

[Execution Version – 2016]

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE ONTARIO NORTHLAND TRANSPORTATION COMMISSION

AND

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER
OF NORTHERN DEVELOPMENT AND MINES**

THIS MEMORANDUM OF UNDERSTANDING

BETWEEN:

THE ONTARIO NORTHLAND TRANSPORTATION COMMISSION

AND

**HER MAJESTY THE QUEEN AS REPRESENTED BY THE MINISTER OF
NORTHERN DEVELOPMENT AND MINES**

WHEREAS the Province of Ontario has established the Ontario Northland Transportation Commission (the “**ONTC**”) to provide transportation services, including rail freight, rail car remanufacturing and repair services, motor coach, and Polar Bear Express passenger rail in Northern Ontario;

AND WHEREAS the ONTC operates under the *Ontario Northland Transportation Commission Act*, R.S.O. 1990, c. O.32;

AND WHEREAS the ONTC, since approximately 2004, has undertaken remanufacturing and repair services for external customers as part of its operations;

AND WHEREAS the Minister of Northern Development and Mines is responsible for the administration of the Act;

AND WHEREAS the Province of Ontario has directed that the ONTC continue regular operations as it undertakes transformation efforts to support long-term sustainability;

AND WHEREAS it is necessary for the Parties to enter into a Memorandum of Understanding that reflects the policies of the Province of Ontario, as they pertain to the Mandate, operation and funding requirements of the ONTC;

NOW THEREFORE the Parties agree as follows:

ARTICLE 1 PURPOSE

- 1.1 **Purpose.** The purpose of this Memorandum of Understanding (MOU) is to set out the accountability relationship between the Parties. The Memorandum of Understanding shall:
- (a) Clarify the roles and responsibilities of the Minister, the Deputy Minister, the Commissioners, the Chair, and the CEO of the ONTC; and
 - (b) Set out the operational, administrative, financial, auditing and reporting arrangements between the ONTC and the Ministry of Northern Development and Mines.

ARTICLE 2 DEFINITIONS

2.1 **Definitions.** In this MOU, terms shall have the following meanings:

- (a) “**Act**” means the *Ontario Northland Transportation Commission Act*, R.S.O. 1990, c.

- O. 32, and any regulations made pursuant thereto;
- (b) “**Agencies and Appointments Directive**” means the Management Board of Cabinet *Agencies and Appointments Directive*;
 - (c) “**Annual Report**” has the meaning set out at Section 10.8;
 - (d) “**Business Plan**” means the ONTC’s multi-year business plan submitted annually by the ONTC to the Province;
 - (e) “**By-laws**” means the by-laws adopted by the Commission.
 - (f) “**Cabinet**” means the Executive Council of the Province of Ontario;
 - (g) “**Capital Plan**” means the ONTC’s annual capital plan submitted annually by the ONTC to the Province;
 - (h) “**CEO**” means the individual appointed by the Commission as the Chief Executive Officer of the ONTC;
 - (i) “**Chair**” means the Chair of the ONTC;
 - (j) “**Commissioners**” means the commissioners/members of the Board of Directors of the ONTC;
 - (k) “**Communication**” means any and all forms of communication, reporting and exchanges of information in the following contexts:
 - i. between the Parties,
 - ii. internally within the ONTC respecting the implementation of the ONTC’s Mandate or any other communication, reporting or exchange of information not in the ordinary course of business, and
 - iii. externally with any ONTC stakeholder or any other member of the public including respecting the routine business and operations of the ONTC;
 - (l) “**Communications Protocol**” means the protocol established by the Ministry and the ONTC from time to time to govern all Communications;
 - (m) “**Contribution Agreement**” means the annual funding and service level agreement between MNDM and the ONTC;
 - (n) “**Crown Agency**” means a Crown agency under the *Crown Agency Act*, R.S.O. 1999, c. C.48;
 - (o) “**Deputy Minister**” means the Deputy Minister of Northern Development and Mines;
 - (p) “**Direction**” means any written direction to the ONTC from the Lieutenant Governor in Council or the Minister expressing the policy of the Government of Ontario;
 - (q) “**Effective Date**” has the meaning set out in Section 22.1;
 - (r) “**Legislative Assembly**” means the Legislative Assembly of Ontario;

- (s) “**LGIC**” means the Lieutenant Governor in Council of Ontario;
- (t) “**Mandate**” means the mandate for the operations of the ONTC in accordance with the Act and as approved by Cabinet, as described in Section 3.3 of this MOU;
- (u) “**Minister**” means the Minister of Northern Development and Mines or such other Minister as may from time to time be responsible for the administration of the Act;
- (v) “**Ministry**” or “**MNDM**” means the Ministry of Northern Development and Mines;
- (w) “**MOU**” means this Memorandum of Understanding;
- (x) “**ONTC**” means the Ontario Northland Transportation Commission;
- (y) “**Party**” or “**Parties**” mean a signatory or the signatories to this MOU as the context requires;
- (z) “**Services**” means the services prescribed for the ONTC as defined in Schedule “B” to this MOU;
- (aa) “**Province**” means the Province of Ontario;
- (bb) “**PSOA**” means the *Public Service of Ontario Act*, 2006, S.O. 2006, c. 35, Sched. A;
- (cc) “**Reporting Protocol**” means the protocol established by the Ministry and the ONTC from time to time, which sets out the Ministry’s reporting requirements of the ONTC and governs the reporting relationship between the ONTC and the Ministry; and
- (dd) “**TB/MBC**” means the Treasury Board/Management Board of Cabinet of Ontario.

ARTICLE 3 LEGAL AUTHORITY AND MANDATE

- 3.1 **Legal Authority.** The legal authority of the ONTC is set out in the Act. The MOU, any Direction and the Act should be read together to determine how the ONTC should govern itself. The MOU shall not affect, modify, limit or interfere with the responsibilities of any of the Parties under the Act or any other applicable law. In the event of conflict between the MOU and any law, the law takes precedence.
- 3.2 **The Railways Act.** Pursuant to the Act, the ONTC also has authority to exercise certain powers under the *Railways Act*, R.S.O. 1950, c. 331.
- 3.3 **Mandate.** The Province of Ontario has approved the mandate for the ONTC and has directed that ONTC continue to provide and ensure efficient, safe and reliable transportation services, such Services as more particularly described in Schedule B, in Northern Ontario to support long term sustainability through transformation efforts, as directed by the Province of Ontario through the Minister from time to time, including preparing assets and business lines for transformation activities subject to the approval of the Province of Ontario. In accordance with the mandate, and subject to the following, the ONTC:
 - (a) will provide the Services; and
 - (b) the remanufacturing and repair services provided to external customers will be at full cost recovery and will not adversely affect the provision of the other Services.

