

**MEMORANDUM OF UNDERSTANDING  
BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO  
AS REPRESENTED BY THE  
MINISTER OF GOVERNMENT AND CONSUMER SERVICES**

**- AND -**

**THE TECHNICAL STANDARDS AND SAFETY AUTHORITY  
A NOT-FOR-PROFIT CORPORATION WITHOUT SHARE CAPITAL  
INCORPORATED UNDER THE LAWS OF ONTARIO**

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## Recitals

WHEREAS the Minister and the Corporation are required to enter into a memorandum of understanding pursuant to the *Technical Standards and Safety Act, 2000* as amended;

AND WHEREAS the Minister is accountable to the people of Ontario as a member of the Legislative Assembly and to the Legislative Assembly as a Minister of the Crown in right of Ontario;

AND WHEREAS the Corporation is accountable to the Minister and the government for its administration of the delegated legislation, in this case, the *Technical Standards and Safety Act, 2000* (the Act);

AND WHEREAS the Corporation provides valuable information to the government regarding the operational effectiveness of the Act and that both parties acting in the public interest are dependent on a collaborative relationship;

AND WHEREAS the Minister and the Corporation recognize the benefit of maintaining a strong collaborative relationship and the importance of resolving any disagreements as amicably and expeditiously as possible;

AND WHEREAS the Corporation is not a Crown agent, is self-funded and is not self-regulating;

AND WHEREAS the Minister is responsible for recommending legislative and regulatory changes to the Lieutenant Governor in Council;

AND WHEREAS the Minister and the Corporation intend to exercise their powers and duties under the Act in such a manner as to protect public safety and carry out and perform this Memorandum of Understanding in a manner consistent with the objective of ensuring a fair, safe and informed marketplace that supports a competitive economy;

NOW THEREFORE in consideration of the promises and the mutual covenants contained in this Memorandum of Understanding and subject to the terms and conditions hereof, the parties hereby enter into this Memorandum of Understanding.

## 1. Definitions and Interpretation

- 1) In this Memorandum of Understanding, the following terms have the following meanings:
  - a) “**Act**” means the *Technical Standards and Safety Act, 2000* as amended and its associated regulations;
  - b) “**Board**” means the Board of Directors of the Corporation;
  - c) “**Chair**” means the Chair of the Board;
  - d) “**Corporation**” means the Technical Standards and Safety Authority continued under section 3.1 of the Act;
  - e) “**Crown**” means Her Majesty the Queen in Right of the Province of Ontario;
  - f) “**CSRO**” means the chief safety and risk officer described in section 3.11 of the Act;
  - g) “**Minister**” means the Minister responsible for the administration of the Act by Order in Council of the Lieutenant Governor acting for and on behalf of the Crown;
  - h) “**Ministry**” means the ministry of the Minister;
  - i) “**MOU**” means this Memorandum of Understanding entered into between the Minister and the Corporation and includes all attached schedules and any agreement or schedule in writing supplementing or amending this MOU or any schedule.
  - j) “**Statutory Mandate**” means the exercise of the authority delegated to the Corporation pursuant to the Act, excluding non-regulatory business arrangements.
- 2) In this MOU, for the purposes of interpretation:
  - a) Words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
  - b) The word “including” or “includes” shall mean “including (or includes) without limitation”;

- c) Any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided;
  - d) The division of this MOU into separate sections and subsections, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this MOU; and
  - e) This MOU should be read together with the Act. This MOU does not affect, modify or limit the powers of the Act or the Corporation as set out in the Act, or interfere with responsibilities of any of its parties as established by law.
- 3) The powers and responsibilities of the Minister set out in this Agreement may be exercised by the Minister, the deputy minister of the Ministry or another authorized official of the Ministry.

## **2. Purpose of the MOU**

- 1) This MOU between the Minister and the Corporation:
  - a) clarifies the roles, duties and responsibilities of the Minister and the Corporation in relation to the administration of the Act and the administrative matters as set out under the Act; and
  - b) clarifies the administrative, financial, auditing, accountability, legislative and regulatory development, and working and reporting relationships between the parties.

## **3. Delegated Administration**

- 1) The parties acknowledge that responsibility for the administration of the provisions of the Act is as provided for in the Act itself.
- 2) The Corporation has assumed responsibility for the administration of all provisions in the Act as provided for in the Act.
- 3) The Statutory Mandate of the Corporation is defined by the objects of the Corporation as set out in subsections 3.6 (1) to (7) of the Act.

## **4. Objects**

- 1) The objects of the Corporation are set out in subsections 3.6 (1) to (7) of the Act.
- 2) Any additional objects of the Corporation shall be attached in Schedule “A” to the MOU.

## **5. Accountability Relationships**

- 1) The Minister is accountable to the Legislative Assembly for the fulfilment of the Statutory Mandate by the Corporation.
- 2) The Board is accountable to the Minister through the Chair for the performance of the Corporation.

