



The Regional Municipality of Durham Report

To: Finance and Administration Committee
From: Commissioner of Corporate Services
Report: #2022-A-25
Date: December 13, 2022

Subject:

Appointment of Directors to Durham OneNet Inc.

Recommendation:

That the Finance and Administration Committee recommends to Regional Council:

A) That the following persons be appointed to the Board of Directors as members.

- i) Catherine Rosebrugh
- ii) David Stevens
- iii) Ingrid Robinson
- iv) Francis Garwe

B) That the Shareholder's Direction be amended as follows:

- i) s. 7.1 (k) be amended to add “. . . and set employee compensation such that total compensation is comparable to Regional staff with comparable roles and duties.”
- ii) s. 7.2 (b) (ii) be amended to remove “. . . and the slate of six shall include the President of the Corporation.”

C) That the Regional Solicitor as Secretary for the OneNet Inc. Board is directed to carry out such tasks as may be required to implement the recommendations from Regional Council.

Report:**1. Purpose**

- 1.1 The purpose of this report is to carry out the previous direction of Regional Council in report [#2021-COW-32](#) and to amend the Shareholder's Direction to clarify membership on the Board of Directors and Employee Compensation.

2. Background**2.1 Nomination of Board of Directors**

- a. Durham OneNet Inc is a Municipal Service Corporation established by Regional Council to build and operate the Regional Broadband Network. Regional Council forms the Shareholders for Durham OneNet Inc. and provided a Shareholder's Direction setting out Regional Council's requirements for Durham OneNet Inc.
- b. In report [#2021-COW-32](#) Regional Council approved the Shareholder Direction which established an initial Board of Directors comprised of the Regional Chair and Chief Administrative Officer. Regional Council's Shareholder's Direction provided further instructions for the Board of Directors, specifically:
 - "The board shall be comprised of a maximum of six directors which will consist of up to one elected member of Regional Council and up to one senior management staff of the Regional Municipality of Durham. The remaining board members will be comprised of the President of the Corporation and select independent members with expertise needed on the board;"
- c. To carry out this direction Regional Staff under the direction of the Chief Administrative Officer completed a recruitment process for Board members using a third-party consultant, Odgers & Bernstein. Suitable candidates from that process were interviewed by the initial Board appointed by Council and the successful candidates for the Board positions were selected for approval by Regional Council.
- d. Upon Regional Council approval the candidates will sit as members of the Board of Directors commencing at the next meeting of the Board of Directors of Durham OneNet Inc.

2.2 Role of President of Durham OneNet Inc. on the Board of Directors

- a. Regional Staff are recommending that the Shareholder's Direction be amended to remove the President from the slate of voting members of the Board of Directors. This is consistent with maintaining a separation between the role of the Board of Directors and the role of staff within Durham OneNet Inc. The President of Durham OneNet Inc. will sit on the Board of Directors in a non-voting role. The role of Chair of the Board of Directors is currently being fulfilled by the Regional Chair. The Board of Directors may appoint a Chair from among their membership.

2.3 Employee Compensation at Durham OneNet Inc.

- a. Regional Staff are recommending that the Shareholder's Direction be amended to provide additional clarity on the setting of employee compensation and that Durham OneNet Inc. will set employee compensation such that total compensation is comparable to Regional staff with comparable roles and duties.