- 3.4 **Review.** The Mandate of the ONTC shall be reviewed by the Province once every seven years, or more frequently as the Province may determine in its sole discretion.

ARTICLE 4 CROWN AGENCY CLASSIFICATION

- 4.1 **Crown Agency Status and Classification.** The ONTC is a Crown Agency within the meaning of the *Crown Agency Act*, R.S.O. 1999, c. C.48, classified by TB/MBC as a Board Governed Agency and as an operational enterprise agency within the meaning of the Agency and Appointments Directive. The ONTC will comply with the policies and procedures set out in applicable TB/MBC directives, as may be amended from time to time.
- 4.2 **Accounting Standard.** The ONTC's financial statements are prepared in accordance with the standards applicable for government not-for-profit organizations as set out by the Public Sector Accounting Board.

ARTICLE 5 GUIDING PRINCIPLES

- 5.1 **Guiding Principles.** The Parties share the following principles in their relationship that:
- (a) the Minister recognizes that the ONTC is a statutory entity which exercises powers and performs duties in accordance with its Mandate, any Directions and this MOU. As a Board Governed Agency, an operational enterprise Crown Agency, the ONTC has an ability to make decisions, enabling it to operate its businesses in a commercially competent environment subject to its legal authority, the Mandate and any Directions. As with any Board of private concern, the Commissioners must have sufficient authority to meet their responsibilities for the efficient management of the ONTC and the ONTC's businesses subject to the Mandate, this MOU and any Directions;
 - (b) the Province of Ontario has approved the Mandate for the ONTC and the Chair recognizes that the role of the Commissioners is to oversee the implementation of the Mandate and cooperate with the Ministry to ensure that the Mandate is implemented in an effective, accountable, transparent and timely way;
 - (c) The Ministry and ONTC shall respect each other's accountabilities and responsibilities in the management of the Services and shall endeavor to ensure that in fulfilling their respective responsibilities, they will do so in a manner that supports and enables the other party in an effective, transparent and timely way.
 - (d) Consistent with OPS values, ONTC shall conduct itself according to the following principles: ethical behaviour, accountability, excellence in management, responsible and appropriate use of public resources, value for money, public funds being spent with due regard to economy and efficiency, high-quality service provided with integrity and honesty, fair and equitable access, openness and transparency in accordance with applicable legislation and government directives; these are fundamental principles to be observed in the operations of the ONTC and in the implementation of the Mandate.

ARTICLE 6 ACCOUNTABILITY RELATIONSHIPS

6.1 **Minister.** The Minister is accountable:

- (a) to Cabinet and the Legislative Assembly for reporting and responding to the Legislative Assembly on the affairs of the ONTC;
- (b) for attesting, reporting and responding to TB/MBC on the ONTC's performance and compliance with the Province's applicable directives and operational policies;
- (c) to the Cabinet for the performance of the ONTC and its compliance with the Province's operational policies and broad policy directions; and
- (d) for receiving and ensuring that the ONTC's Annual Report is made available to the public after tabling it in the Legislative Assembly.

6.2 **Deputy Minister.** The Deputy Minister is accountable:

- (a) to the Minister and the Secretary of Cabinet for the performance of the Ministry in providing support and direction to the ONTC and for carrying out the roles and responsibilities assigned to him/her by the Minister, TB/MBC and Ministry of Finance directives, the Act, any Directions and any other applicable law and this MOU, including coordinating TB/MBC approval of the Business Plan and Capital Plan, including provincial funding for certain of the Services.

6.3 **The Chair.** The Chair is accountable:

- (a) to the Minister for ensuring that the ONTC fulfills its Mandate in a timely manner and complies with and carries out the roles and responsibilities assigned to it under the Act and other applicable law, this MOU, Directions and applicable TB/MBC and Ministry of Finance directives;
- (b) to the Minister for the ONTC's compliance with any and all Directions in a timely manner;
- (c) to the Minister for the ONTC's adherence to any established Communications Protocol and/or Reporting Protocol;
- (d) to the Minister for the oversight, direction and governance of the ONTC; for setting goals, objectives and strategic direction for the ONTC within its Mandate; and for carrying out the roles and responsibilities assigned to it by the Act and any other applicable law, TB/MBC and Ministry of Finance directives and this MOU;
- (e) for reporting to the Minister as requested on the ONTC's activities; and
- (f) for ensuring timely communications with the Minister regarding any issue that affects or can reasonably be expected to affect, the Minister's responsibilities for the ONTC.

6.4 **The Commissioners.** The Commissioners are accountable:

- (a) to the Minister through the Chair for ensuring that the ONTC fulfills its Mandate in a timely manner and complies with and carries out the roles and responsibilities assigned to it under the Act and other applicable law, this MOU, Directions and applicable TB/MBC and Ministry of Finance directives;
- (b) to the Minister through the Chair for the compliance with any and all Directions in a timely manner;
- (c) to the Minister through the Chair for the ONTC's adherence to any established Communications Protocol and/or Reporting Protocol; and
- (d) to the Minister through the Chair for the oversight, direction and governance of the ONTC; for setting goals, objectives and strategic direction for the ONTC within its Mandate; and for carrying out the roles and responsibilities assigned to it by the Act and any other applicable law, TB/MBC and Ministry of Finance directives, Directions and this MOU.

6.5 The CEO. The CEO is accountable:

- (a) to the Commissioners for the ONTC's fulfillment of the Mandate in a timely manner;
- (b) to the Commissioners for the ONTC's compliance with any and all Directions in a timely manner;
- (c) to the Commissioners for the ONTC's adherence to any established Communications Protocol and/or Reporting Protocol and any other mutually agreed to protocol between the Ministry and ONTC;
- (d) to the Commissioners for the management of the ONTC's operations and the management and supervision of the ONTC's staff subject to the Mandate. The CEO works under the direction of the Chair to implement policy and operational decisions, including Directions. The CEO reports the ONTC's performance results to the Commissioners; and
- (e) to the Commissioners for the accuracy of financial projections and meeting operational, transformation and financial targets.

