meeting of the Members, the Board or the Committee, as the case may be.

ARTICLE 4. PURPOSES OR OBJECTS OF THE CORPORATION

4.01 PURPOSES OR OBJECTS

The purposes for which the Corporation is incorporated are set out in OUINSA and are reproduced here as a reference for the Members and the Board:

- (a) To operate a call system to receive locate requests within Ontario.
- (b) To identify for excavators whether underground infrastructure is located in the vicinity of a proposed excavation or dig site.
- (c) To notify a member of the Corporation of proposed excavations or digs that may affect the underground infrastructure of the member.
- (d) To raise public awareness of the Corporation and the need for safe digging.
- (e) To promote and undertake activities in relation to the matters assigned to the Corporation under OUINSA and the regulations under OUINSA, including compliance and enforcement ~~under its regulations~~.
- (f) To promote and undertake activities which support timely responses to locate requests.
- (g) To promote and undertake additional activities in accordance with the MOU.
- (h) To carry out any additional objects the Minister may, by order, specify.

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ARTICLE 5. MEMBERSHIP IN THE CORPORATION

5.01 ADMISSION AND DESIGNATION.

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- (a) The persons who have made an application for Membership or are deemed to be Members under the OUINSA, have been or shall be admitted to membership in the Corporation by Ordinary Resolution of the Board in one of the following subcategories:
 - (i) Electricity Industry Members;
 - (ii) Gas and Oil Pipeline Industry Members;
 - (iii) Municipalities and Government Industry Members;
 - (iv) Telecommunications and Cable Industry Members; and
 - (v) Other Members.
- (b) Each subcategory of Members ranks equally with the other subcategories of Members and together represent one class of Members.

5.02 MEMBERS.

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Each Member shall be entitled to attend all Members' meetings. Members' meetings shall refer throughout to both annual general meetings of the Members and special meetings of the Members of the Corporation. At all Members' meetings, each Member shall be entitled to cast one (1) vote on every question. However, in order to ensure that no one subcategory of Members prevails over the others by size of its membership, the votes will be tabulated on each matter in accordance with Section 5.03 of this By-law. Each Member shall be entitled to cast such vote(s) by proxy through a proxyholder, which proxyholder must be either an individual senior employee of the Member or the Chair of the Board of the Corporation. Each proxy shall be executed in the form provided for in the notice of the Members' meeting and deposited with the Secretary of the Corporation prior to the meeting.

5.03 WEIGHTING OF VOTES.

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Each of the five subcategories of Members will have 20 votes to be allocated on a pro-rated basis based on each sector's voting. The result of the tabulation from each of the five Member subcategories will be aggregated and the total will decide the matter being voted upon (for example, if 51 or more out of 100 voted yes, then the matter is approved, or in the case of a Special Resolution, if 67 or more out of 100 voted yes, then the matter is approved).

5.04 FEES.

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Fees or dues to be paid by Members ~~are addressed in a separate by law and inshall be established by the corporation in accordance with OUIINSA and~~ the MOU.

5.05 TERMINATION.

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Membership in the Corporation shall be terminated if:

- (a) a corporate member is dissolved or wound-up;
- (b) an individual Member dies or, in the case of a non-individual member that is other than a corporation, ceases to exist;

- (c) subject to (d), if the Member ceases to own or operate underground infrastructure;
or
- (d) if the Member intends to abandon its infrastructure or operations respecting the infrastructure, and it has transferred the ownership or operations of such infrastructure to another Member, or has removed the infrastructure from the ground. Otherwise, the Member remains a Member until it has done so.

5.06 NON-TRANSFERABLE.

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Membership in the Corporation is not transferable and is cancelled when a Member ceases to be a member.

5.07 SCHEDULE 1

Members must adhere to the requirements of Schedule 1 to By-~~law~~-Law No. 1 which is incorporated by reference in and forms part of this By-law.

ARTICLE 6. ANNUAL AND SPECIAL MEETINGS OF THE MEMBERS OF THE CORPORATION

6.01 ANNUAL MEETING - TIMING

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The Corporation shall hold an annual meeting of its Members not more than fifteen (15) months after holding the preceding annual meeting. The annual meeting will either be in person or held electronically, or such other combination thereof as technology may support, in compliance with the Act.

6.02 ANNUAL MEETING – NOTICE

- (a) Notice of the time and place of (or electronic link to) the annual meeting of the Members shall be given to each Member, each Director and to the Auditor not less than ten (10) days and not more than fifty (50) days in advance of the meeting, by one of the following methods:
 - (i) by prepaid mail by sending it to the last address shown on the records of the Corporation; or
 - (ii) by electronic communication by sending it to the last electronic communication address on record.

- (b) Attendance of any Member at a meeting of Members shall constitute a waiver of notice of the meeting, except where such Member attends such meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.
- (c) The notice of an annual meeting shall contain sufficient information concerning any special business (see section 6.03(b)) to permit the Member to form a reasoned judgment on the decision to be taken as well as the text of any Special Resolution to be submitted to the meeting.
- (d) A form of proxy shall accompany the notice of annual meeting.

6.03 ANNUAL MEETING – BUSINESS

- (a) The business transacted at the annual meeting shall include (and need not be highlighted in the annual meeting notice):
 - (i) the minutes of the previous meeting of Members;
 - (ii) reports from the Chair of the Board and the CEO and President;
 - (iii) report of the Auditor and presentation of the annual financial statements;
 - (iv) election of Directors; and
 - (v) appointment of the incumbent Auditor.
- (b) Special business transacted at an annual meeting requires specific advance notice and includes any business not included in section 6.03(a), such as:
 - (i) approval of By-law amendments;
 - (ii) Special Resolutions (see Appendix A); or
 - (iii) appointment of a new Auditor.

6.04 LOCATION OF ANNUAL MEETING

The annual meeting of the Members shall be held at the Registered Office, or such other place and at such time as the Board may determine. Alternatively, the annual meeting may be held (a) entirely by telephonic or electronic means or (b) partly in person and partly by telephonic or electronic means, and in each case subject to section 3.01 and as the Board shall determine.

6.05 SPECIAL MEETINGS OF THE MEMBERS

- (a) The Board may call a special meeting of the Members.
- (b) Members who hold at least ten percent (10%) of the votes that may be cast at a meeting of the Members may, in writing, requisition the Board to call a special meeting of the Members for the purposes stated in the requisition.
- (c) The requisition must state the business to be transacted at the meeting and must be sent to each Director and to the Registered Office.
- (d) The Board shall call and hold a meeting of the Members within twenty-one (21) days from receiving the requisition.
- (e) Notice of a special meeting shall be given in the same manner as provided in section 6.02 and shall state the purpose for which it is called. A special meeting of the Members may be held in the same manner as annual meetings, as contemplated in section 6.04.
- (f) A special meeting of the Members shall be held at the Registered Office or such other place as the Board may determine. Alternatively, a special meeting may be held (a) entirely by telephonic or electronic means or (b) partly in person and partly by telephonic or electronic means, and in each case subject to section 3.01 and as the Board shall determine.