3. Previous Reports and Decisions

- 3.1 [#2019-P-3](#) Proposed Durham Region Broadband Strategy, "Connecting our Communities: A Broadband Strategy for Durham Region", File: D24-12
- 3.2 [#2020-INFO-5](#) Durham Region Broadband Program Update
- 3.3 [#2020-EDT-6](#) Regional Broadband Network Business Case Development and Endorsement of Grant Funding Application
- 3.4 [#2020-INFO-91](#) Durham Region Broadband Program Update – Improving Connectivity for Ontario (ICON) Program, Stage 1 Application Status
- 3.5 [#2020-COW-29](#) Durham Broadband Stage Two Funding Application for the Provincial Improving Connectivity for Ontario (ICON) Program
- 3.6 [#2020-EDT-11](#) Pickering-Uxbridge Broadband Fibre Trunk Project
- 3.7 [#2021-COW-2](#) Regional Broadband Network, Applications for Provincial and Federal Funding
- 3.8 [#2021-COW-18](#) Update on Regional Broadband Program; Authority to Accept Improving Connectivity for Ontario (ICON) or Universal Broadband Fund (UBF) Grant Awards; and Authority to Make Project Commitments During Summer Recess
- 3.9 [#2021-COW-32](#) Establishing a Municipal Services Corporation to build and operate the Regional Broadband Network
- 3.10 [#2021-COW-23](#) CONFIDENTIAL Regional Broadband Program: Grant Application Status Update

4. Financial Implications

- 4.1 Pursuant to the Shareholder Direction approved by Regional Council, these Board Members will receive \$20,000 per annum as compensation. Regional staff who sit as Board Members do not receive additional compensation and members of Regional Council receive an amount equal to the Chairs of Regional Committees which is currently \$6,000 per annum. The President of Durham OneNet Inc. does not receive additional Board remuneration.

5. Relationship to Strategic Plan

- 5.1 This report aligns with/addresses the following strategic goals and priorities in the Durham Region Strategic Plan:
- a. Goal 3: Economic Prosperity. Objective: To build a strong and resilient economy that maximizes opportunities for business and employment growth, innovation and partnership.
 - Section 3.1 Position Durham Region as the location of choice for business
 - Section 3.3 Enhance communication and transportation networks to better connect people and move goods more effectively
 - b. Goal 5: Service Excellence. Objective: To provide exceptional value to Durham taxpayers through responsive, effective and fiscally sustainable service delivery.
 - 5.1 Optimize resources and partnerships to deliver exceptional quality services and value
 - 5.4 Drive organizational success through innovation, a skilled workforce, and modernized services

6. Conclusion

- 6.1 The above recommendations will provide appropriate direction from Regional Council for the good governance of Durham OneNet Inc. and clarify the intentions of Regional Council as Shareholders.

7. Attachments

Attachment #1: Shareholder's Direction for Durham OneNet Inc.

Respectfully submitted,

Original signed by

Barb Goodwin, MPA, CPA/CGA,
B.Comm, CPM, CMMIII
Commissioner of Corporate Services

Recommended for Presentation to Committee

Original signed by

Elaine C. Baxter-Trahair
Chief Administrative Officer

**Shareholder's Direction for
Durham OneNet Inc.
(the "Corporation")**

WHEREAS:

- A. The Regional Municipality of Durham (the "**Region**") has established the Corporation as a Municipal Services Corporation pursuant to the provisions of the *Municipal Act* and the OBCA and is the sole shareholder of the Corporation;
- B. The Region incorporated the Corporation for the purpose of providing a telecommunications and high-speed broadband internet network in Durham Region. The Corporation will register with the Canadian Radio-television and Telecommunications Commission as a non-dominant carrier;
- C. The Region as the sole shareholder of the Corporation has developed a detailed initial business plan for establishing the Corporation's business and undertaking as more particularly described below which will be brought to Regional Council ("**Council**") for approval (the initial business plan once approved by Council herein called the "**Initial Plan**"); and
- D. The Region, in this Shareholder's Direction, wishes to set out for the Board, the Region's expectations of, and objectives for, the Corporation's mandate, scope of responsibility, and reporting requirements in respect of its business and operations.