ARTICLE 7 ROLES AND RESPONSIBILITIES

7.1 Minister. The Minister is accountable to Cabinet and to the Legislative Assembly for:

- (a) recommending and seeking the necessary authority from the Province, as may be required from time to time, to enable the ONTC to carry out its Mandate;
- (b) recommending the appointment and reappointment of individuals as Commissioners pursuant to the process for public appointments established by TB/MBC;
- (c) receiving the ONTC's Annual Report, tabling it in the Legislative Assembly and ensuring that the Annual Report is made available to the public after tabling it in the Legislative Assembly;
- (d) reporting and responding to the Legislative Assembly on the affairs of the ONTC;

- (e) attesting, reporting and responding to TB/MBC on the ONTC's performance in delivering its Mandate, and its compliance with applicable TB/MBC directives, the Province's operational policies and Directions;
- (f) informing the Chair of the Province's priorities and policy directions for the ONTC, including providing the ONTC with Directions;
- (g) where required, recommending to TB/MBC any change to the ONTC's Mandate and the powers to be given to or revoked from the ONTC when a change in the Mandate is being proposed;
- (h) reviewing and approving annually the Business Plan and Capital Plan;
- (i) at a minimum of once every year, recommending to TB/MBC the approval of the Business Plan and Capital Plan;
- (j) meeting with the Commission annually, or more often as needed;
- (k) when appropriate or necessary, issuing Directions, taking action or directing that action be taken in respect of the ONTC's interpretation of its Mandate or the ONTC's operations or administration;
- (l) developing an MOU with the Chair, recommending approval to TB/MBC before it is signed by the parties, and signing it into effect after it has been signed by the Chair;
- (m) recommending to TB/MBC any provincial funding to be allocated to the ONTC;
- (n) determining at any time the need for a review or audit of the ONTC, and recommending to TB/MBC any changes to the governance or administration of the ONTC resulting from any such review or audit; and
- (o) directing the Chair to undertake periodic reviews of the ONTC and making subsequent recommendations to TB/MBC as may be required.

7.2 **Deputy Minister.** The responsibilities of the Deputy Minister, or any designate or delegate, are to:

- (a) provide the Minister with advice and assistance to meet his or her assigned responsibilities regarding the ONTC;
- (b) advise the Minister on the requirements of the Agencies and Appointments Directive, and other Provincial directives that apply to the ONTC;
- (c) establish a framework for reviewing and assessing the ONTC's Business Plans, Capital Plans and other reports, with consultation with the ONTC as considered desirable in the Deputy Minister's sole discretion;
- (d) advise the Minister on ONTC documents submitted to the Minister for review, approval or both;
- (e) keep the Minister advised in respect of issues or events that fall within the responsibilities of the ONTC;

- (f) consult with the Chair, as needed, on matters of mutual importance, including on any services provided by the Ministry and compliance with TB/MBC directives and Ministry policies and priorities;
- (g) undertake and/ or cooperate with reviews of the ONTC as may be directed by the Minister or TB/MBC;
- (h) maintain an open and co-operative working relationship with ONTC with respect to all planning, financial, administrative and management matters through regular meetings with ONTC;
- (i) consult and meet with the CEO on a regular basis as needed;
- (j) ensure the Ministry's adherence to any established Communications Protocol and/or Reporting Protocol and any other mutually agreed to protocol between the Ministry and ONTC;
- (k) keep the CEO informed on issues or events that concern the CEO and Chair in the exercise of their respective responsibilities on matters of mutual importance;
- (l) monitor the ONTC on behalf of the Minister and, where warranted, identify needs for corrective action and recommend to the Minister ways of resolving issues;
- (m) ensure an accountability framework, that includes without limitation an approved memorandum of understanding, Business Plan and Capital Plan, and Contribution Agreement, is in place in accordance with the applicable directives of the Province;
- (n) arrange for administrative, financial, and other support to the ONTC as specified in the MOU;
- (o) advise the Chair of required timelines for the ONTC to submit its Business Plan and Capital Plan and its operating budget;
- (p) apprise the ONTC of decisions of the Province with respect to the ONTC's annual allocation and any Direction and/or any potential impact on delivery of services as reflected in the Mandate;
- (q) approve, on behalf of the Ministry an annual Contribution Agreement between MNDM and the ONTC setting out:
 - (i) any Cabinet direction and where appropriate any Direction with respect to the ONTC,
 - (ii) the approved annual operating subsidy, capital funding, service levels and performance measures for the Services as needed, and
 - (iii) if appropriate, any changes that may be required in the ONTC's Business Plan and Capital Plan to reflect the Cabinet direction referred to at paragraph (i) above.
- (r) recommend to the Minister, as may be necessary, the evaluation or review, including a risk-based review, of the ONTC or any of its programs, or changes to the management framework or operations of the ONTC;

- (s) facilitate briefings and consultations between the Chair and the Minister, and between Ministry staff and the ONTC staff as appropriate;
- (t) attest to TB/MBC as required, to the ONTC's compliance with the mandatory accountability requirements set out in the Agencies and Appointments Directive;
- (u) ensure that the Ministry and the ONTC have the capacity and systems in place for ongoing risk-based management, including appropriate oversight of the ONTC;
- (v) ensure that the ONTC has an appropriate risk management framework and a risk management plan in place;
- (w) undertake timely risk-based reviews of the ONTC, its management or operations as may be directed by the Minister or TB/MBC;
- (x) support the Minister in reviewing the performance targets, service standards, measures and results of the ONTC;
- (y) submit to the Minister, as part of the annual planning process, a risk assessment and management plan for each risk category;
- (z) meet with the Chair as needed or as directed by the Minister;
- (aa) inform the Chair in writing of new directives of the Province and any exceptions to or exemptions in whole or in part from TB/MBC directives or Ministry administrative policies; and
- (bb) when required, submit a report to TB/MBC on the transformation of the ONTC.