6.06 ADJOURNED MEETING

If, within one-half (1/2) hour after the time appointed for a meeting of the Members, a quorum is not present, the meeting shall stand adjourned until a day to be set within thirty (30) days of the meeting and if applicable, the place of the continued meeting, as determined by the Chair. At least five (5) days' notice of the adjourned meeting shall be given to the Members that conforms to the requirements of section 3.01(c).

6.07 QUORUM

A quorum for the transaction of business at an annual or special meeting of the Members shall consist of at least five (5) of the Members of each of the five (5) subcategories of members described in section 5.01 and present at such a meeting in person or represented by proxy. If a quorum is present at the opening of a meeting of the Members, the Members present may proceed with the business of the meeting, even if a quorum is not present throughout the meeting.

6.08 CHAIR

The chair of a meeting of the Members shall be:

- (a) the Chair of the Board;
- (b) the Vice-Chair of the Board, if the Chair of the Board is absent; or
- (c) a chair elected by the Members present, or the Board as the case may be, if the Chair and Vice-Chair of the Board are absent.

6.09 GUESTS

- (a) The Auditor is entitled to notice of and to attend meetings of the Members.
- (b) Other guests may attend a meeting of the Members at the invitation of the Board.

(c) The Corporation's Annual Meeting must be open to the public.

ARTICLE 7. BOARD OF DIRECTORS

7.01 COMPOSITION OF THE BOARD

The affairs of the Corporation shall be managed by a Board who may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation and are not by the by-laws or any resolution of the Corporation or by statute or the MOU expressly directed or required to be done by the Corporation at a meeting of Members or any subcategory of Members. Each director shall be not less than eighteen (18) years of age and shall not be disqualified under the Act and shall have met the competency criteria described in the MOU.—once such criteria, if any, are stated to come into effect.

7.02 NUMBER OF DIRECTORS

- (a) Until changed in accordance with the OUINSA, the Act ~~or~~ the MOU, ~~the or a new Order from the Minister, the total~~ number of ~~Elected~~ Directors shall ~~consist of eight (8) directors, or such other number of directors as may be determined from time to time by Special Resolution. In addition, there will be such a number of Appointed Directors pursuant to the OUINSA as determined by~~ as specified in the Minister's July 28, 2023 Order.

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- (b) The Elected Directors shall be elected from time to time by the Members from among those persons put forward by the Human Resources, Governance and Nomination Committee of the Corporation and approved by the Board, ~~of whom four (4) will be representatives of the Members and four (4) will be representatives of the Excavator community.~~
- (c) Nominations for Elected Directors representing Members or Excavators shall be deposited with the Secretary of the Corporation prior to each annual meeting for the election of Directors who shall work with the Human Resources, Governance and Nomination Committee to prepare a slate of Elected Directors for presentation to and election by the Members as aforesaid.
- (d) At present, the Minister ~~is to may~~ appoint ~~four (4) members to the Board of Directors for a term specified in the appointment as long as the~~ Appointed Directors ~~to do not constitute a majority of~~ the Board.

~~7.021.01~~ IN ACCORDANCE WITH THE MINISTER'S ORDER DATED MAY 9, 2024, AS MAY BE UPDATED FROM TIME TO TIME, REGARDLESS OF WHETHER THE MEMBER IS AN ~~Term~~

- (e) ~~The term of each~~ Elected Director ~~shall be for a~~ or and Appointed Director:
 - (i) no more than 34 percent of Directors shall be drawn from among individuals who are (or were within the preceding one year period):
 - (ii) directors or officers of one (1) year until members of the next annual meeting of Members, after the coming into effect ~~Corporation, or~~
 - (iii) employees or agents of this By-law. Thereafter, the terms ~~members~~ of the Corporation, where the individual's role includes responsibilities relating to locate requests or to the planning, development or maintenance of underground infrastructure;
 - (iv) no more than 34 percent of Directors shall be drawn from among individuals who are (or were within the preceding one year period):
 - (v) directors or officers of excavators, or
 - (vi) employees or agents of members of excavators, where the individual's role includes responsibilities relating to excavation or digging in Ontario; and
 - (vii) for greater certainty, the restrictions applicable to employees or agents of members or excavators do not apply to individuals whose responsibilities are (or were, in the case of former employees or agents) exclusively related to

human resources, information technology, communications, legal services, or finance.

7.03 TERM

Elected Directors ~~shall be staggered with three Directors to have~~ are elected up to a three (3) year ~~terms, three Directors to have two (2) year terms and two Directors to have two (2) term.~~ If necessary, in order to support the good governance of the Corporation, the Chair may extend the term of an Elected Director by up to a maximum of one year ~~term~~ on a single occasion before requiring the Elected Director to stand for reelection. Where possible, no more than three (3) Elected Directors will be required to retire or be up for re-election in any one given year to ensure adequate Board succession planning. If the total number of Elected Directors and Appointed Directors exceeds the total number of Directors permitted by Minister's July 28, 2023 Order or the OUINSA, then the Board Chair shall determine which Elected Directors will cease to hold office before the end of their term so as not to exceed the total number of permitted directors. The Human Resources, Governance and Nomination Committee shall develop and present to the Board a plan as to which nominees will be recommended for which such terms in accordance with the foregoing, as part of their process of creating a slate of nominees to be put forward to the Members for election at the subsequent annual meetings of Members. ~~A~~An Elected Director may serve for successive terms up to a total of nine (9) years in the aggregate if so elected and re-elected.

7.04 APPOINTED DIRECTORS

Pursuant to the OUINSA and the MOU, in addition to Elected Directors there ~~will~~may be Appointed Directors who serve on the Board of Directors of the Corporation at the pleasure of the Minister under the OUINSA.

7.05 CONSENT

All Directors, whether elected or appointed, must consent in writing to be a Director of the Corporation.

7.06 VACATION OF OFFICE

~~The~~For the office of Director, the Director shall be vacated upon the occurrence of any of the following events:

(a) the Elected Director; ~~does not qualify for the position pursuant to paragraph 7.12;~~

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~~(a)~~(b) the Elected Director by notice in writing to the ~~Secretary~~Chair or the Vice-Chair of the Corporation, resigns ~~their~~ office, which resignation shall be effective at the time it is received by the ~~Secretary~~Chair or the Vice-Chair of the Corporation or at ~~the~~ time specified in the notice, whichever is later;

~~(b) — the Director ceases to have the qualifications set out in section 7.12;~~

~~(c) — the Director dies;~~

~~(d) — the Director becomes an Excluded Person;~~

~~(c)~~ the Members, the Appointed Director by notice in writing to the Chair or the Vice-Chair of the Corporation and the Minister resigns office, which resignation shall be effective at the time it is received by the Chair or the Vice-Chair of the Corporation and the Minister or at the time specified in the notice, whichever is later;

~~(e)~~(d) an Ordinary Resolution is passed by the members at a special meeting called for the purpose, vote by Ordinary Resolution to remove~~removing~~ an Elected Director before the expiration of the Elected ~~Director's~~Director's term of office; ~~or~~

~~(f)~~(e) the Minister revokes the appointment of an~~the Elected or~~ Appointed Director; ~~dies;~~

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~~(f)~~ the Appointed Director's appointment is revoked by the Minister; or

~~(g)~~ the Minister's exercise of appointment results in there being a greater percentage of directors on the Board drawn from those classes of persons than is permitted by subparagraph 7.02(e), the Elected Director drawn from those classes of persons most recently elected shall immediately cease to be a Director, effective as of the date of the Minister's appointment of the Appointed Director, provided that if it cannot be determined which of such Elected Directors drawn from those classes of persons was most recently elected, the Elected Director drawn from those classes of persons whose current term of office ends latest shall immediately cease to be a director, effective as of the date of the Minister's said appointment.