NOW THEREFORE it is hereby agreed and declared as follows:

1. INITIAL PLAN

- 1.1 The Initial Plan shall include the following, together with anything else that the Corporation or the Board may consider necessary or advisable (or that Council may require once a proposed Initial Plan is placed before Council for approval), in relation to the following:
- (a) an initial strategic plan, business and financial plan and budget (including a capital and operating budgets), including, without limitation, any transfer of assets and financial assistance that may be required in relation thereto;
 - (b) a proposal for pursuing existing and future grant applications in relation to the Corporation's pursuit of its objects; and
 - (c) any plan for pursuing arrangements with any third-party entity in relation to the Corporation's undertaking as a telecommunications and high-speed broadband internet network serving Durham Region.

Once the proposed Initial Plan (with any such amendments as required by Council) is approved by Council it shall constitute the Initial Plan for the purposes of this Shareholder's Direction.

2. LIMITATIONS

- 2.1 The Corporation and the Board shall not, without further approval of Council, undertake any activities beyond what they are expressly empowered to proceed with in this Shareholder's Direction, but are empowered to do all things necessary or advisable in pursuit of those activities.
- 2.2 The provisions in this Shareholder's Direction following this Section 2.2 are not effective until the Initial Plan has undergone the necessary Council procedure and has been approved by Council. Upon such approval having been obtained from Council the proposed Initial Plan (with such amendments as required by Council) shall be considered the Initial Plan for the purposes of this Shareholder's Direction, and the provisions of this Shareholder's Direction immediately following this Section 2.2 shall become effective without further action being required.

3. DEFINITIONS AND INTERPRETATION

- 3.1 In this Shareholder's Direction, the following definitions apply:
 - (a) "Annual Business Plan" means the annual business plan presented by the President, approved by the Board and approved by Council which is from time to time in effect, and which includes any updates to the Corporation's strategic plan, the Corporation's business and financial plan and budgets for the Corporation (including capital and operating budgets) and such other information for the applicable period covered by such Annual Business Plan as set out in Section 9.1, required by this Shareholder's Direction or otherwise required by Council.
 - (b) "Annual Report" means the Corporation's annual report to its shareholder, the Region, as more particularly described in Section 9.6.
 - (c) "Applicable Law" means any federal, provincial or municipal statute, regulation, regulatory policy or order of any Government Authority, including all applicable by-laws, as same may be amended from time to time (including federal, provincial, or municipal government, or any entity, person, court or other body or organization exercising one more executive, legislative, judicial or regulatory functions, having jurisdiction over the matter).
 - (d) "Articles" means the Articles of Incorporation of the Corporation issued by the Province of Ontario's Ministry of Government Services on *** , 2022.

- (e) "Authorized Region Signatory" means the individual or individuals who are authorized by Council to sign written approvals or other documents relating to the Corporation on behalf of the Region.
- (f) "Corporate Employees" has the meaning set out in Section 6.2. "Corporate Employees" does not include Regional Staff.
- (g) "Durham Region" means the geographical area of the Regional Municipality of Durham.
- (h) "Financial Statements" means, for any particular period, audited and/or (if the requisite legal exemptions are available at law and have been validly authorized and pursued) unaudited comprehensive financial statements of the Corporation consisting of not less than a balance sheet, a statement of income and retained earnings, a statement of changes in financial position, a report or opinion of the Corporation's auditor, and such other statements reports, notes and information as are required in accordance with any Applicable Law, all prepared in accordance with GAAP (meaning Canadian generally accepted accounting principles applied on a consistent basis and which are in accordance with recommendations from time to time of the Chartered Professional Accountants of Canada, at the date on which such generally accepted accounting principles are applied).
- (i) "Fiscal Year" means the twelve (12) month period commencing on January 1st and ending on December 31st.
- (j) "Municipal Act" means the *Municipal Act, 2001*, S.O. 2001 c.25, as may be amended, replaced and/or re-enacted from time to time.
- (k) "Network" means the telecommunications and highspeed broadband networks in Durham Region being a dark fibre telecommunications network consisting of fibre optic cables and other means of transmission facilities, appurtenances, and related equipment, including conduit, but excluding real property upon which the facilities are situated.
- (l) "OBCA" means the *Business Corporations Act* (Ontario), as may be amended, replaced and/or re-enacted from time to time.
- (m) "President" means the President of the Corporation.
- (n) "Regional" when used in relation to a facility, means a facility owned, operated or managed by the Region, and when used in relation to a branch or department, means a Regional branch or department of the Region.
- (o) "Regional Auditor" means the Internal Auditor of the Region.
- (p) "Regional CAO" means the Chief Administrative Officer of the Region.