7.3 **Chair.** The responsibilities of the Chair of the ONTC are to:

- (a) provide leadership and oversight to the ONTC and to the Commissioners and monitor the Commissioners' performance;
- (b) monitor the performance of the ONTC;
- (c) ensure the ONTC adheres to any established Communications Protocol and/or Reporting Protocol;
- (d) cooperate and ensure the ONTC cooperates with the Ministry to facilitate the transformation process;
- (e) provide to the Ministry at least two day's prior written notice of Commission meetings and all material circulated to Commissioners, including past meeting minutes, and, at the discretion of the Commission, invite a Ministry representative to attend each Commission and any committee meetings, including in camera sessions, as an observer and liaison between the Ministry and the ONTC;
- (f) provide oversight responsibility to ensure that all Directions from the Minister or the Lieutenant Governor in Council are carried out by the ONTC promptly and efficiently and report back to the Ministry on the implementation by ONTC of the activities required by any Directions;

- (g) keep the Minister advised in a timely fashion of issues or events relating to the ONTC that may concern or be reasonably expected to concern the Minister in the exercise of his or her responsibilities;
- (h) ensure that the ONTC responds to requests for information from the Ministry promptly;
- (i) account to the Minister for the overall operating and financial performance of the ONTC and ensure that an evaluation of operating and financial performance is submitted to the Minister on a quarterly basis or as required by the Ministry;
- (j) keep the Ministry informed of any financial or operational variances in the ONTC Business Plan and Capital Plan and provide this information promptly after it has been reported to the Commissioners;
- (k) arrange for the preparation and submission to the Minister of all reports, plans, strategies and programs required under this MOU, any Directions or the Act in accordance with prescribed or required timelines, or as otherwise requested by the Minister;
- (l) review and approve the Business Plan and Capital Plan, budget, Annual Report and financial reports, and submit them to the Minister in accordance with the timelines specified in the applicable TB/MBC and Ministry of Finance directives, and this MOU, or where directives are not applicable then in accordance with the timelines specified by the Ministry in consultation with the ONTC;
- (m) cooperate with any review or audit of the ONTC as directed by the Province, including the Minister or TB/MBC;
- (n) sign the ONTC's MOU as authorized by the Commissioners;
- (o) approve, on behalf of the ONTC, a Contribution Agreement between MNM and the ONTC;
- (p) notify the Minister of upcoming appointment vacancies and if requested provide recommendation for appointments or reappointments;
- (q) evaluate the performance of the CEO in consultation with the Commissioners and pursuant to performance criteria established by the Commissioners and the Chair;
- (r) ensure the implementation of actions that support the Mandate of the ONTC;
- (s) seek strategic policy direction(s) for the ONTC from the Minister;
- (t) consult with the Minister in advance regarding any activity or activities which may have an impact on the Province and Ministry's policies, Directions, directives or procedures or on the Mandate;
- (u) ensure that the ONTC operates within its approved operating and capital budget allocations in fulfilling its Mandate;
- (v) provide both the Minister and the Minister of Finance with a copy of every audit report, a copy of the ONTC's response to each of the audit reports and the recommendations made in those reports;

- (w) advise the Minister annually on any outstanding audit recommendations;
- (x) conduct regular assessments with respect to the effectiveness and the contribution of each individual Commissioner;
- (y) ensure that a process is in place, in accordance with section 17.1 of this MOU, for responding to and resolving complaints from the ONTC customers about quality of service;
- (z) consult with the Deputy Minister as needed on matters of mutual importance including on the Services and on TB/MBC directives, Ministry policies and Directions;
- (aa) fulfill the role of ethics executive for public servants who are government appointees to the ONTC in accordance with the PSOA, including by promoting ethical conduct and ensuring that Commissioners are informed of their responsibilities under the PSOA including without limitation with respect to:
 - (i) the rules of ethical conduct (Part IV of the PSOA),
 - (ii) the political activity rules (Part V of the PSOA),
 - (iii) conflict of interest, and
 - (iv) the protected disclosure of wrongdoing,
 and with the regulations and the directives made under that Act; and
- (bb) provide signed attestation annually, in accordance with the Agencies and Appointments Directive, confirming compliance with legislation, government directives, and accounting and financial policies.

7.4 The Commissioners. The responsibilities of the Commissioners are to:

- (a) set the goals, objectives and strategic directions of the ONTC within its Mandate as defined by the Act, Directions and approved MOU;
- (b) ensure the ONTC adheres to the established Communications Protocol and the Reporting Protocol;
- (c) cooperate and ensure that the ONTC cooperates with the Ministry to facilitate the transformation process;
- (d) ensure that no ONTC employment contracts, severance packages, new material obligations or any other contracts outside of the ordinary course of business are approved without the prior written approval of the Ministry;
- (e) establish a risk management framework to improve the effectiveness and consistency of its risk management process;
- (f) direct the preparation of and approve the Business Plans, Capital Plans and Annual Reports within the timelines set out in the Agencies and Appointments Directive as

applicable or where directives are not applicable then in accordance with the timelines specified by the Ministry and in consultation with ONTC;

- (g) set policies whereby, and to ensure that that the ONTC uses public funds:
 - (i) prudently and only for the business of the ONTC based on the principles of value for money, and in compliance with applicable law, any Directions and TB/MBC directives,
 - (ii) in conformance with the Act, the *Pension Benefits Act*, R.S.O. 1990, c. P.8, other applicable law and this MOU, and
 - (iii) with integrity, honesty, fairness and effective controllership;
- (h) establish performance measures, targets and service standards for ONTC and management systems for monitoring and assessing the ONTC's performance and the progress of transformation;
- (i) conduct regular assessments with respect to the effectiveness of the Commissioners as a whole and the contribution of each Committee of Commissioners;
- (j) conduct an annual assessment of the Commissioners to ensure compliance with this MOU and other obligations of the Commissioners;
- (k) arrange for audits and reviews, including risk-based audits and reviews of the ONTC as needed and cooperate with and share any relevant information on any risk-based or periodic review directed by the Minister or TB/MBC;
- (l) direct the affairs of the ONTC and set overall priorities so as to fulfill its Mandate and ensure that the ONTC manages its affairs in compliance with applicable TB/MBC directives, Directions and any Cabinet directions;
- (m) make decisions consistent with the Business Plan and Capital Plan approved for the ONTC and ensure that the ONTC operates within its allocations;
- (n) approve the MOU for the ONTC in a timely manner and authorize the Chair to sign it on behalf of the ONTC;
- (o) approve for submission to the Minister within the timelines as set out in the Agencies and Appointments Directive, or where directives are not applicable then in accordance with the timelines specified by the Ministry in consultation with the ONTC, the ONTC's plans, reports, and reviews;
- (p) direct action(s), including corrective actions to be taken if needed with respect to the effectiveness of the ONTC and the ONTC's compliance with the Mandate, all applicable laws, policies and directives and Directions;
- (q) ensure that Directions are implemented promptly and efficiently;
- (r) advise the Minister, through the Chair, on issues within or affecting the ONTC's implementation of the Mandate or operations;
- (s) where applicable, ensure that conflict of interest rules that the ONTC is required to follow, as set out in Ontario Regulation 381-07 (or as have been approved and