7.067.07 VALIDITY OF ~~ACTIONS~~ACTIONS

No act or proceeding of any Director or the Board shall be deemed invalid or ineffective by reason of the subsequent ascertainment of any irregularity in regard to such act or proceeding or the qualification of such Director or the Board.

7.077.08 DIRECTORS' ~~RELIANCE~~RELIANCE

Directors may rely upon the accuracy of any statement or report prepared by the Corporation's auditors and shall not be responsible or held liable for any loss or damage resulting from acting upon such statement or report.

7.087.09 REIMBURSEMENT OF EXPENSES

Directors are entitled to be reimbursed for reasonable expenses incurred in attending Board meetings as determined by the Board policy from time to time. The Board may establish reasonable stipends to be paid to Directors for attending Board meetings and Committee meetings.

7.10 COMPOSITION

The Board will strive to ensure that the Directors, collectively, possess the skills necessary to fulfill its governance responsibilities and oversee the management of the Corporation, including any skills required under the MOU, all as may be further specified in Board policy. The Board is aware that the Corporation's location and size of catchment area may be limiting in as far as recruiting the expertise required for the Board. If the Board identifies gaps in skills, particularly skills required by the MOU, it shall make every effort to address the gaps through recruitment of new Directors, education of the Board and/or by retaining external expertise when needed.

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7.11 —7.11 NOMINATIONS TO THE BOARD

Nominations for election as an Elected Director at the annual meeting of the Corporation may be made only in accordance with the following process~~:-~~, with due regard to the MOU, as applicable:

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- (a) The Board will annually establish a Human Resources, Governance and Nomination Committee to assist with recruiting and recommending candidates to fill vacancies on the Board.
- (b) The Board will identify the number of vacancies for the year's annual meeting of Members and shall conduct a skill-set and gap analysis each year as part of the nominations process in accordance with the MOU. The Board shall endeavour to ensure that the candidates reflect the geographic areas represented by the Corporation.
- (c) Directors shall be evaluated based on their past performance. Renewal of their term shall not be automatic.

- (d) Throughout the year, the Human Resources, Governance and Nomination Committee shall identify through consultation with the Board, the CEO and President and external stakeholders, potential candidates for the Board and determine the willingness of such candidates to serve.
- (e) An open call for nominations shall be made in a manner to be determined by the Board, and interested parties will be encouraged to submit written applications. The call for nominations shall be directed to the relevant stakeholders at least sixty (60) days in advance of the annual meeting of Members.
- (f) Applications shall be submitted to and reviewed by the Human Resources, Governance and Nomination Committee. The Human Resources, Governance and Nomination Committee will ensure that the nominees meet the skills requirements and will prepare a list of recommended nominees who best meet the criteria for Board approval. The Human Resources, Governance and Nomination Committee shall provide such list to the Board.
- (g) The Board shall review the list of recommended nominees from the Human Resources, Governance and Nomination Committee and prepare a list of candidates who meet the criteria identified by the Board.
- (h) The Board shall ensure that the Board's list of recommended candidates, together with their qualifications, are made available to the Members at least ten (10) days prior to the annual meeting of Members.

7.12 QUALIFICATIONS OF DIRECTORS

- (a) Every Elected Director shall:
 - (i) be eighteen (18) or more years of age;
 - (ii) not have the status of bankrupt;
 - (iii) not be a person who has been found under the *Substitute Decisions Act, 1992* or under the *Mental Health Act*, to be incapable of managing property;
 - (iv) not be a person who has been found to be incapable by any court in Canada or elsewhere; and
 - (v) not be an Excluded Person.

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- (b) Every Elected Director, when first elected to the Board, shall sign and submit to the Secretary a form of consent to act as Director within ten (10) days of being elected, which form must be maintained within the Corporation's registers.

~~7.13 STAGGERED TERMS OF OFFICE~~

~~Elected Directors are elected to a three (3) year term, with at least three (3) Directors required to retire or be up for re-election in one given year to ensure adequate Board succession planning.~~

~~7.15~~ 7.13 VACANCIES

- (a) ~~Subject to meeting the criteria in the Minister's Order dated May 9, 2024 (as may be updated from time to time), if~~ a vacancy occurs on the Board respecting an Elected Director position for any reason, and subject to the Act, the OUINSA and the MOU, the Board shall fill the vacancy with a new Elected Director representing the same Member subcategory or Excavator group from which such Elected Director leaving was elected to the Board for the remainder of the unexpired portion of the term of the vacating Director.
- (b) If there is not a quorum of Directors, the Directors in office shall, without delay, call a special meeting of the Members to fill the vacancy or vacancies and, if they fail to call such a meeting or if there are no Directors in office, the meeting may be called by any Member.

ARTICLE 8. RESPONSIBILITIES OF INDIVIDUAL DIRECTORS

8.01 STANDARDS OF CARE

Every Director and Officer of the Corporation, in exercising their powers and discharging their duties to the Corporation, shall:

- (a) act honestly and in good faith with a view to the best interests of the Corporation;
~~and~~
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; ~~and~~
- (c) comply with the applicable provisions of the MOU.

8.02 CONFLICT OF INTEREST - SELF-DECLARATION AND PROCEDURES

~~(a) Every Director who, either directly or indirectly, has or thinks they may potentially have a Conflict of Interest with respect to a proposed or current contract, transaction, matter or decision of the Corporation shall disclose the nature and extent of the Conflict of Interest at a meeting of the Board. The declaration of Conflict of Interest shall be disclosed at the meeting of the Board at which the contract, transaction, matter or decision is first raised or at which the Director is first aware of the potential or actual Conflict of Interest. Every Director shall comply with the Corporation's Code of Conduct for Directors.~~

~~(b) Any Director who believes that their ability to meet the expectations in the Code of Conduct is at risk, or may appear to be at risk, shall advise the Board Chair and together they will consider whether the Director should either:~~

~~(i) declare a conflict of interest and recuse themselves in respect of the particular matter; or~~

~~(ii) offer to resign from the Corporation's Board.~~

~~(e)~~

~~(b)(c)~~ Every declaration of a Conflict of Interest and the general nature thereof shall be recorded in the minutes of the Board.

~~(e)(d)~~ Where the number of Directors who, by reason of this section are prohibited from participating in a meeting is such that at the meeting, the remaining Directors are not of sufficient number to constitute a quorum, then, notwithstanding any other provision in this By-law, the remaining number of Directors shall be deemed to constitute a quorum.