- (q) “Regional Treasurer” means the Commissioner of Finance and Treasurer of the Region.
- (r) The necessary grammatical changes required to make the provisions of this Shareholder’s Direction apply in the plural sense where the context comprises more than one entity and to corporations, associations, partnerships or individuals, males or females, in all cases will be assumed as though in each case fully expressed. References to any individual shall be read with such changes in number and gender as may be appropriate.
- (s) The captions for sections of this Shareholder’s Direction are for convenience only and are not to be considered a part of this Shareholder’s Direction and do not, in any way, limit or amplify the terms and provisions of this Shareholder’s Direction.
- (t) Where there is a reference to a director, officer or employee performing duties in respect of this Shareholder’s Direction, this shall also include the individual acting in that capacity or his or her designate.
- (u) In the event of any conflict between any approval or direction given or action taken pursuant hereto or any provision of this Shareholder’s Direction and any Applicable Law, the Applicable Law shall govern.

4. MISSION AND GUIDING PRINCIPLES

4.1 Mission and Guiding Principles of the Corporation

The Corporation’s mission is to maintain and expand the Network, to provide open access fibre connectivity across Durham Region, to deliver Regional services and to enable economic development and innovation across Durham Region through improved broadband connectivity.

4.2 The Corporation’s mission is supported by these guiding principles:

- (a) **Improve Service Delivery:** Leverage the Network to expand and enable more impactful Regional services to its residents through the use of network fibre to connect Regional facilities, assets and operations.
- (b) **Fast and Reliable:** Design and build a fibre based, future-proof, scalable and resilient network to meet current to future needs.
- (c) **Ubiquitous:** Expand the Network across Durham Region to encourage and enable service providers to deliver ubiquitous broadband services across Durham Region.
- (d) **Collaborative:** Leverage private and public partnerships aligned to the vision of a Regional Broadband Network connecting our communities.

- (e) **Open Access:** The Network should be open for all service providers to deliver a vast array of broadband services and foster competitive choice across Durham Region.
- (f) **Affordable and Inclusive:** The Corporation should seek opportunities to influence and offer affordable services across Durham Region.

5. OBJECTIVES AND PRINCIPLES

5.1 Purpose of this Shareholder's Direction

This Shareholder's Direction:

- (a) Sets out for the Board the Region's expectations of and objectives for the Corporation and the Corporation's mandate, scope of responsibility, and reporting requirements;
- (b) Sets out the relationship between the Corporation and the Region; and
- (c) Constitutes, where applicable, a declaration by the Region, as the sole shareholder of the Corporation, pursuant to subsection 108(3) of the OBCA.

5.2 Regional Objectives

The Region has the following objectives in its decision to incorporate the Corporation as a wholly-owned subsidiary of the Region under the OBCA:

- (a) As an OBCA corporation governed by a board of directors, the Corporation will have greater agility to make and implement decisions quickly within the defined strategy and budgets and defined reporting requirements. Through delegation from the Board to the President, the President can execute agreements that are in conformance with the approved Annual Business Plan.
- (b) As a for-profit corporation under the OBCA, the Corporation will have greater ability to enter into strategic partnerships, pilot projects and other business arrangements.
- (c) In time, the Corporation will be financially sustainable on an operating basis.

5.3 Mandate of the Corporation

The Corporation will strive to achieve the Region's objectives set forth in Section 5.2 (Regional Objectives) when carrying out the following mandates. Specifically:

- (a) The Corporation shall ensure that the connectivity requirements of Regional departments for service delivery continue to be addressed to enhance operational efficiencies and use of applications.