published by the Conflict of Interest Commissioner), are in place for the Commissioners and employees of the ONTC; and

- (t) establish such Commission committees or oversight mechanisms as may be required to advise the Commission on effective management, governance or accountability procedures for the ONTC.

7.5 The CEO. The responsibilities of the CEO are to:

- (a) provide leadership and management to the ONTC's staff including financial resource management;
- (b) manage the daily activities of the ONTC in accordance with the Mandate, sound business and financial management practices, Directions and applicable TB/MBC and Ministry of Finance directives;
- (c) ensure the ONTC adheres to any established Communications Protocol and/or Reporting Protocol;
- (d) cooperate and ensure that the ONTC cooperates with the Ministry to facilitate the transformation process;
- (e) keep the Ministry informed of the status of the implementation of the Mandate promptly following a request from the Ministry for such information;
- (f) ensure that the ONTC responds to requests for information from the Ministry promptly;
- (g) ensure that any and all Directions from the Minister are carried out by the ONTC promptly and efficiently and report back to the Commissioners on the implementation by ONTC of the activities required by the Directions;
- (h) prepare a Business Plan, annual operating budget and Capital Plan for approval by the Commissioners within timelines prescribed by the Ministry;
- (i) establish systems to ensure that the ONTC operates within its approved Business Plan, Capital Plan and budgets;
- (j) establish management reporting and analysis systems to improve management planning, risk management, and performance assessments and to ensure proper action is taken, resulting from these analyses;
- (k) keep the Chair and the Commissioners informed of the ONTC's operational matters;
- (l) prepare Annual Reports for the ONTC as directed by the Commissioners;
- (m) prepare and provide for approval to the Chair and the Commissioners quarterly operating and financial reports, including:
 - (i) cash flow statements of revenues and expenses,
 - (ii) line of credit and other financing activities, and

- (iii) actual and projected variances in all income statement items from the ONTC's multi-year Business Plan and an explanation of these variances;
- (n) establish a system for the retention of the ONTC documents (to include but not be limited to the audited financial statements, Annual Reports, Business Plans, and Capital Plans) and for appropriately making such documents publicly available;
- (o) apply policies so that public funds are used with integrity and honesty;
- (p) establish and apply a financial management framework for the ONTC in accordance with applicable Minister of Finance controllership directives, policies and guidelines;
- (q) support the Chair and the Commissioners in meeting their respective responsibilities;
- (r) carry out in-year monitoring of the ONTC's operational performance and transformation progress, and report on it to the Chair and the Commissioners;
- (s) advise the Chair and the Commissioners on the requirements of and compliance with the Agencies and Appointments Directive as well as all other TB/MBC and Ministry of Finance directives and policies, Ministry policies and procedures and the By-laws and policies;
- (t) seek advice and support from the Ministry, as appropriate regarding management issues the Ministry might reasonably be expected to have an interest in;
- (u) cooperate with any periodic review directed by the Minister or TB/MBC;
- (v) prepare financial reports for approval by the Commissioners;
- (w) prepare and establish, for approval by the Commissioners, a performance review system for the ONTC's staff and implement this system when approved;
- (x) ensure that the ONTC has the oversight capacity and an effective oversight framework in place for monitoring its management and operations;
- (y) put in place and maintain a system for ensuring that the ONTC is kept informed of any applicable laws, policies and directives;
- (z) ensure that a system is in place for the creation, collection, maintenance and disposal of records in accordance with section 21.1 of this MOU;
- (aa) ensure that an appropriate framework is in place for the ONTC staff and appointees to receive adequate orientation and training;
- (bb) ensure that ONTC staff and appointees are aware of and comply with applicable TB/MBC and Ministry of Finance directives;
- (cc) fulfill the role of ethics executive for public servants who are not government appointees to the ONTC in accordance with the PSOA, including by promoting ethical conduct and ensuring that Commissioners are informed of their responsibilities under the PSOA including without limitation with respect to:

- (i) the rules of ethical conduct (Part IV of the PSOA),
- (ii) the political activity rules (Part V of the PSOA),
- (iii) conflict of interest, and
- (iv) the protected disclosure of wrongdoing,

and with the regulations and the directives made under that Act;

- (dd) establish emergency management plans, including but not limited to a Rail Safety Management System, that focus on preventing, training for, and responding to emergencies that may be caused by natural, technological, and/or human-caused incidents;
- (ee) provide signed attestation annually, to support the Chair in accordance with the Agencies and Appointments Directive, confirming ONTC is in compliance with all legislation, government directives, and accounting and financial policies;
- (ff) post approved governance documents on the ONTC public website per the guidelines and timeframes established in the Agencies and Appointments Directive; and
- (gg) inform, discuss, and try to reach mutual understanding with the Ministry on items that require Commission decisions and that the Ministry might reasonably be expected to have an interest; and
- (hh) send a package of relevant materials and documents to the Ministry in advance of each Commission meeting.

ARTICLE 8 EXCHANGE OF INFORMATION AND COMMUNICATION

8.1 **Exchange of Information between the Parties.** The Parties recognize that the timely exchange of information regarding the operations and administration of the ONTC is essential to:

- (a) enable the Minister to meet his or her responsibilities for reporting and responding to the Legislative Assembly on the affairs of the ONTC;
- (b) enable the Parties to discharge their respective responsibilities;
- (c) ensure that the Chair is kept informed of the Province's initiatives and broad policy directions that may affect the ONTC's Mandate; and
- (d) communicate any Directions to the ONTC.