## **6. Roles and Responsibilities of the Parties**

### **6.1 The Minister**

- 1) The Minister is responsible for the Corporation’s fulfilment of its Statutory Mandate. For this purpose, the Minister requires timely access to information from the Corporation as set out in the Information Sharing Protocol, attached as Schedule “B”.
- 2) The Minister is responsible for bringing forward proposed changes to the Act to the Lieutenant Governor in Council and the Legislative Assembly.
- 3) The Minister may engage the Corporation:
  - a) throughout the policy development process,
  - b) in coordinating public and stakeholder communications regarding any proposed legislative, regulatory or policy changes, and
  - c) in the development of communication strategies for critical or on-going issues.
- 4) The Minister may provide the Corporation with an annual letter outlining the government’s expectations and priorities with respect to the Corporation during the specified fiscal year. The letter would provide measurable expectations from the Minister that align with the Corporation’s mandate as well as government priorities and commitments. At such a time that a letter is sent to TSSA, the Minister and the Corporation will work on a

communications approach.

- 5) Pursuant to section 3.14 and subject to section 3.23.2 of the Act, the Minister may issue policy directions to the Corporation relating to its administration of the Act after giving the Corporation the notice that the Minister considers reasonable in the circumstances. The parties acknowledge that a policy direction issued to the Corporation is deemed to form part of the MOU and is binding on it.
- 6) The Minister may, where the Minister deems appropriate, delegate, make or assign to the Corporation such additional authority, appointments or consents as are within the Minister's authority, if the Corporation requires such additional authority, appointments, or consents to carry out its Statutory Mandate.
- 7) The Minister may, where the Minister deems appropriate, assist the Corporation in obtaining any additional authorities, appointments or consents which cannot be granted by the Minister.
- 8) The Minister may, where the Minister deems appropriate, assist the Corporation in working with other ministries to facilitate agreements and relationships with the Corporation.
- 9) The Minister may, where the Minister deems appropriate in consultation with the Corporation and as approved by the Lieutenant Governor in Council or such other government personnel or bodies as are required, conduct intergovernmental relations and negotiate trade and other binding intergovernmental agreements.
- 10) The Minister shall not interfere with the independent exercise of the statutory functions fulfilled by the Corporation's directors, inspectors, investigators or assessors and other officers exercising statutory and regulatory duties.
- 11) The Minister shall make reasonable efforts to meet with the Chair from time to time.

## **6.2 The Corporation**

- 1) The Corporation shall carry out its duties and responsibilities in accordance with the law, the Act, and this MOU.
- 2) The Corporation shall carry out its duties and responsibilities with the purpose of protecting public safety and advancing the principle of ensuring a



fair, safe and informed marketplace that supports a competitive economy.

- 3) The Corporation, through the Chair, shall ensure that the Board is aware of the terms of this MOU.
- 4) The Corporation is responsible for ensuring that it has adequate resources, including financial resources, to comply with the Act, this MOU, and other applicable law, and for acting in accordance with the business plan that it has provided to the Minister under clause 8(1)(b) of this MOU.
- 5) The Corporation is responsible for developing and maintaining corporate bylaws and shall make such bylaws available on its website within 10 days after the bylaws are passed by the Board.
- 6) The Corporation is responsible for developing and maintaining up-to-date written policies and procedures for functional areas of its business.
- 7) The Corporation is responsible for developing, maintaining and making publicly available on its website up-to-date written procurement policies that comply with the Ontario Public Service Procurement Directive.
- 8) The Corporation is responsible for developing and maintaining up-to-date written travel, meal and hospitality expenses policies and procedures in keeping with the spirit and principles of the most recent Ontario Public Service Travel, Meal and Hospitality Expenses Directive in order to set out principles for the reimbursement of expenses to ensure fair and reasonable practices, and to provide a framework of accountability to guide the effective oversight of resources in the reimbursement of expenses. The Corporation shall make publicly available on its website its travel, meal and hospitality expenses policies.
- 9) The Corporation is responsible for developing and maintaining appropriate performance measurements, governance, and financial management processes with sound internal controls to conduct the Corporation's operations effectively and efficiently.
- 10) The Corporation is responsible for developing, maintaining and making publicly available by posting on the Corporation's website up-to-date written policies and procedures for responding to and assisting in the resolution of consumer and other complaints received by the Corporation related to its administration of the Act.
- 11) The Corporation is responsible for providing the Minister with timely information

in relation to any matter requested by the Minister and shall also provide the information identified in the Information Sharing Protocol attached as Schedule “B”.