8.03 CONFLICT OF INTEREST – OTHER DIRECTORS

(a) If a Director believes that any other Director is in a Conflict of Interest position with respect to any contract, transaction, matter or decision, the Director shall have their concern recorded in the minutes, and the Director with the alleged Conflict of Interest shall have the right to address the Board with respect to the allegation.

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- (b) Thereafter, at the request of the Director who recorded the initial concern, the Board, after the Director alleged to have a Conflict of Interest has left the discussion, shall vote on whether the Director alleged to have a Conflict of Interest is, in the opinion of the Board, in a Conflict of Interest. If the Board finds the person in a Conflict of Interest, that interested Director shall leave during any subsequent discussion or voting process relating to or pertaining to the conflict. The question of whether a Director has a Conflict of Interest shall be determined by an Ordinary Resolution of the Board and shall be final.
- (c) The procedures set out in section 8.02 apply where, in accordance with this section, the Board has determined a Director has a conflict of interest.

8.04 CONFLICT OF INTEREST - CONSEQUENCES

- (a) No Director with a Conflict of Interest, as determined under section 8.02 or section 8.03, shall attend ~~any~~the part of a Board meeting, during which the contract, transaction, matter or decision is discussed and shall not vote on any resolution to approve the contract, transaction, matter or decision, or otherwise attempt to influence the voting on a contract, transaction, matter or decision.
- (b) After making a declaration of Conflict of Interest in accordance with this By-law, the Director is not accountable to the Corporation for any profits they may realize from the contract, transaction, matter or decision as of the date of the declaration, provided the contract, transaction, matter or decision was reasonable and fair to the Corporation when it was approved.
- (c) If the Director fails to make a Declaration of their Conflict of Interest in a contract, transaction, matter or decision, as required by this By-law, this failure may be considered grounds for termination of their position as a Director.
- (d) The failure of any Director to comply with the Conflict of Interest provisions of this By-law does not, in or of itself, invalidate any contract, transaction, matter or decision undertaken by the Board or the Corporation.
- (e) Despite any other provision in this By-law, the fact that a Director who is appointed by the Minister, or otherwise affiliated with a stakeholder group does not in itself create a Conflict of Interest.

8.05 CONFLICT OF INTEREST – ANNUAL DECLARATION

Every Director shall complete and submit to the Secretary of the Board an annual Conflict of Interest declaration in the form approved by the Board from time to time.

8.06 CONFIDENTIALITY

- (a) Every Director and Officer of the Corporation and every member of a Committee shall respect the confidentiality of matters brought before the Board or any such Committee or coming to their attention in the course of their duties, keeping in mind that unauthorized statements may adversely affect the interests of the Corporation.
- (b) Guests permitted to attend any meeting of the Board or any meeting of a Committee shall be advised that they are required to respect the confidentiality of all matters coming to their attention during any such meeting and shall undertake to do so accordingly, and in compliance with the MOU.

8.07 PUBLIC COMMUNICATIONS

Subject to the MOU, the Chair is responsible for Board communications and may delegate authority to one or more Directors, Officers or the CEO and President to communicate to the news media or public about matters that the Chair determines appropriate for disclosure.

8.08 PERFORMANCE EXPECTATIONS OF EACH DIRECTOR

- (a) Accountability
 - (i) In making decisions at the Board, the Director represents the interests of the Corporation as a whole, taking into account the needs of all stakeholders, and does not represent the specific interests of any constituency, stakeholder or Member.
 - (ii) The Director must comply with the OUINSA, the MOU, the Act, the By-laws, and the Board's policies and procedures.
- (b) Exercise of Authority. A Director carries out the powers of the office only during a duly constituted meeting of the Board or one of its appointed Committees.
- (c) Team Work. A Director works positively, cooperatively and respectfully with other Directors, the Officers, and the CEO and President.
- (d) Attendance. The Director attends Board meetings, in accordance with at least the minimum expectations established by the Board and will endeavour to attend all Board meetings.
- (e) Participation

- (i) The Director comes prepared to Board meetings, asks informed questions, and makes a positive contribution to discussions.
- (ii) The Director treats others with respect.
- (f) Competencies/Skills. Where appropriate, the Director actively contributes specific expertise, skills and other attributes that are needed on the Board.
- (g) Public Support. The Director supports the decisions and policies of the Board in discussions with outsiders, even if the Director voiced or holds other views or voted otherwise at the Board.
- (h) Education. The Director takes advantage of opportunities to be educated and informed about the Board and the Corporation's marketplace and industry.
- (i) Evaluation. The Director participates in the evaluation of the Board and individual Directors as may be conducted by the Board from time to time.
- (j) Discipline: A Director who fails to comply with the performance expectations set out in this section 8.08, will be notified and action may be required of them to remedy any non-compliance. If the Director consistently fails to comply, the Board may ~~ask the Members to~~ remove the Elected Director pursuant to the Act, or the Minister to do so in relation to Appointed Directors.

8.09 ROLES OF THE BOARD

The Board shall have three key roles:

- (a) Policy Formulation. The Board shall establish policies to provide guidance to the CEO and President in the operations of the Corporation.
- (b) Decision-Making. The Board shall choose from alternatives that are consistent with Board policies and that advance the goals of the Corporation.
- (c) Oversight. The Board shall monitor and assess organizational processes and outcomes.

8.10 RESPONSIBILITIES OF THE BOARD

The Board shall be responsible for governing and overseeing the management of the affairs of the Corporation. In particular, the Board shall:

- (a) Define Ends

- (i) Formulate the vision, mission and values of the Corporation.
 - (ii) Contribute to the development of and approve the strategic plan of the Corporation.
 - (iii) Ensure that key goals are formulated that help the Corporation accomplish its mission and actualize its vision.
 - (iv) Recommend and/or review the development and implementation of targeted procedures for Members, Excavators and others based on defined needs.
 - (v) Monitor and measure corporate performance against the strategic and operating plans.
 - (vi) Regularly review the functioning of the Corporation in relation to the purposes of the Corporation as stated in the By-laws, and demonstrate accountability for its responsibilities to the annual meeting of the Corporation.
 - (vii) Retain overall accountability for the performance of the Corporation.
 - (viii) Decide, by Special Resolution, whether to seek any amendments to the MOU. For the purposes of this subsection, a Director may cast a vote irrespective of any Conflict of Interest.
 - (ix) Develop and approve effective policies and procedures to govern the Corporation.
 - (x) Develop and maintain effective working relationships with organizations in the community and surrounding areas.
- (b) Provide for Leadership and Management in the CEO and President Position
- (i) Appoint the CEO and President.
 - (ii) Establish a job description for the CEO and President.
 - (iii) Establish a Board policy for the performance evaluation of the CEO and President.
 - (iv) Establish the compensation of the CEO and President.
 - (v) Specify measurable performance expectations in cooperation with the CEO and President and appraise/assess the CEO and President's performance.