8.1 **Communications.** The Parties agree that regarding Communications:

- (a) The Chair will keep the Minister advised, in a timely manner, of all planned events and issues that concern or can be reasonably expected to concern the Minister in the exercise of his/her responsibilities, and the Minister and Ministry will advise, in a timely manner, of all planned events and issues that concern or can reasonably be expected to concern the Chair and the CEO in the exercise of their responsibilities;

- (b) The Minister will consult with the Chair, as appropriate, on broad government policy initiatives or legislation being considered by the government that may impact on the ONTC's Mandate or functions;
- (c) The Minister and the Chair will consult with each other on public communications strategies and publications. They will keep each other informed of the results of stakeholder and other public consultations and discussions;
- (d) The Minister and the Chair will meet at least annually, or as requested by either party, to discuss issues relating to the fulfillment of the ONTC's Mandate, management and operations;
- (e) The Deputy Minister and the CEO will meet at least quarterly to discuss issues relating to the efficient operation of the ONTC and the provision of services by the Ministry to the ONTC; and
- (f) The ONTC and Ministry may develop a Communications Protocol and include it as a Schedule to this MOU.

ARTICLE 9 FINANCIAL ARRANGEMENTS

- 9.1 **Funding.** The ONTC is funded from the Consolidated Revenue Fund pursuant to an appropriation authorized by the Legislative Assembly.
- 9.2 **Estimates.** The CEO will prepare the estimates of the ONTC's expenditures for inclusion in the Ministry's annual multi-year plan. The Chair will deliver these estimates to the Minister in sufficient time to be analyzed and approved by the Minister. The estimates may, after appropriate consultation with the Chair, be altered as the Ministry may require.
- 9.3 **ONTC Financial Procedures.** The financial procedures of the ONTC must be in accordance with TB/MBC and Ministry of Finance directives and guidelines and other applicable direction of the Province.
- 9.4 **The Contribution Agreement.** The Parties agree to enter into an annual Contribution Agreement which will set out, among other things:
- (a) any Cabinet direction received with respect to the ONTC, including any Directions where appropriate;
 - (b) the approved annual operating subsidy, capital funding, service standards and performance measures for the Services as needed; and
 - (c) any changes as may be required in the Business Plan and Capital Plan to reflect direction of the Province.
- 9.5 **Approval of the Contribution Agreement.** The terms and conditions of the Contribution Agreement will be determined each year and confirmed in writing by the Chair and the Deputy Minister.
- 9.6 **Separate Account.** Any allocations to the ONTC made pursuant to the Contribution Agreement will be deposited into an account, which will be separate from the Consolidated Revenue Fund and will be under the control and direction of the ONTC in accordance with the provisions of the Act, this MOU, and the terms of the Contribution Agreement.

- 9.7 **Funding Schedule.** The operating and capital allocation will be disbursed according to the Contribution Agreement.
- 9.8 **Surplus Funding.** When ordered to do so by the Minister of Finance, pursuant to Section 16.4 of the *Financial Administration Act*, R.S.O. 1990, c. F. 12, the ONTC shall pay into the Consolidated Revenue Fund any money that the Minister of Finance determines is surplus to its requirements.
- 9.9 **Contingent Liability.** The ONTC shall comply with Section 28 of the *Financial Administration Act*, R.S.O. 1990, c. F. 12 (FAA), including without limitation by not entering into any financial arrangement or commitment, guarantee, indemnity or similar transaction that may increase, directly or indirectly, the indebtedness or contingent liabilities of the Province of Ontario without the written approval of the Minister of Finance. The Minister's approval is required before seeking statutory approval from the Minister of Finance. The Ministry shall endeavour to seek timely approvals for Section 28 FAA requests upon receipt of satisfactory materials from ONTC.
- 9.10 **Financial Arrangements in Excess of Approved Budget.** The ONTC will not enter into financial arrangements or commitments which exceed the capacity of its approved budget, or could increase the Province's direct, indirect or contingent liabilities, or affect the financial, cash and similar debt management policies of the Province, or undertake any other similar activity without a Direction, the prior approval of the Minister, the Minister of Finance and Cabinet as appropriate.
- 9.11 **Fiscal Year.** The fiscal year of the ONTC will commence on the 1st day of April in each year and will end on the 31st day of March in the succeeding year.
- 9.12 **Salary Disclosure.** The ONTC will submit to the Ministry of Finance its salary information in accordance with the *Public Sector Salary Disclosure Act*, 1996, S.O. 1996, c. 1, Sched. A.
- 9.13 **HST.** The ONTC charges and remits HST to the federal government on the taxable goods and services that it provides, as required. HST is paid on goods and services purchased by the ONTC and claims input tax credits that are rebated back 100 percent from the federal government.

ARTICLE 10 AUDIT, REPORTING AND REVIEW ARRANGEMENTS

- 10.1 **Annual Financial Statements.** The Chair will provide to the Minister audited annual financial statements, and will include them as part of the ONTC's Annual Report. The statements will be provided in a format that is in accordance with the accounting policies issued by the Office of the Provincial Controller. ONTC management is responsible for the preparation and fair presentation of the financial statements in accordance with Canadian Public Sector Accounting Standards.
- 10.2 **Periodic Review.** The ONTC is subject to periodic review and value-for-money audit by the Auditor General of Ontario under the *Auditor General Act*, R.S.O. 1990, c. A.35 or by the Ontario Internal Audit Division.
- 10.3 **The Auditor General of Ontario.** The ONTC will comply with the *Auditor General Act*, including without limitation by furnishing the Auditor General of Ontario (the "**Auditor General**") with the information regarding its powers, duties, activities, organization, financial transactions and methods of business that the Auditor General requires. The Auditor

General will have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to the ONTC that the Auditor General needs to perform his or her duties.