- (b) The Corporation shall assist municipalities, universities, schools and hospitals sector entities within Durham Region in meeting and/or optimizing their connectivity levels to foster better communications.
- (c) The Corporation shall develop a telecommunications system that provides open access fibre infrastructure across Durham Region to public and private sector entities.
- (d) Subject to the terms and conditions of this Shareholder's Direction, the Corporation shall assume responsibility for strategic planning, management and development of the Network, including without limiting the generality of the foregoing, the Network design, preliminary design, construction, maintenance, operation, capital delivery, funding, financing, and procurement in respect of the Network. The Corporation's responsibilities in this respect will include but not be limited to pursuing funding opportunities, negotiating contracts, structuring business and commercial arrangements, including pricing and fees structure, and entering into contracts to give effect thereto.

5.4 Agreements and Ownership of Assets

- (a) The Corporation will own or have such ownership interests in the assets and infrastructure of the Network as acquired by it in conformance with the Annual Business Plan and as transferred to it by the Region pursuant to transfers entered into by the Region in conformance with any applicable Asset Transfer Policy, with the exception of assets and infrastructure that may be owned by any third-party entity also involved in developing and operating the Network.
- (b) The majority of such infrastructure is affixed to and/or situated in a Regional rights-of-way, under the legal jurisdiction of the Region, as the road authority. The Corporation shall enter into a municipal access agreement with the Region under which the Corporation will be granted such rights to the Regional right-of-way that are necessary for the Corporation to construct, maintain and operate the current and future Network.
- (c) Any business agreements and other Network related operational agreements that are currently in place between the Region and a third party shall be assigned by the Region to the Corporation upon the Region entering into an assignment agreement in conformance with any Annual Business Plan acceptable to the Region and the Corporation. All future access and other Network related operational agreements shall be entered into in the Corporation's name, provided that they are provided for and contemplated in an Annual Business Plan.
- (d) All rights in intellectual property created by the Corporation regarding or in respect of the Network including but not limited to copyrights, trademarks,

trade secrets, patents and industrial designs shall be owned by the Corporation. The Region may request a licence from the Corporation to use the Corporation's intellectual property, in whole or in part, such request not to be unreasonably denied. Any such licence granted will be irrevocable, perpetual, and royalty-free.

5.5 Operating Principles

The directors and officers of all OBCA corporations have a duty to act honestly, in good faith, and in the corporation's best interests. The Corporation is wholly owned by the Region and the Region has established the objectives for the Corporation that are aligned with the Region's interests. In this context, the Corporation, acknowledges and agrees, that in delivering its mandate, the following principles will govern the operations, services and activities of the Corporation:

- (a) The Corporation will conduct its business in a socially responsible manner that respects the public nature of its shareholder and the importance of the Region's accountability to the general public.
- (b) The Corporation will operate in a manner to enable the Corporation to become financially sustainable on an operating basis over time.
- (c) The Corporation will initially operate as a fibre provider that is effectively providing connection infrastructure. This could include any networking and management equipment to operate and manage services provided.
- (d) The Corporation will conduct its affairs in a manner that supports the Region's goals and priorities and is not in conflict with them.
- (e) The Corporation will act in accordance with and be accountable for the financial performance and strategic objectives as set out in the Corporation's Annual Business Plans.
- (f) The Corporation will act reasonably to mitigate financial risks to the Region.

5.6 Municipal Services Corporation Requirements under the *Municipal Act*

The Board shall ensure that the Corporation fulfills its legal obligations under the *Municipal Act* as a municipal services corporation incorporated pursuant to the *Municipal Act*. The following highlights sections of O. Reg . 599/06 (the "**Regulation**") under the *Municipal Act* that are most relevant to the corporation:

- (a) Section 18(1) of the Regulation prohibits the Corporation from incorporating another corporation.
- (b) Section 18(2) of the Regulation provides that the Corporation may only invest in securities that are prescribed under section 418 of the *Municipal Act* and any Regulation made under section 418 applies to the Corporation.