- 12) The Corporation is responsible for developing, maintaining and making publicly available by posting on the Corporation’s website up-to-date written policies regarding up to five key service standards. If applicable, these policies will be established in accordance with any performance measures and associated targets under Schedule “M” relating to service standards.
- 13) When able and appropriate, the Corporation shall coordinate its enforcement activities in relation to the investigation of serious incidents with the enforcement activities of other provincial and federal enforcement authorities.
- 14) The Corporation may appoint representatives to cross-jurisdictional and standards development organizations and may make such representations and communications as it deems appropriate for such purposes subject to Section 3.3 of the TSS Act.
- 15) The Corporation shall execute a protocol to be followed in the investigation of serious incidents under the Act as set out in Schedule “C”.
- 16) When engaged by the Minister, in accordance with subsection 6.1(3), the Corporation shall participate in:
  - a) the policy development process;
  - b) coordinating public and stakeholder communications regarding any proposed legislative, regulatory or policy changes; and
  - c) in the development of communication strategies for critical or ongoing issues.
- 17) The Corporation shall provide the CSRO with access to any information and records required to perform the duties of the CSRO.
- 18) If the Minister exercises any of the Minister’s powers under sections 3.7, 3.10, 3.14, 3.19.3, 3.21 and 3.23 of the Act, the Corporation shall take all necessary and advisable steps to ensure compliance with the power that has been exercised.

## **7. Board and Statutory Appointments**

### **7.1 Board Composition and Appointment of Board Members**

- 1) Subject to any Minister's order made under the Act and any other legal obligations, the composition of the Board, the selection criteria, selection process and term of office of Board members, other than Ministerial appointees, shall be established by bylaw with the approval of the membership. The Corporation shall provide such bylaws or resolutions to the Minister for review and approval prior to submitting them to the Board or membership as the case may be.
- 2) Regarding Ministerial appointees, the bylaws of the Corporation may include provisions that reflect the content of subsections 3.7(3), (4), (5), (6), (7.1), (8) and (10) of the Act for completeness.
- 3) The Corporation shall obtain the Minister's prior approval of any change in the bylaws respecting Board composition, the selection criteria, selection process and term of office of its Board members.
- 4) No person may sit as a member of the Board while the person is an employee of a trade association representing the interests of the regulated industry.
- 5) The by-laws of the Corporation shall not grant to any person who is not a Board member the right to notice of meetings of the Board or the right to attend meetings of the Board.
- 6) Subject to any order made by the Minister under subsection 3.7(8.1) of the Act, the Corporation shall develop and maintain competency criteria for the Board setting out the types of skills and competencies that are required on the Board, which shall be approved by the Minister and attached to this MOU as Schedule "D". A Minister's order is deemed to be an addendum to Schedule "D".
- 7) The Board selection criteria in Schedule "D" shall be inclusive and shall require reasonable efforts to include members on the Board who reflect a variety of perspectives, including public safety or public interest perspectives. Board members shall also reflect the diversity of Ontario, including gender, geographic distribution, and ethnicity. The Corporation shall make the selection criteria public.

- 8) The Minister shall have regard to the competency criteria and selection criteria used by the Board when making appointments to the Board.
- 9) The Board recognizes that Board members appointed by the Minister in accordance with the Act may include representatives of consumer groups, business, government organizations, or such other interests as the Minister determines.
- 10) The Minister shall endeavour to make appointments to the Board in a timely manner.
- 11) Board members appointed by the Minister shall be remunerated by the Corporation in an amount and on a basis that is equivalent to all other Board members. If such a Board member is employed by the public service of Ontario as defined in the *Public Service of Ontario Act, 2006*, the Board member shall not receive any remuneration unless permitted under the Ontario Public Service Agencies and Appointments Directive or any successor directive.
- 12) The Board shall ensure that new Board members complete any training required by the Minister within six (6) months of being elected or appointed, or when next available.

## **7.2 Information Required from the Board**

- 1) The Board shall conduct a Board evaluation in accordance with best practices at least once every two years. The evaluation may be facilitated by an independent third party. The results of the evaluation shall be provided to the Chair. A report summarizing the results of the evaluation shall be provided to the Minister upon request.
- 2) The Board shall adopt a binding code of conduct for the Board members to prevent the possibility of any Board member advancing his or her personal or business interests, or the interests of another person or organization, ahead of the interests of the Corporation. The code of conduct for Board members, as it may be amended from time to time, is subject to the approval of the Minister. Upon approval by the Minister, such code shall be attached to this MOU as Schedule "F".
- 3) The annual meeting, at which the Board shall present its annual report and audited financial statements, and report to the members of the Corporation on the affairs of the Corporation for the immediately preceding year, shall be

open to the general public and the Board shall make reasonable efforts to inform the general public of such meeting.

- 4) Subject to any Minister's order made under section 3.10 of the Act, the Corporation shall maintain one or more advisory councils for direct input to the Corporation on issues of public safety importance to the industries regulated by the Corporation and consumers. The terms of reference of such a process shall be made public and a report on the activities and advice provided by this process shall be reported annually to the Chair of the Board.