- 10.4 **The Ontario Internal Audit Division.** The Ontario Internal Audit Division may also carry out an internal audit, if approved to do so by the Ministry or by the Commission's Audit and Finance Committee.
- 10.5 **Minister May Direct Audit.** Regardless of any annual external audit, the Minister may direct that the ONTC be audited at any time.
- 10.6 **Copy of Audit Report.** The ONTC will promptly provide a copy of every report from an audit to the Minister and the Minister of Finance. The ONTC will also provide a copy of its response to the audit report and any recommendations therein. The ONTC will advise the Minister annually on any outstanding audit recommendations.
- 10.7 **Chair May Request.** The Chair may request an external audit of the financial transactions or management controls of the ONTC at the ONTC's expense.
- 10.8 **Annual Report.** The Commissioners shall ensure that an annual report (Annual Report) is submitted to the Minister, in accordance with s.41 of the Act and the Agencies and Appointments Directive, within 90 days of the ONTC receiving its audited financial statements from the Auditor General. The Ministry will endeavour to provide timely approvals of the Annual Report. The Annual Report will contain:
- (a) description of activities over the year;
 - (b) analysis of the ONTC's operational and financial performance;
 - (c) discussion of performance targets achieved or not achieved and of action(s) to be taken;
 - (d) names of the Commissioners, the date of when each was appointed, and the date on which the current term of appointment expires;
 - (e) the audited financial statements of the ONTC, prepared in accordance with Canadian Public Sector Accounting Standards ; and
 - (f) the Auditor General's report on the financial statements, addressed to the Minister and the ONTC.

ARTICLE 11 INDEMNIFICATION AND INSURANCE

- 11.1 **Indemnification.** The Commissioners and officers of the ONTC will be indemnified in accordance with a form of indemnity approved by the Minister of Finance pursuant to section 28 of the *Financial Administration Act* (the "**Indemnity**"). The Commissioners and officers of the ONTC will comply with all of the terms and conditions of the Indemnity.
- 11.2 **Insurance.** The Commissioners shall ensure that the business of the ONTC and all its properties and assets are covered by such policies of insurance, issued by responsible insurers, as are appropriate to such business, property and assets, in such amounts and

against such risks as are customarily carried and insured against by owners of comparable businesses, properties and assets.

ARTICLE 12 OPERATING RELATIONSHIPS

- 12.1 **In the Absence of the Chair.** In the absence of the Chair or in the event that the office of Chair is vacant, the Vice Chair has all the powers and shall perform all the duties of the Chair.
- 12.2 **Quorum.** A majority of the Commissioners from time to time forms a quorum.

ARTICLE 13 ADMINISTRATIVE ARRANGEMENTS

- 13.1 **Compliance with Directives.** The Chair is responsible for ensuring that the ONTC operates in accordance with all applicable directives of the Province, including TB/MBC, Public Service Commission, and Ministry of Finance directives, as well as applicable Ministry financial and administrative policies and procedures, any Directions and any Cabinet direction that may be issued from time to time. Schedule C to this MOU provides a list of some of the applicable directives and policies.
- 13.2 **Financial, Administrative and Legal Services.** The ONTC will provide its own financial, legal and administrative services, including internal audit services.
- 13.3 **ONTC Staff.** The ONTC staff are hired by the ONTC and are public servants as defined in the PSOA.
- 13.4 **Retention of Outside Services.** Only in the ordinary course of business when it requires expertise unavailable from ONTC staff or upon prior written approval from the Ministry, the ONTC may retain outside consulting and legal assistance. Legal services are to be provided in accordance with the Ministry of the Attorney General's Corporate Operating Policy on Acquiring and Using Legal Services. Consulting services are to be provided in accordance with the Province's procurement rules.

ARTICLE 14 CONFLICT OF INTEREST

- 14.1 **No Conflict of Interest.** A Commissioner shall not use any information gained as a result of his or her appointment to the ONTC for personal interest or act in any other way that may cause an actual or perceived conflict of interest as set out in the PSOA.
- 14.2 **Chair Responsible.** Without limiting the role of the ethics executives set out in the PSOA and reflected in this MOU, the Chair is responsible for ensuring that appointees and staff of the ONTC are informed of the ethical rules to which they are subject, including the rules on conflict of interest, political activity and protected disclosure of wrongdoing that apply to the ONTC.
- 14.3 **Disclosure of Conflict.** A Commissioner who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the ONTC, or a committee of the ONTC, shall disclose the nature of the conflict to the Chair of the ONTC at the first opportunity and shall refrain from further participation in the consideration of the matter.

- 14.4 **Record.** The Chair shall cause to be recorded any declared conflict of interest in the minutes of the ONTC.

ARTICLE 15 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- 15.1 **FIPPA.** The ONTC shall comply with the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31 ("**FIPPA**").
- 15.2 **All Documents and Records.** All documents or records in the custody or under the control of the ONTC will be subject to, and will be maintained and disposed of in accordance with FIPPA and any applicable directives of the Province relating thereto.
- 15.3 **Head.** The Chair is the institution head for the purposes of FIPPA.

ARTICLE 16 STAFFING AND APPOINTMENTS

- 16.1 **Appointment.** The Commissioners of the ONTC are appointed by the Lieutenant Governor in Council on the recommendation of the Premier of Ontario pursuant to section 3 of the Act.
- 16.2 **Chair and Vice-Chair.** The Chair and Vice-Chair are designated by the Lieutenant Governor in Council pursuant to section 4 of the Act.
- 16.3 **Employees.** ONTC employees are employed pursuant to section 22 of the Act.

ARTICLE 17 CUSTOMER SERVICE QUALITY REVIEW PROCESS

- 17.1 **Complaints Process.** The ONTC will develop and implement a process for responding to complaints from ONTC customers about quality of service.
- 17.2 **OPS Service Directive.** The Chair will ensure that the ONTC delivers its services at a quality standard that reflects the principles and requirements of the OPS Service Directive.
- 17.3 **Business Plan.** The ONTC's Business Plan will include performance measures, targets, and service standards for customer service and the ONTC's response to complaints, and will contain the elements set out in Schedule A.

ARTICLE 18 AGREEMENTS WITH THIRD PARTIES

- 18.1
- (a) **Covenants of the ONTC.** Other than as contemplated under this MOU, ONTC must advise the Ministry prior to undertaking, directly or indirectly, including making any commitment or agreement, to do any of the following:
- (i) any initiative that would result in a material change in the business of the ONTC;

- (ii) purchase or acquisition of shares of, or other interests in, any other person;
 - (iii) adopting or amending any compensation plan in respect of its management and officers;
 - (iv) increasing any severance, change of control or termination payments that could become payable to any of its management and officers;
 - (v) undertaking any workforce reduction initiatives or similar programs or terminate the employment of any member of senior management.
- (b) **Agreements with Third Parties.** The Chair is responsible for ensuring that the legal, financial and other interests of the Province are protected in any agreement that the ONTC may enter into with a third party.