- (vi) Delegate responsibility and authority to the CEO and President and require accountability to the Board.
- (c) Ensure Effective Communication
 - (i) Ensure the Corporation has a policy to enable the Corporation to communicate effectively with its stakeholders (which include Members, Excavators, staff and the Ministry). This policy addresses how feedback from stakeholders will be factored into the Board's decisions, including solicitation of feedback with respect to Board processes and policies and demonstrates the commitment of the Corporation's engagement with its stakeholders and residents of the community.
 - (ii) Ensure the Board is accountable to the Members by providing to them on a regular basis balanced and understandable information about the Corporation and its proposed activities.
 - (iii) Define and monitor stakeholder satisfaction.
- (d) Ensure Financial Viability
 - (i) Establish key financial objectives that support the Corporation's goals and mission (including capital allocations and expenditures).
 - (ii) Approve the annual operational budget of the Corporation.
 - (iii) Encourage the reduction of costs relating to the services provided by the Corporation, together with the maintenance and improvement of service levels.
 - (iv) Ensure that the Corporation undertakes the necessary financial planning activities so that resources are allocated effectively.
- (e) Ensure Board Effectiveness
 - (i) Measure the Board's own effectiveness and efficiency, including monitoring the effectiveness of individual Directors and Officers and employ a process for Board renewal that embraces evaluation and continuous improvement.
 - (ii) Ensure ethical behaviour and compliance with laws and regulations, audit and accounting principles, and the By-laws.
 - (iii) Ensure the decision-making processes are transparent and that appropriate representation and input are achieved.

- (f) Ensure Compliance with the MOU by establishing appropriate processes or policies for:
- (i) Developing and submitting to the Ministry all mandatory reports required by the MOU.
 - (ii) Receiving and resolving complaints and disputes.
 - (iii) Ensuring service delivery systems and administrative operations are otherwise in compliance with the terms of the MOU.
- (g) Ensure the delivery by the Corporation of the following services:
- (i) provide and maintain a call system, located within the Province of Ontario and operated pursuant to the terms of the OUINSA utilizing the primary communications links designated by the Corporation from time to time to enable an Excavator or Member to make a locate request by electronic means or other means of communication;
 - (ii) provide a digital voice recorder (or equivalent) to record all Excavator locate requests. The recording shall identify the date and time of each such recording and tapes of conversations containing Excavator locate requests shall be provided upon request of the Member, the Member to pay the cost of producing the tape;
 - (iii) retain possession of all original ~~tapes~~digital recordings, electronic communications, facsimiles and all other records in its possession or control of Excavator locate requests relating to the Member for the period specified in the Specifications. Said tapes, facsimiles and other records shall remain the property of the Corporation at all times but originals may be requested in writing by the Member for the defence of claims or any other reason;
 - (iv) in the event the testimony or evidence of any of the Corporation's employees or agents is requested by the Member to appear before any tribunal, arbitrator, hearing or court of law, regarding work performed for the Member compensation for time and expenses of any such witness for their testimony shall be negotiated between the Corporation and the Member at that time but in any event, shall not be greater than the current rate of remuneration;
 - (v) provide reasonable and adequate security in connection with all information provided to the Corporation by the Member and all communications from the Corporation to the Member and keep confidential information provided to it by Members that is confidential to the Member and made known to the

Corporation as such or a reasonable person ought to know is confidential to the Member;

- (vi) ensure that any computer system which it will use to interface or communicate with any of the Member's systems does not contain any pre-programmed devices which could affect the operation and performance of the Member's computer system without the Member's authorization. The foregoing includes, without limiting the generality of the foregoing, devices such as viruses, bugs, "time bombs", "drop dead devices", and "Trojan horses";
- (vii) ensure that any computer system which will interface or communicate with any of the Member's systems will provide sufficient security to prevent any unauthorized access to the Member's system through Corporation's computer system; and
- (viii) ensure the Corporation's primary telephone number shall be a toll-free number.

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8.11 REMUNERATION

The Directors of the Corporation will be entitled to reasonable remuneration in the performance of their duties as a Director, all in accordance with the policies of the Corporation and necessary approvals. Appointed Directors will be remunerated pursuant to the MOU.

ARTICLE 9. REGULAR AND SPECIAL MEETINGS OF THE BOARD

9.01 REGULAR MEETINGS

- (a) There shall be at least four (4) regular Board meetings per year. The schedule of regular Board meetings shall be established by the Chair of the Board each year no later than January 10th and provided in writing to the Board.
- (b) The Chair may cancel any regular Board meeting (excluding the Board meeting that follows the annual meeting of the Corporation), in their discretion if there is insufficient business to merit a meeting, on twenty-four (24) hours written notice.
- (c) The Board shall meet at the Registered Office or another place determined by the Board, at such time as the Board may from time to time determine or the Board may choose to meet electronically in accordance with section 3.01(b) of this By-law.

- (d) All Board meetings are closed to the public unless the Board determines otherwise for any specific Board meeting or part thereof.

9.02 SPECIAL MEETINGS

Special meetings of the Board shall be called by the Secretary of the Corporation on the written request of any of the following:

- (a) the Chair of the Board; or
- (b) any two (2) Directors.

9.03 NOTICE OF REGULAR AND SPECIAL MEETINGS

- (a) The Secretary will give at least seven (7) days' written notice of a regular meeting of the Board, which notice may be given electronically (for example, via e-mail).
- (b) The notice of meeting shall specify any matter that constitutes a Board Exclusive Responsibility if any such matter is to be included on the meeting agenda.
- (c) Notice of a special meeting of the Board shall be given by telephone and/or email at least twenty-four (24) hours in advance of the meeting. The notice of a special meeting shall state the purpose for which it is called.
- (d) Provided a quorum is present, each newly appointed Board may, without notice, hold its first meeting immediately following the annual meeting of Members, provided the agenda does not include any matter that is a Board Exclusive Responsibility.
- (e) No notice will be required for a special meeting of the Board immediately following the Annual Meeting of Members.

9.04 QUORUM

- (a) A quorum for the transaction of business at any meeting of the Board shall consist of a Majority of the Directors.
- (b) Subject to section 8.02, no meeting of the Board shall be duly constituted for the transaction of business unless a quorum is present. There will be no representation by proxy at any Board meeting.

9.05 CHAIR OF BOARD MEETINGS

The chair of a Board meeting shall be:

- (a) the Chair of the Board;
- (b) the Vice-Chair of the Board; or
- (c) a chair elected by the Directors present, if the Chair and Vice-Chair of the Board are absent.

9.06 ADJOURNED BOARD MEETING

If within one-half (1/2) hour after the time appointed for a meeting of the Board, a quorum is not present, the meeting shall stand adjourned until the same day in the following week at the same hour and place, or if such day shall be a Saturday, Sunday or holiday, on the next business day following such date. The Secretary shall send notice of such adjourned meeting to each of the Directors at least forty-eight (48) hours prior to the meeting.