- (c) Section 19 of the Regulation provides that the directors and officers of the Corporation are deemed to be members for the purposes of the *Municipal Conflict of Interest Act* which imposes certain obligations relating to declaring interests and avoiding conflicts of interest and establishes consequences for failing to comply with those obligations. In addition, as an OBCA corporation, the directors and officers of the Corporation are required to comply with the conflict of interest requirements set out in the OBCA.
- (d) Section 20 of the Regulation provides that a wholly owned municipal services corporation is deemed to be an institution for purposes of the *Municipal Freedom of Information and Protection of Privacy Act*.
- (e) Section 21(2) of the Regulation provides that the Corporation shall be deemed to be a local board for the purposes of subsection 270(2) of the *Municipal Act*, that requires the Corporation adopt and maintain policies with respect to the following matters:
 - (i) sale and other disposition of land;
 - (ii) hiring of employees; and
 - (iii) procurement of goods and services.

5.7 Confidentiality

The Corporation shall use its best efforts to ensure that no confidential information of the Region or the Corporation is disclosed or otherwise made available by the Corporation or any of its directors, officers and employees to any individual, except to the extent that:

- (a) Disclosure to the Region's or the Corporation's officers, employees or agents is necessary for the performance of any of their duties or obligations under this Shareholder's Direction, or in their jobs at the Region, or for the performance of duties by third parties receiving confidential information; or
- (b) Disclosure is required in the course of any legal or regulatory proceedings or actions or pursuant to an Applicable Law; or
- (c) The confidential information becomes part of the public domain (other than through unauthorized disclosure by the Corporation); or
- (d) Disclosure is made in full compliance with and as required by the *Municipal Freedom of Information and Protection of Privacy Act* and the conflict of interest provisions in the OBCA or other applicable law or regulation or by court order.

6. RELATIONSHIP TO THE REGION

6.1 Relationship of the Corporation to the Region

- (a) The Region is the sole shareholder of the Corporation and requires that the Corporation take responsibility for designing, constructing, maintaining, operating and developing the Network in accordance with the mandate set out in Section 5.3, subject to the terms, conditions and provisions of this Shareholder's Direction and Applicable Law. To this end and subject to the express terms and conditions of this Shareholder's Direction, the Region hereby directs and authorizes the Corporation to undertake any and all steps necessary to carry out these responsibilities in conformance with the Corporation's Annual Business Plans, including without limitation, procuring, awarding, executing, project managing, and awarding contracts.
- (b) Under the *Municipal Act*, the Region has, and will continue to have, legal jurisdiction of the Regional rights-of-way upon which the Network is situated.
- (c) The Corporation shall be entitled to receive all fees and other revenue arising from the Network operations and be responsible for paying its operating costs.

6.2 Corporation's Employees

- (a) All staff of the Corporation including the President (collectively "**Corporate Employees**") shall be hired as employees of the Corporation. Initial Corporate Employees shall include the President and Chief Financial Officer. A performance appraisal process applicable to Corporate Employees will be developed considering best practices utilized in the Region. The salaries and benefits and other employment-related costs of Corporate Employees shall be the responsibility of the Corporation.
- (b) Subject to the provisions set out in Subsection 7.1(j) and compliance with the policies applying to the hiring of Corporate Employees, the Corporation, through delegation to the President, is responsible for establishing the duties and responsibilities of each Corporate Employee's job description. When carrying out their duties and responsibilities, Corporate Employees carry out same for and on behalf of the Corporation.