### **7.3 Minister's Appointment of Chair and Vice-Chair**

In accordance with subsection 3.7(10) of the Act, the Minister shall appoint the Chair and Vice-Chair of the Board from among the Board members as soon as practical 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.

### **7.4 Statutory Appointments**

- 1) The Corporation shall make and maintain all statutory appointments required by the Act.
- 2) As provided for in section 4 of the Act, the Corporation may appoint statutory directors.
  - a) A statutory director shall not:
    - i) be a member of the Board unless the Board has approved guidelines providing for the independent exercise of the director's statutory duties;
    - ii) be an employee or director of a trade association representing the interests of a regulated sector;
    - iii) Engage in external activities that could pose a conflict of interest or the perception of a conflict of interest with the regulated sector that the statutory director is responsible for;
    - iv) be the President and CEO; or
    - v) be the CSRO.
- 3) The Corporation acknowledges that the statutory directors, inspectors,

investigators, assessors, and other officers exercise statutory duties that require independent decision-making and, for that purpose, the Corporation agrees that the Board, President, and CEO shall not interfere with the independent exercise of these statutory responsibilities but may review the manner in which those responsibilities are carried out, consistent with the Board's corporate and regulatory governance responsibilities. In addition, the CSRO and the Minister shall not interfere with the independent exercise of these statutory functions.

## **8. Corporate Reporting**

- 1) The Corporation shall:
  - a) each year, provide the Minister, no later than one hundred twenty (120) days before the end of its fiscal year, a strategic plan for the forthcoming year (as described in Schedule "G") in a format acceptable to the Minister;
  - b) each year, provide the Minister with a business plan (as described in Schedule G) for the forthcoming year, in a format acceptable to the Minister no later than the commencement of the fiscal year;
  - c) each year, provide the Minister with an annual report (as described in Schedule G) in a format acceptable to the Minister, no later than one hundred twenty (120) days after the end of its previous fiscal year;
  - d) enable the Minister to review and comment on the documents referred to in clauses (a), (b) and (c) prior to publication for a reasonable time period of approximately thirty (30) days from the receipt of the documents under normal circumstances.
- 2) The Corporation's business plan shall set out a summary of the activities it will undertake to ensure that its goods, services and facilities are accessible in accordance with the *Accessibility for Ontarians with Disabilities Act, 2005*, and any relevant additional accessibility related activities. The Corporation's annual report shall account for how these accessibility-related activities were provided.
- 3) The Corporation's business plan shall set out the means by which services related to the administration are provided in French in accordance with section 3.19.1 of the Act and the Corporation's annual report shall account for how these French language services were provided.
- 4) The Corporation's business plan shall set out the means by which complaints

received by the Corporation related to the administration of the Act are managed and resolved and the Corporation's annual report shall account for how these complaints were responded to and resolved.

- 5) The Corporation:
  - a) shall make the business plan referred to in clause (1)(b) available to the public, including by posting on the Corporation's website, within 45 days after the Minister's review;
  - b) shall publish the annual report referred to in clause (1)(c) to the Corporation's website and by any other method no later than the Corporation's annual general meeting.
- 6) The Corporation shall conduct a client satisfaction / value survey of its stakeholders, clients and holders of authorizations at least once every two (2) years. The client satisfaction / value survey shall be facilitated by an independent third party. The Corporation shall share a summary of the survey results with the Minister. The Corporation's annual report and website shall also include a synopsis of the results of the client satisfaction / value survey as conducted.
- 7) The Corporation shall have a risk management framework and risk management plan for managing risks that the Corporation may encounter in meeting its program and service delivery objectives as described in Schedule "G".
- 8) The Corporation's annual report shall include a section on data integrity, data quality, and implementation of data quality control and assurance processes and procedures throughout the organization.
- 9) The Corporation shall establish performance measures regarding the administration of the Act, subject to the approval of the Minister, as described in Schedule "M". This stable set of performance measures will reflect the regulated sector and enable a year-to-year comparison. Where a year-to-year comparison is not possible because of a change in performance measures, the Corporation shall give the Minister sufficient information to enable a proximate comparison of the changed performance measure.
- 10) The Corporation shall provide the Minister with performance targets and results for the performance measures approved by the Minister in subsection (9) on an annual basis and upon request by the Minister, as described in

Schedule “M”. Where the Corporation does not meet any one or more of its performance targets, the Corporation shall identify any variance from the target and provide a written rationale to the Minister.

- 11) The Corporation shall provide quarterly updates to the Minister on the performance targets and results referred to in subsection (10), in accordance with Schedule “M”.