9.07 GUESTS

- (a) The CEO and President shall be invited to and attend at all meetings of the Board as a resource to the Board. The CEO and President may be asked to leave during an *in camera* session of the Board. The CEO and President is not entitled to vote at any meeting of the Board.
- (b) Any guest must be invited to a Board meeting by the Chair or by an Ordinary Resolution of the Board.

9.08 RIGHT OF DISSENT

- (a) A Director who is present at a meeting of the Board or of a Committee is deemed to have consented to any resolution passed or action taken at the meeting unless:
 - (i) the Director requests a dissent to be entered in the minutes of the meeting;
 - (ii) the Director sends a written dissent to the secretary of the meeting before the meeting is terminated; or
 - (iii) the Director submits to the Corporation a written dissent immediately after the meeting is terminated.
- (b) A Director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented to the resolution or action unless, within seven (7) days after becoming aware of the resolution or action, the Director:
 - (i) causes a dissent to be placed with the minutes of the meeting; or

- (ii) submits a written dissent to the Corporation.

ARTICLE 10. COMMITTEES OF THE BOARD AND ADVISORY COUNCIL

10.01 BOARD STANDING COMMITTEES.

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The Corporation will have the following standing committees of the Board:

- (a) Risk, Finance, and Audit Committee; and
- (b) Human Resources, Governance, and Nomination Committee.

10.02 TERMS OF REFERENCE.

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The Board shall develop terms of reference for each standing committee and approve them by Ordinary Resolution. Such terms of reference shall include responsibilities, membership and voting, frequency of meetings, quorum, reporting to the Board and term of appointment, if any. Amendments to such terms of reference shall also require approval by Board resolution.

10.03 APPOINTMENT.

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The Board shall by Ordinary Resolution appoint individuals to the standing committees in accordance with the terms of reference for each such Committee.

10.04 EXECUTIVE COMMITTEE

The Board may create and appoint an Executive Committee if it so desires. If so created and appointed, the Executive Committee shall exercise, during intervals between meetings of the Board, all of the powers of the Board in the administration of the affairs of the Corporation, subject to the limitations of applicable law.

10.05 RISK, FINANCE AND AUDIT COMMITTEE.

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The Risk, Finance, and Audit Committee will oversee all elements of the Corporation's banking, financial reporting, and risk management, in accordance with the terms of

reference for such Committee as approved by the Board from time to time in accordance with Section 10.02.

10.06 HUMAN RESOURCES, GOVERNANCE AND NOMINATION COMMITTEE.

The Human Resources, Governance and Nomination Committee will oversee human resources matters and the nomination process for Board candidates, and review and recommend changes to the Board relating to the governance of the Corporation, in accordance with the terms of reference for such Committee as approved by the Board from time to time in accordance with Sections 7.11 and 10.02.

10.07 OTHER COMMITTEES.

- (a) The Board may create other Board Committees by Ordinary Resolution. The Board will approve the terms of reference for any such Committee when they are created in accordance with Section 10.02.
- (b) The functions, duties, responsibilities and powers of Committees shall be provided in the By-laws, in the resolution of the Board by which such Committee is established, or in terms of reference adopted by the Board.

10.08 ALL COMMITTEES

(a) For all Committees, the following shall apply:

(b) The Board shall appoint a Director to be the chair of each committee.

(c) A quorum for any meeting of any Committee shall be a Majority of the voting members of the Committee.

(d) Procedures at Committee meetings shall be consistent with the procedures outlined in this By-law unless otherwise established by a Board policy.

(e) All committees must report to the Board at least quarterly throughout the financial year.

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10.09 DELEGATION OF DECISION-MAKING TO COMMITTEE

Pursuant to section 36 of the Act, the Board may delegate decision-making authority to a committee of directors on the following conditions:

- (a) the Board may not delegate any Board Exclusive Responsibility to a Committee; and
- (b) only Directors may be members of that Committee.

~~10.11~~**10.10** **NON-DIRECTORS ON COMMITTEES**

- (a) In this section, “non-Director” means a person who is not a Director of the Corporation, who has been appointed to a Committee in accordance with this section, and who has the same rights and obligations of other members of the Committee who are Directors (unless expressly stated by this By-law or the terms of reference of that Committee).
- (b) On the recommendation of the Human Resources, Governance and Nomination Committee, non-Directors may be appointed by the Board as voting members of any advisory Committee and as non-voting members of any Committee that has delegated decision-making authority.
- (c) Any non-Director appointed under this section is not eligible to serve as the chair of a Committee.
- (d) Non-Directors serving on Committees shall have one (1) year renewable terms.
- (e) Participation by a non-Director is conditional on the non-Director signing an acknowledgment that they:
 - (i) are a fiduciary of the Corporation and must place the best interests of the Corporation above their own best interests;
 - (ii) have read and understood the Conflict of Interest and confidentiality requirements of this By-law, which apply to all non-Directors; and
 - (iii) agree to participate in the Board’s orientation program if requested.

~~10.12~~**10.11** **ADVISORY COUNCILS**

The Board may create and appoint one or more Advisory Councils to advise the Board on such matters as the Board directs, and to provide recommendations to the Board, in accordance with the terms of reference for each such Council as is approved by the Board from time to time. At least one director shall be a member of each Advisory Council. Each Advisory Council will report to the Board according to the terms of reference creating it.

ARTICLE 11. OFFICERS

11.01 OFFICERS

- (a) The Board, taking into consideration the recommendations of the Human Resources, Governance and Nomination Committee, shall elect from among the Directors, at its first meeting following the annual meeting of the Members, the Chair of the Board, and may elect a Vice-Chair from among the Directors, unless the Minister exercises the powers under OUINSA to appoint the Chair of the Board.
- (b) The Board may appoint by Ordinary Resolution a CEO and President, a Secretary and a Treasurer.
- (c) Any Officer of the Board shall cease to hold office upon resolution of the Board.
- (d) The Chair of the Board shall serve for no longer than three (3) consecutive years.
- (e) An individual may hold more than one office.
- (f) Except for the Chair of the Board and any Vice-Chair of the Board, no other officer shall be a Director of the Corporation.

11.02 DUTIES OF THE CHAIR OF THE BOARD

The Chair of the Board shall be selected from among the Directors. The Minister may appoint the Chair from among the Board members and for this purpose the Minister shall have regard to the views of the Board, the competency criteria used by the Board, the Corporation's succession planning, and any other matter the Minister considers advisable in the circumstances.

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The duties of the Chair of the Board shall include, without limitation, the following:

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- (a) preside at all meetings of the Members and the Board and act as chair of such meetings;
- (b) report to the Board at regular meetings and to the Members at the annual meeting of the Members, and at all such other times as the Chair of the Board may consider advisable or necessary, concerning the operations of the Corporation;
- (c) report regularly and promptly to the Board issues that are relevant to their governance responsibilities;
- (d) be responsible for addressing issues associated with under-performance of individual Directors including, if applicable, their removal from the Board;

- (e) ensure that the annual review of the CEO and President's performance and compensation is done;
- (f) stay up-to-date about the Corporation and determine when an issue needs to be brought to the attention of the Board;
- (g) intervene when necessary in instances involving Conflict of Interest, confidentiality and other Board policies;
- (h) represent the Corporation and the Board as may be required or appropriate; and
- (i) assume and perform such other duties as may from time to time be assigned to them by the Board.
- (j) In the event of a tie at a meeting of the Board or the Members, the Chair of the Board or the person acting as chair shall have a second, tie-breaking vote.