ARTICLE 19 PROCUREMENT ARRANGEMENTS

- 19.1 **Procurement.** The ONTC will ensure the Province of Ontario's Procurement Directive is followed in all situations when procurement of goods or services is required.

ARTICLE 20 INTELLECTUAL PROPERTY

- 20.1 **Intellectual Property.** The Chair is responsible for ensuring that the legal, financial and other interests of the Province in intellectual property are protected in any contract that the ONTC may enter into with a third party that involves the creation of intellectual property.
- 20.2 **Definition.** The ONTC is to be guided by the definition of intellectual property as set out in the Managing, Distributing and Pricing Government Information (Intellectual Property) Directive.

ARTICLE 21 CREATION, COLLECTION, MAINTENANCE AND DISPOSITION OF RECORDS

- 21.1 **ONTC Responsible.** The ONTC is responsible for ensuring that a system is in place for the creation, collection, maintenance and disposal of records. The ONTC must comply with all provincial and federal regulations guiding the retention of records and the system should address ensuring compliance with those requirements.
- 21.2 **ONTC Accounts and Records.** The ONTC will cause books of account and records in relation thereto to be kept in accordance with applicable reporting requirements, directives, policies, and legislative requirements in all material respects, and efficient and effective financial management controls, information systems and management practices to be maintained.
- 21.3 **ONTC Accounts and Records Management.** The books, records, system and management practices will be kept and maintained in such a manner so as to provide reasonable assurance to the Province that:

- (a) all assets, accounts, records and information in the ONTC's possession or control are safeguarded and controlled;
- (b) the transactions of the ONTC are in accordance with the Act, the By-laws of the ONTC any and all Directions and applicable TB/MBC requirements; and
- (c) the financial, human and physical resources of the ONTC are managed economically and efficiently and their operations are carried out effectively.

ARTICLE 22 MISCELLANEOUS

- 22.1 **Effective Date.** This MOU becomes effective on the date it is signed by the Parties (Effective Date). The MOU expires on the date a new memorandum of understanding has been approved and signed by the Parties.
- 22.2 **Review of the MOU.** This MOU will be reviewed when there is a change in Minister or Chair. This MOU will also be reviewed every five years from the Effective Date, or earlier if the Parties agree, in order to ensure the MOU is current and consistent with requirements. Any amendments to this MOU shall be in accordance with Section 22.4 of this MOU.
- 22.3 **Change in Minister or Chair.** Within six months of any change in the Minister or the Chair, the parties shall affirm the MOU by either a letter of affirmation, which letter shall be attached to the MOU, or by signing this MOU.
- 22.4 **Amendment.** All amendments to the MOU must be in writing, approved by TB/MBC and signed by the Parties.
- 22.5 **Compliance.** The ONTC shall at all times conduct its business and carry out its roles and responsibilities in accordance with the Act, this MOU, the Mandate, any Directions all applicable TB/MBC, Ministry of Finance and other directives of the Province, the Act and all other applicable law.

This Memorandum of Understanding will be in effect as of the Effective Date.

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO AS REPRESENTED BY THE
MINISTER OF NORTHERN DEVELOPMENT
AND MINES**

By: _____
Per: Michael Gravelle
Minister

I have authority to bind the Province.

**ONTARIO NORTHLAND TRANSPORTATION
COMMISSION**

By: _____
Name: Thomas Laughren
Title: Chair

I have authority to bind the Corporation.

SCHEDULE "A"

THE ONTC BUSINESS PLAN

The ONTC will prepare a multi-year rolling (three year period or longer) business plan on an annual basis. This business plan will contain all of the elements as set out in the Agencies and Appointments Directive:

1. Agency Mandate
2. Strategic direction
3. Overview of the ONTC's current and forthcoming programs/activities
4. Environmental Scan
5. Resources needed to meet goals and objectives of mandate, including detailed costing information
6. Summary of numbers of staff, impact of business plan on human resources, and compensation strategy including employee benefits and benchmarking against other public sector bodies
7. Financial budget over three-year life of business plan (including proposed operating expenditures and projected revenues)
8. Risk identification, assessment and mitigation strategies
9. Performance measures, targets, and services standards over three year life of the business plan
10. Implementation plan
11. Communication plan
12. Initiatives involving third parties such as other levels of government or not-for-profit foundations

SCHEDULE "B"

SERVICES OF THE ONTC AS OF THE EFFECTIVE DATE

The Services of the ONTC shall be:

- Rail Freight
- Motor Coach Services
- Real Estate, including the Cochrane Station Inn
- Polar Bear Express passenger/excursion train service
- Rail Freight service between Moosonee and Cochrane
- Remanufacturing and repair services for ONTC's Rail Freight, ONTC's Polar Bear Express and for external customers

SCHEDULE "C"

TREASURY BOARD/MANAGEMENT BOARD OF CABINET DIRECTIVES AND POLICIES APPLICABLE TO THE ONTC

Note: "Applicable" directives includes any amended, revised or successive directives . Where a directive applies, all associated policies, procedures and guidelines also apply. This is in not an exhaustive list of applicable directives.

Delegation of Authority Key Directive

Accountability Directive

Agencies and Appointments Directive

Advertising Content Directive

Travel, Meal and Hospitality Expenses Directive

Procurement Directive

Procurement Directive on Advertising, Public and Media Relations and Creative Communications Services

Accounting Advice Directive

Business Planning and Allocations Directive

Capital Expenditure Evaluation Directive

Cash Management Directive

Communications in French Directive

Disclosure of Wrongdoing Directive for Employees/Appointees of Public Bodies

Expenditure Management Directive

Indemnification Directive

Internal Audit Directive

Internal Controls Management Directive

Management and Use of Information and Information Technology (I & IT) Directive

Open Data Directive

Perquisites Directive

Realty Directive

Revenue Management Directive

Transfer Payment Accountability Directive

Visual Identity Directive

Freedom of Information Guideline and Corporate Policy on Protection of Personal Information