## **9. Regulatory Governance**

- 1) The Board shall be responsible for carrying out the following regulatory governance functions:
  - a) reviewing the adequacy and effectiveness of the Corporation’s authorization, enforcement, and safety framework to ensure compliance with the Act;
  - b) reviewing implementation of and reporting on the enforcement of the Act, as well as the operations of the safety framework; and
  - c) Providing strategic advice to the Minister on potential or proposed legislative or regulatory changes.

## **10. Financial Arrangements**

- 1) The Corporation shall ensure that it has adequate resources to comply with this MOU and the Act consistent with the business plan that it has provided to the Minister under clause 8(1)(b) of this MOU.
- 2) The Corporation acknowledges that it cannot collect or retain as revenue any fines imposed by a court further to proceedings taken by the Corporation under the *Provincial Offences Act*.
- 3) The Corporation may establish fees, subject to any limitations on the amount imposed by the Act, costs and other charges related to its administration of the Act in accordance with the process and criteria approved by the Minister, as set out in the attached Schedule “H”.
- 4) The Corporation shall make publicly available, including by posting on its website,
  - a) its fees, costs and other charges,



- b) the process and criteria by which its fees, costs and other charges are established, and,
  - c) any rules governing the payment of its fees, costs and other charges.
- 5) The Corporation agrees to pay to the Minister such amounts as set out in the attached Schedule "I".
- 6) Any payments by the Corporation to the Minister shall be made payable to the Minister of Finance, drawn on the account of the Corporation and paid on a timely basis and on the terms as set out in the attached Schedule "I".
- 7) The Minister will charge interest on any late payments on the terms set out in the attached Schedule "I".
- 8) The Corporation shall report to the Minister at the earliest opportunity if there is any reason for concern about the financial state of the Corporation.

## **11. Records, Privacy and Access**

- 1) To the extent permissible by law, all records obtained from any source, created, or maintained by the Corporation in the course of carrying out its administration of the Act are the property of the Corporation and the Corporation is the sole owner and custodian of such records and may use them for its legitimate purposes in the administration of the Act.
- 2) All records that are the property of the Corporation shall be maintained in keeping with the records retention and destruction schedules established by the Corporation.
- 3) Subject to any regulation made under section 3.19.2 of the Act, the Corporation shall have an access and privacy code addressing issues of access to its records, protection of personal information, and effective procedural rights and remedies. This code shall protect privacy and provide access in accordance with the principles of the *Freedom of Information and Protection of Privacy Act* and provide an effective procedure in support of these principles. Upon approval by the Minister, the code shall be attached to this MOU as Schedule J".
- 4) The Corporation shall comply with the access and privacy code referred to in subsection (3), and shall make the code available to the public, including by posting on the Corporation's website.

- 5) The Corporation shall obtain the Minister's approval of any changes to the access and privacy code.

## **12. The Chief Safety and Risk Officer**

### **Appointment**

- 1) The Board shall appoint the CSRO with the consent of the Minister. For this purpose, the Minister shall provide the consent in writing, in advance of the appointment.
- 2) In determining whether to consent to the appointment of the proposed CSRO, the Minister shall consider:
  - a) whether the proposed CSRO has appropriate credentials and competencies to effectively discharge the duties of the position;
  - b) whether the proposed CSRO has demonstrated experience in the area of auditing and reviewing/assessing regulatory administrative processes and effectiveness;
  - c) whether the proposed CSRO has exhibited the ability to work with impartiality, objectivity and integrity;
  - d) whether the proposed CSRO is not a current employee or has not been a past employee, officer or director of the Corporation within the last four (4) years; and
  - e) any other matter the Minister considers appropriate, on giving reasonable notice to the Board.
- 3) The CSRO shall be appointed for a term of at least three (3) years and up to five (5) years. The CSRO may only be removed from the position with good and sufficient cause by the Board. The Board shall advise the Minister of any action it proposes to take under this provision.

### **Accountability**

- 4) The CSRO shall report directly to the Board and the Board shall review/evaluate the performance of the CSRO on an annual basis.
- 5) The Board and the Minister acknowledge that the CSRO exercises an independent role, pursuant to the Act and that the duties of the CSRO requires independent decision making. For this purpose, the Board and the Minister shall not interfere with the independent exercise of the CSRO's role. For this

purpose, the parties acknowledge that it is the explicit employment duty of the CSRO to report to the Board or the Minister, as the case may be, any interference in the CSRO's discharge of its duties.