11.03 DUTIES OF THE VICE-CHAIR

The Vice-Chair, if any, shall be elected by the Board from among the Directors. The Vice-Chair works collaboratively with the Chair of the Board. The Vice-Chair supports the Chair of the Board in fulfilling their responsibilities. In addition, the Vice-Chair assumes the duties of the Chair of the Board in the Chair of the Board's absence, as requested by the Chair or the Board, including representing the Board and the Corporation as may be required or appropriate. The Vice-Chair will perform such other duties as may be delegated by the Chair of the Board.

11.04 DUTIES OF THE ~~CEO~~ CEO AND PRESIDENT

- (a) The CEO and President may be appointed by the Board according to the selection process defined in Board policy from time to time.
- (b) (b) The specific duties of the office of CEO and President shall be defined in a job description approved by the Board. The Board shall undertake an annual performance review of the CEO and President in accordance with a process and policy approved by the Board from time to time.

11.05 DUTIES OF THE SECRETARY

- (a) The Secretary of the Corporation shall:
 - (i) attend or cause a recording secretary to attend all meetings of the Members, Board and Committees to act as clerk thereof and to record all votes and minutes of all proceedings in the books to be kept for that purpose;

- (ii) maintain the minutes of all meetings of the Board, the Members and the Committees of the Board;
 - (iii) ensure that appropriate notice of meetings of the Board, the Members and Committees is given;
 - (iv) where possible, ensure that appropriate information and supporting materials are provided to the Board at least seven (7) days prior to a meeting and to the Members at least ten (10) days prior to a meeting;
 - (v) have custody of all minute books, documents and registers of the Corporation and ensure that the same are maintained as required by law;
 - (vi) keep a roll of the names and addresses of the Directors and the Members;
 - (vii) ensure that all reports are prepared and filed as are required to be filed by law or requested by the Board; and
 - (viii) perform such other duties as may from time to time be assigned to the Secretary by the Board.
- (b) The Secretary may delegate the performance of their duties, but the Secretary shall remain responsible for ensuring the proper performance of such duties.

11.06 DUTIES OF THE TREASURER

- (a) The Treasurer shall oversee the management of the finances of the Corporation, and ensure that appropriate reporting mechanisms and control systems as established by the Board, are in place, and monitor such mechanisms and systems for compliance.
- (b) The Treasurer shall ensure that systems for the care and custody of the funds and other financial assets of the corporation, and for making payments for all approved expenses incurred by the Corporation, are in place, are functional and adequate and shall monitor for compliance with such systems.
- (c) The Treasurer shall report to the Board no less than quarterly on the financial position of the Corporation.
- (d) The Treasurer shall cause the accounts of the Corporation to be audited, and cause to be prepared financial statements and an auditors' report as prescribed by the Act.
- (e) The Treasurer shall report to the Board at least semi-annually regarding any trust funds held by the Corporation.

- (f) The Treasurer may delegate the performance of their duties, but the Treasurer shall remain responsible for ensuring the proper performance of such duties.

11.07 DUTIES OF THE PAST-CHAIR

- (a) Any Chair of the Board, at the completion of their term of Chair of the Board, may assume the role of Past-Chair, ex-officio, if that Director is re-elected to the Board. The Past Chair shall serve as such for one (1) year.
- (b) The Past-Chair shall:
 - (i) ensure continuity of Corporation knowledge among the Officers;
 - (ii) assist the Chair of the Board to become oriented to their new role, as requested by the Chair of the Board; and
 - (iii) provide support to the Chair of the Board, as requested by the Chair or the Board.

11.08 OTHER OFFICERS

The powers and duties of all other Officers shall be such as the Board may from time to time determine. Any of the powers and duties of an Officer to whom an assistant has been appointed may be exercised and performed by such an assistant unless the Board otherwise directs.

ARTICLE 12. INDEMNIFICATION OF DIRECTORS, OFFICERS AND COMMITTEE MEMBERS

12.01 INDEMNIFICATION OF DIRECTORS, OFFICERS, AND COMMITTEE MEMBERS

- (a) Every Director, Officer, and Committee member, their heirs, executors, administrators and estate, respectively, shall from time to time and at all times be indemnified and saved harmless out of the funds of the Corporation from and against all costs, charges and expenses including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other action or proceeding, whether before a court, tribunal or judicial inquiry or similar body, in which the individual is involved due to association with the Corporation.

- (b) The Corporation may advance money to a Director, Officer or other individual referred to in section 12.01(a) for the costs, charges and expenses of an action or proceeding referred to in that section, but the individual shall repay the money if the individual does not fulfil the conditions set out in section 12.01(c).
- (c) The indemnity provided for in this section shall be applicable only if the Director, Officer or Committee member acted honestly and in good faith with a view to the best interests of the Corporation and, in the case of criminal or administrative action or other proceeding that is enforceable by a monetary penalty, had reasonable grounds for believing that their conduct was lawful.

12.02 INSURANCE

The Board will cause to be purchased such insurance as it considers advisable and necessary to ensure that Directors, Officers, and Committee members will be indemnified and saved harmless in accordance with this By-law; the premiums for such insurance coverage shall be paid from the funds of the Corporation.

ARTICLE 13. FINANCIAL MATTERS

13.01 FINANCIAL YEAR END

The financial year of the Corporation shall end on the 31st day of December in each year.

13.02 AUTHORIZED SIGNING OFFICERS

- (a) Two (2) Directors or Officers shall sign on behalf of the Corporation all contracts, agreements, cheques, conveyances, mortgages, or other documents, unless otherwise stipulated in a signing authority policy approved by the Board from time to time.
- (b) The CEO and President may be permitted to sign on behalf of the Corporation all contracts, cheques, conveyances, mortgages or other documents, having such financial thresholds as stipulated in the signing authority policy approved by the Board from time to time.
- (c) The Board may direct, by resolution or policy, the manner in which, and the person or persons by whom, any particular instrument or class of instruments may or shall be signed any such policy shall prevail over the rules in paragraphs (a) and (b).

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13.03 BANKING AND BORROWING

- (a) Bank accounts of the Corporation shall be kept at such banks and in such places and shall be operated in such manner and by such person or persons as the Board shall from time to time determine by by-law.
- (b) The Board may from time to time:
 - (i) borrow money on the credit of the Corporation;
 - (ii) issue, sell or pledge debt obligations (including bonds, debentures, debenture stock, notes or other like liabilities whether secured or unsecured) of the Corporation;
 - (iii) charge, mortgage, hypothecate or pledge all or any currently owned or subsequently acquired real or personal, movable or immovable property of the Corporation, including book debts, rights, powers, franchises and undertakings, to secure any debt obligations or any money borrowed, or other debt or liability of the Corporation; and
 - (iv) delegate the powers conferred on the Board under this paragraph to such Officer or Offices of the Corporation and to such extent and in such manner as the Directors shall determine.