6.3 Services Agreement between the Region and the Corporation

In order for the Corporation to carry out its business and affairs, the Corporation will require the Region to provide certain services to the Corporation. To this end, the Corporation and the Region will negotiate and execute a services agreement (the "**Corporate Services Agreement**") under which Regional employees and/or contractors of the Region (collectively "**Regional Staff**") will provide the necessary

services to the Corporation. The Corporate Services Agreement shall include, but not be limited to, the following terms and conditions:

- (a) A description of (i) the services to be provided by a Regional department and/or Regional branch; (ii) the fees and/or allocations of Regional Staff attributable to the Corporation for such services; and (iii) the working relationship between Corporate Employees and Regional Staff; and
- (b) The authorized signatories in respect of the Corporate Services Agreement.

6.4 President and Secretary

- (a) The President will be a full time position with the Corporation.
- (b) The role of the President will be to lead the Corporation, provide leadership on strategic and tactical business objectives, develop on an annual basis a proposed annual business plan (including updating the strategic plan, a business and financial plan and budget (including capital and operating budgets) and, when it is anticipated that there will be funds available for distribution through dividends, a dividend policy) and prepare the Annual Report (in each case for presentation to the Board and consideration and approval by the Board for presentation to the Region by the Board), and hire and manage Corporate Employees. The President will provide regular reports to the Board regarding actual performance in comparison to the Annual Business Plan and any other matters of strategic or business importance coming to his attention and work priorities under the Corporation's Annual Business Plan.
- (c) The President will develop the Corporation's operating and capital budgets to be included in his proposed Annual Business Plan based upon the Corporation's forecasted work priorities and objectives.
- (d) Subject to any conditions or restrictions imposed upon the President by the Board or in this Shareholder's Direction, the President will be responsible for all of the following in accordance with and in compliance with the Corporation's Annual Business Plan:
 - (i) negotiating business and commercial arrangements, including but not limited to agreements to co-build with external internet service providers, indefeasible rights of use agreements, construction and/or design-build agreements based on forecasted build requirements;
 - (ii) establishing fee structures;
 - (iii) negotiating individualized pricing options, discounts and/or tariffs with third parties;

- (iv) pursuing senior government funding and preparing and submitting funding applications; and
 - (v) hiring and managing the Chief Financial Officer and other Corporate Employees.
 - (vi) The President shall have a signing authority limit to be established by the Board and in any event the President shall have signing authority for items already approved in the Annual Business Plan (as defined below). The President has the authority to establish signing authority limits (within the limits imposed upon the President to conform to the Annual Business Plan) for Corporate Employees.
- (e) The Secretary of the Corporation should initially be the Regional Solicitor. A replacement Secretary may be elected by the Board following the initial constitution of the full Board.

7. BOARD OF DIRECTORS

7.1 Responsibilities of the Board of Directors

Subject to this Shareholder's Direction and the OBCA, the Board shall supervise the management of the business and affairs of the Corporation. The Board shall supervise and manage the business and affairs of the Corporation in compliance with and conformance to the Corporation's Annual Business Plan. In particular, the Board, or where delegation is permitted and deemed appropriate by the Board, a committee of the Board, shall:

- (a) Receive the Corporation's proposed Annual Business Plan, as developed and presented to it by the President, and approve the proposed Annual Business Plan in such form and with such amendments as they determine in accordance with their responsibilities as directors, so long as it is in accordance with the Corporation's mandate and the requirements of this Shareholder's Direction, and provided that it is in accordance with the operating and/or capital budgets and capital and operating spending authority approved by Council in the Region's annual budget process for that Fiscal Year.
- (b) Present for approval by Council on an annual basis the proposed Annual Business Plan, which must be in conformance with and comply with the requirements of the Corporation's mandate, this Shareholder's Direction, the Region's operating and/or capital budgets and capital and operating spending authorities approved by Council as part of the Region's annual budget process. Once a proposed Annual Business Plan (with such amendments as required by Council) is approved by Council, it shall constitute an Annual Business Plan for the purposes of this Shareholder's Direction.