### **Duties and Responsibilities**

- 6) The CSRO shall independently review and audit the Corporation's administration of the public safety responsibilities assigned to the Corporation pursuant to the Act, including comments on the Corporation's annual safety performance report and provide advice to the Minister and the Board on improving the corporation's effectiveness; and its ability to operate within an evidence-informed model.
- 7) The CSRO will review the Corporation's annual public safety report for the purpose of assessing the quality, accuracy and clarity of the data used for the report.
- 8) The CSRO will assess the adequacy and reliability of scorecard metrics and any performance measurement used to measure the Corporation's performance and provide the Minister and the Board with advice based on established best practices to continuously improve scorecard or performance metrics.
- 9) The CSRO may, subject to subsection 12 (11) of the MOU, prepare a report on any matter related to the Corporation's administration of the Act and the regulations delegated to the Corporation if the CSRO considers it in the public interest to do so.
- 10) The CSRO shall, subject to subsection 12 (11) of this MOU, prepare a report on an annual basis as required by subsection 3.11 (4) of the Act and such other reports as may be requested by the Board or the Minister. Where either the Board or the Minister requests a report, the CSRO shall provide the report within the time indicated by the Board or the Minister as the case may be. The annual report shall include an overview of the CSRO's activities and operations, highlight key recommendations arising out of any other report issued by the CSRO in the preceding year, and any other matter the CSRO considers relevant to the public.
- 11) The reports prepared by the CSRO shall be made available at the Corporation's annual meeting and shall be made available to the public by such means as determined by the CSRO.
- 12) The CSRO shall be an advocate for evidence informed decision-making and

public safety issues and shall take a forward-looking approach in this role based on current best practices and trends.

- 13) The CSRO shall not at any time accept or engage in any of the following duties:
- a) report or comment on any finding of liability or fact or on any investigation, whether initiated by the Corporation or another enforcement body, any legal proceeding, or reasonably foreseeable legal proceeding involving the Corporation or the Ministry;
  - b) report or comment on any action, or decision, by a statutory director under the Act, nor interfere in any duty, or power of a statutory director;
  - c) investigate or review specific incidents, or individual complaints;
  - d) accept any statutory, regulatory, administrative, or enforcement responsibilities.

### **13. Litigation**

- 1) The following provisions address any litigation arising after or as a result of the Corporation's designation under the *Safety and Consumer Statutes Administration Act, 1996*, as well as litigation arising after the amendments to the Act. For this purpose the Administrative Authority means the Corporation.
- 2) Civil and administrative litigation, including inquests, related to the Act in which the Crown is a defendant or an interested party, which was commenced prior to the date of designation of the Administrative Authority or which was commenced after that date but which relates in whole or in part to any event, act or omission, or to any event, act or omission occurring prior to that date, shall be defended or otherwise carried out by the Crown unless the parties expressly agree otherwise, and the Crown shall be responsible for all costs of the litigation and for the payment of any settlement costs agreed to and payable, and any damages awarded against it, as a result of any act, omission or fault of the Crown subject to order of the court or agreement of the parties otherwise. The parties agree that the Corporation reserves the right to defend or otherwise carry out any such litigation on its own behalf and at its own cost where it determines that it has an independent interest in the litigation.
- 3) The Corporation shall cooperate with the Crown for the purpose of the Crown's defence or other participation in the litigation referred to in subsection 13(2) of this MOU including providing documentation or information and providing witnesses in such litigation, where appropriate.

- 4) Civil and administrative litigation, including inquests, related to the Act in which the Crown is a defendant or an interested party, as a result of any alleged act or omission of the Corporation in its administration of the Act and which was commenced after the date of designation of the Administrative Authority shall be defended or otherwise carried out by the Corporation (with full right and power to choose legal counsel and with full right and power to reach a settlement which binds the Corporation and, with the Crown's consent, binds the Crown), unless the parties expressly agree otherwise. The Corporation shall be responsible for all costs of the litigation and for the payment of any settlement costs agreed to and payable by it and any damages awarded against it, as a result of any act, omission or fault of the Corporation, subject to an order of the court or agreement between the parties. The parties agree that the Crown reserves the right to defend or otherwise carry out any such litigation on its own behalf and at its own cost in respect of its own interest where it determines that it has an independent interest in the litigation.
- 5) Any proceedings, and any civil, criminal or administrative litigation, including inquests, not related to the Corporation's administration of the Act, in which the Crown is a defendant or an interested party, arising from or in any way connected with any activity undertaken by, or alleged act or omission of the Corporation, shall be defended or otherwise carried out by the Corporation. The Corporation shall be responsible for all costs of the proceedings or litigation and for the payment of any settlement costs agreed to and payable by it and any damages awarded against it. The parties agree that the Crown reserves its right to defend or otherwise carry out any such proceedings or litigation on its own behalf and at its own cost where it determines that it has an independent interest in the proceedings or litigation.
- 6) The Minister or the Crown shall cooperate with the Corporation for the purpose of the Corporation's defence or other participation in the litigation referred to in subsections (4) and (5) including providing documentation or information and providing witnesses in such litigation, where appropriate. The Corporation shall carry out all prosecutions related to the Act on its own behalf and in its own name, all in accordance with, pursuant to and in furtherance of the obligations of the Corporation to administer the Act.
- 7) The Corporation shall develop policies for the conduct of prosecutions that accord with the principles set out in any Ministry of the Attorney General prosecution-related policies, guidelines, codes or similar documents provided to it by the Minister. In carrying out prosecutions related to the Act, the Corporation shall conduct prosecutions in the public interest and in a manner

consistent with such policies.