13.04 SEAL

The corporate seal of the Corporation shall be such as the Board may by Ordinary Resolution from time to time adopt, and shall be entrusted to the Secretary of the Corporation (or delegate) for safekeeping.

13.05 INVESTMENTS

The Board may invest in any investments that are authorized by the Corporation's investment policy. The Corporation's investment policy shall be developed by the Board.

13.06 AUDITOR

- (a) The Corporation shall at its annual meeting appoint an Auditor who shall not be a Director or an Officer or employee of the Corporation or a partner or employee of any such person, and who is duly licensed under the provisions of the *Public Accountancy Act* (Ontario), to hold office until the next annual meeting of the Members.

- (b) The Board shall fill any vacancy in the office of Auditor that occurs between annual meetings.
- (c) The Auditor shall have all the rights and privileges as set out in the Act and shall perform the audit function as prescribed therein. The Auditor shall also meet the test of independence set out in the Act.
- (d) The Auditor shall receive notice of the annual meeting in accordance with section 6.02 of this By-law.

13.07 TRUST FUNDS (RESTRICTED PURPOSE FUNDS)

The Corporation shall apply any trust funds or restricted purpose funds of the Corporation only to the designated purpose(s) for which such funds were intended. Under no circumstances shall the Corporation transfer any funds held in trust by the Corporation to any other individual or entity, unless such transfer complies with all applicable law, including without limitation, the *Income Tax Act* and the *Trustee Act* (Ontario).

13.08 BOOKS AND RECORDS

- (a) All necessary books and records of the Corporation required by the Act or the MOU shall be regularly and properly kept at the Registered Office or at another place determined by the Board. Without limiting the generality of the foregoing, the following records shall be prepared and regularly maintained:
 - (i) the By-laws, and amendments to them;
 - (ii) minutes of meetings of the Members, the Board, and any Committee;
 - (iii) resolutions of the Members, the Board, and any Committee;
 - (iv) register of Directors and their consents to serve as such;
 - (v) register of Officers;
 - (vi) register of Members; and
 - (vii) accounting records adequate to enable the Board to ascertain the financial position of the Corporation with reasonable accuracy on a quarterly basis.
- (b) A record of the Corporation's ownership interests in land, if any, shall be kept at the Registered Office and in accordance with section 92.1 of the Act.

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13.09 REGISTERED OFFICE

The registered office of the Corporation shall be at such address in the City of Guelph in the Province of Ontario as the Board may by Ordinary Resolution determine from time to time.

ARTICLE 14. NOTICES UNDER THIS BY-LAW

14.01 SERVICE

Any notice or other document required by the OUIISA, the Act, the MOU or the By-laws of the Corporation to be sent to any Member or Director or to the Auditor shall be delivered personally or sent by prepaid mail or electronically to any such Member or Director at their latest addresses shown in the records of the Corporation (whether physical or electronic) and to the Auditor at its business address, or if no address be given therein then to the last address of such Member or Director known to the Secretary; provided always that notice may be waived or the time for the notice may be waived or abridged at any time with the consent in writing of the person entitled thereto.

14.02 COMPUTATION OF TIME

Where a given number of days' notice or notice extending over any period is required to be given, the day of service or posting of the notice shall, unless it is otherwise provided herein, be counted in such number of days or other period.

14.03 PROOF OF SERVICE

A certificate of any Officer of the Corporation in office at the time of the making of the certificate as to facts in relation to the mailing or delivery of any notice to any Member, Director, Officer or Auditor or publication of any notice shall be conclusive evidence thereof and shall be binding on every Member, Director, Officer or Auditor of the Corporation, as the case may be.

14.04 SIGNATURES TO NOTICES

The signature to any notice may be written, stamped, typewritten, printed or partly written, stamped, typewritten or printed and any such signature shall be as effective as an original manual signature.

14.05 ERROR OR OMISSION

The accidental omission to give any notice to any Member, Director, Officer, or Auditor, or the non-receipt of any notice by any such person where the Corporation has provided

notice in accordance with the By-laws or any error in any notice not affecting its substance shall not invalidate any action taken at any meeting to which the notice pertained or otherwise founded on such notice.

ARTICLE 15. ADOPTION AND AMENDMENT OF BY-LAWS

15.01 AMENDMENTS TO BY-LAWS

- (a) Subject to the OUIINSA, the Act and the MOU, the Board may, by Ordinary Resolution, make, amend or repeal any By-laws that regulate the activities or affairs of the Corporation.
- (b) Subject to the Act (which requires a Special Resolution for changes to the transfer of a membership; changes to giving notice to Members entitled to vote at meetings of Members; and changes to the method of voting by Members not in attendance at meetings of Members), any such By-law, amendment or repeal shall be effective from the date of the resolution of the Board until the next meeting of the Members where it may be confirmed, rejected or amended by the Members by Ordinary Resolution. If the By-law, amendment or repeal is confirmed or confirmed as amended by the Members it remains effective in the form in which it was confirmed. The By-law, amendment or repeal ceases to have effect if it is not submitted to the Members at the next meeting of the Members or if it is rejected by the Members at the meeting.
- (c) A By-law or an amendment to a By-law passed by the Board that requires only an Ordinary ~~Resolution~~Resolution is effective once made by the Board until confirmed by the Members at the next meeting of Members.
- (d) A By-law or an amendment to a By-law that requires a Special Resolution of the Members is effective only when confirmed by Special Resolution of the Members.

15.02 REPEAL

ON THE DATE THIS BY-LAW NO. 1 IS CONFIRMED BY THE MEMBERS,
PRIOR BY-LAW NO. 3 IS REPEALED AND OF NO LONGER IN EFFECT.

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ENACTED as By-law No. 1 this

day of ~~July~~, 2023.

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Chair

Secretary

CONFIRMED by the Members this day ~~of September, 2023.~~

Chair

Secretary

APPENDIX A – LIST OF SPECIAL RESOLUTIONS REQUIRED BY THE ACT

The following decisions require either (i) the approval of 2/3 or more of the votes cast by Members who attend a duly called meeting of the Members or (ii) the consent of all Members entitled to vote in a written resolution, before taking effect:

- To change the municipality or geographic township in which its Registered Office is located to another place in Ontario - section 14(4)
- To set the exact number of Directors to be on the Board - section 22(2)
- To confirm or approve a contract or transaction of a director or officer that is the subject of a conflict of interest - s. 41(10)
- To approve articles of amendment - section 103(1)
- To approve an amalgamation agreement - section 111(5)
- To approve a continuance under this Act - section 115(2)
- To approve a continuance under the Co-operative Corporations Act - section 117(1)
- To approve the sale, lease or exchange of all or substantially all of the property of the corporation other than in the ordinary course of its activities - section 118(6)
- To approve an arrangement as defined in section 120
- To require the corporation to be wound up voluntarily under section 123
- To authorize an application to be made to the court to wind up the corporation - section 136
- To authorize the corporation to be dissolved - section 166