- 8) The Minister shall keep the Corporation informed of any litigation by or against the Crown or in which the Crown is an interested party that may affect the interests of the Corporation.
- 9) The Corporation shall keep the Minister informed of any litigation by or against the Corporation or in which the Corporation is an interested party that may affect the interests of the Crown.

#### **14. Indemnification**

- 1) The Corporation acknowledges that, pursuant to subsection 3.17(4) of the Act, it is required to indemnify the Crown in respect of damages and costs incurred by the Crown for any act or omission of the Corporation or its members, officers, Board members, employees or agents in the exercise or performance or intended exercise or performance of their duties or powers under the Act, the regulations, a Minister's order, an alternate rule or the MOU or for any act or omission otherwise connected to the Act, the regulations, a Minister's order, the alternate rules or the MOU.
- 2) This indemnification survives termination of this Agreement for the maximum period permitted by law or contract.

#### **15. Insurance**

- 1) The Corporation shall take all reasonable steps to protect itself from and against all claims which might arise from the carrying out of the administration of the Act and the exercise or performance of its duties under the Act by the Corporation, its Board members, appointees, officers, employees and agents. The Corporation shall at all times maintain adequate insurance against liability arising out of the Corporation's carrying out its administration of the Act, the exercise or performance of its duties or powers under the Act, or this MOU including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage. The Corporation shall also provide an updated certificate each time the policy is updated. The policy is to include the following:
  - a) Her Majesty the Queen in Right of Ontario as represented by the Minister as additional insureds with respect to liability arising in the course of performance of the Corporation's obligations under, or otherwise in connection with, the Act;

- b) cross-liability clause;
  - c) thirty (30) day written notice of cancellation, termination or material change; and,
  - d) non-owned automobile coverage with blanket contractual coverage for hired automobiles.
- 2) The Corporation shall provide the Minister with certificates of insurance or other proof as may be requested by the Minister, that confirms all of the insurance coverage as provided for in subsection (1), and renewal replacements on or before the expiry of any such insurance.
- 3) In the event that the Minister imposes an obligation on the Corporation by obtaining the enactment of legislation, making a regulatory change or otherwise, which gives rise to exposure to liability on the part of the Corporation for which the Corporation cannot reasonably obtain appropriate liability insurance, the Corporation shall provide immediate notice to the Minister in writing of the uninsured risk and subject to government approvals that may be required, if any, the Corporation and the Minister shall identify appropriate measures to resolve the issue to the satisfaction of both parties. Where government approval is required, the Minister shall make reasonable efforts to obtain the necessary approvals.

## **16. Non-Regulatory Business**

- 1) The Corporation shall only enter into non-regulatory business arrangements that promote the public interest and enhance public safety. For this purpose, the Corporation shall comply with the principles set out in the Non-Regulatory Business Policy set out in Schedule “K”.
- 2) For any non-regulatory business arrangements, the Corporation shall submit to the Minister a statement confirming that such non-regulatory business arrangement will not negatively impact the Corporation’s regulatory business. The form and content of the statement shall be as detailed in Schedule “K”.
- 3) The Corporation acknowledges that, in accordance with subsection 3.5(2) of the Act, it shall not engage in commercial activity through an individual, corporation or other entity that is related to the Corporation.

## **17. Code of Conduct for Compliance Personnel**

- 1) The Corporation shall develop a code of conduct for its compliance personnel

relating to the Corporation's compliance and enforcement responsibilities under the Act and any other legislation that is in keeping with the spirit and principles of the most recent Ontario Public Service Regulators' Code of Practice.

- 2) The Corporation shall provide its code of conduct to the Minister, as it is updated from time to time, make it available to the public, and post the code on the Corporation's website.

## **18. Administrator**

The parties recognize that the Minister has the power under section 3.23 of the Act to appoint an administrator if the Minister is of the opinion that it is advisable in the public interest because at least one of the following conditions is satisfied:

- a) The appointment is necessary to prevent serious harm to public safety or to the interests of the public or consumers.
- b) An event of force majeure has occurred.
- c) The Corporation is facing a risk of insolvency.
- d) The number of members of the board of the authority is insufficient for a quorum.

## **19. Dispute Resolution**

The parties agree to use reasonable efforts to resolve any disputes that may arise out of or in connection with this MOU or the administration of the Act.

## **20. Communications and Information Sharing**

- 1) Each of the parties shall designate an individual who will be the primary contact for all issues and communications related to this MOU, the Act and the administration of the Act.
- 2) The parties shall develop procedures for the sharing of information and the resolution of issues that may arise during the course of the Corporation's administration of the Act. Upon approval by the Minister, such procedures shall be attached to the MOU as Schedule "B".

## **21. Reviews and Audits**

- 1) The Corporation acknowledges that pursuant to section 3.21 of the Act:



- a) The Minister may require that policy, legislative or regulatory reviews related to the Act or this MOU be carried out.
  - b) The Minister may also require that reviews of the Corporation, its operations, or both, including performance, governance, accountability and financial reviews, be carried out.
- 2) If the Minister requires the Corporation or a person on behalf of the Corporation to carry out a review mentioned in subsection 21(1), the Corporation shall share the results of any such reviews with the Minister.
  - 3) If the Minister specifies another person or entity to carry out a review mentioned in subsection 21(1), the Minister shall ensure that the person or entity consults with the Corporation as appropriate during any such review.
  - 4) Pursuant to section 3.22 of the Act, the Auditor General appointed under the *Auditor General Act* may conduct an audit of the Corporation, other than an audit required under the *Not-for-Profit Corporations Act, 2010*.
  - 5) Upon the Auditor General conducting an audit under the Act, the Corporation shall provide the Auditor General and its employees access to all records and any information required to conduct the audit, as may be requested by the Auditor General and as referenced in Schedule “L”.
  - 6) The Corporation shall forthwith notify the Minister upon receiving notice from the Auditor General of an audit conducted on the Corporation.
  - 7) The Corporation shall cooperate in any review or audit required by the Minister or the Auditor General.

## **22. Severability of Provisions**

The invalidity or unenforceability of any provision of this MOU will not affect the validity or enforceability of any other provision of the MOU. Any invalid or unenforceable provision will be deemed to be severed.

## **23. Assignment**

Neither the Corporation nor the Minister shall assign this MOU in whole or in part without the express written consent of the other.

## **24. Waiver**

If a party fails to comply with any term of the MOU, that party may only rely on a

waiver of the other party if the other party has provided a written waiver. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

## **25. Independent Parties**

The Corporation is not an agent, joint venture, partner or employee of the Crown, and the Corporation shall not represent itself in any way that might be taken by a reasonable person to suggest that it is or take any actions that could establish or imply such a relationship.

## **26. Jurisdiction**

This MOU shall be governed by the laws of the Province of Ontario and applicable laws of Canada.

## **27. Conflict**

In the event of a conflict between the provisions of this MOU and the Act or a Minister's order made under the Act, the Act or the Minister's order, as the case may be, prevails.

## **28. Amendment and Review of MOU**

- 1) Subject to subsection 3.15(2) of the Act, the terms of this MOU may only be added to, deleted, varied or amended with the consent of both parties. Such amendments shall be in writing, dated, and signed by both parties and attached to this MOU.
- 2) The parties shall amend this MOU as required to accommodate any changes to the Act.
- 3) Pursuant to subsection 3.15(2) of the Act, prior to any Minister's amendments to this MOU, the Minister shall give such notice to the Corporation as the Minister considers reasonable in the circumstances. The Minister shall provide the Corporation with a time period that the Minister considers reasonable for the Corporation to comply with the amendments.
- 4) Upon a change in the Minister or Chair of the Board, the new Minister or new Chair, as the case may be, must, within six months of the change, send a letter to the other party affirming their awareness of the MOU in order to facilitate compliance with the requirements of the MOU.

- 5) The parties shall conduct a review of this MOU within five (5) years of execution to ensure it is current. Despite the foregoing, either party may initiate a review of the MOU when advisable in the public interest upon giving notice in writing to the other.

## **29. Public Document**

The parties agree that this MOU, including the Schedules hereto, and any amendments, shall be made available to the public by either party upon request to that party by any member to the public. The Corporation shall post the MOU, schedules and any amendments on its website within thirty (30) days of the effective date of this MOU and thirty (30) days of execution of any amendments thereafter.

## **30. Entire Agreement**

The Minister and the Corporation agree that this MOU and any schedules hereto, as amended from time to time in accordance with section 28 of this MOU and subsection 3.15 (2) of the Act form the entire MOU between the parties and, subject to Schedule N, supersede any prior understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of the execution of the MOU.

## **31. Effective Date**

Subject to Schedule N, This MOU comes into effect on the later date of execution of this MOU by the parties and will supersede and replace any prior memorandum of understandings made between the parties.

IN WITNESS WHEREOF the parties hereto have executed this MOU.

**Technical Standards and Safety  
Authority**

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

**As originally signed by RJ Falconi**

**As originally signed by The Honourable  
Minister Ross Romano**

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Chair of the Board

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Minister of Government and Consumer  
Services

Date: April 25, 2022

Date: April 28, 2022