- (c) Appoint the President, approve the President's term of employment, establish performance objectives for the President, monitor the President's success in meeting those objectives, and hold the President accountable for meeting those objectives.
- (d) In addition to the President, appoint the executive officers of the Corporation.
- (e) Receive annual updates from the President regarding achievement of goals and objectives in the Corporation's Annual Business Plan based upon performance metrics and whether there are budget variances and/or budget pressures. The Board will ensure that the Corporation acts in accordance with the Corporation's Annual Business Plan.
- (f) Receive the proposed strategic and financial plans forming part of the proposed Annual Business Plan as developed and presented to it by the President, and approve such plans for presentation to Council, so long as they are in accordance with the Corporation's mandate and provided that it is in accordance with this Shareholder's Direction and the operation and/or capital budgets and capital and operation spending authority approved by Council in the Region's annual budget process for that Fiscal Year.
- (g) Review annually the Corporation's mandate and recommendations to changes to the mandate for consideration by Council so long as amendments do not contravene the operating principles set forth in Section 5.5 or the Corporation's Annual Business Plan.
- (h) Upon the President's recommendation, approve in-year changes to work priorities in the business plan including budget re-profiling, provided that any such approval does not impact the Region's financial position in a material way and such changes are in conformance with the Corporation's Annual Business Plan.
- (i) Adopt and maintain a policy with regard to the sale and other disposition of land in conformance with the Annual Business Plan.
- (j) Adopt and maintain policies with regard to the hiring of Corporate Employees.
- (k) Develop and approve human resources policies and procedures for the Corporation considering applicable best practices of the Region's policies and procedures with the intention that Corporate Employees are treated in a comparable manner to Regional jobs, in respect of their employment terms and conditions.
- (l) Develop and approve procurement policies for goods and services designed with the objective of providing good value while providing sufficient flexibility to the Corporation to conduct its business and affairs.

- (m) Develop and approve signing authority policies for the President and any other executive officer of the Corporation in conformance with the Annual Business Plan.
- (n) Adopt financial and risk management strategies for the Corporation.
- (o) Approve the Audited Financial Statements, the Annual Report and submit the Audited Financial Statements and Annual Report to the Region, as shareholder.
- (p) Maintain appropriate insurance coverage for the Corporation's business and activities.
- (q) Ensure that the Corporation's officers and employees act in accordance with this Shareholder's Direction.
- (r) Provide such annual or special reports to Council as Council may from time to time determine it requires.

7.2 Composition of the Board of Directors

- (a) The Region has the sole authority to determine and amend the composition of the Board, subject to the provisions in the Corporation's Articles and any articles of amendment or any corporate by-law, or shareholder proceedings executed by the Region.
- (b) The Board shall be comprised of:
 - (i) A maximum of six board members;
 - (ii) One or two additional initial board members (in addition to the Regional Chair who is serving as incorporator and initial director of the Corporation) will be elected by the Region (as sole shareholder). The two or three initial board members will act as a nomination committee to recommend within 3 months of the date of incorporation of the Corporation a slate of up to six board members (total) for the consideration of the Shareholder, and the slate of six shall include the President of the Corporation;
 - (iii) Of the six nominees to be presented by the nomination committee to the Shareholder for its consideration in connection with the Shareholder's election of the Board of Directors of the Corporation, up to one nominee may be an elected member of Regional Council and up to one nominee may be a member of senior management staff of the Regional Municipality of Durham;
 - (iv) After a review of industry best practices, a skills matrix will be used to target and select the expertise needed on the board. The matrix

would contain expertise for finance/trustee with private CFO experience, legal, telecom industry experience (operator and/or vendor), MUSH sector experience (customer or client experience), and diversity; and

- (v) Board members must be Canadian citizens and must meet statutory requirements required for qualification as a member of the Board.

7.3 Term of a Member on the Board of Directors

- (a) For Board members who are Corporate officers: the term will align with the role/position appointed by the Board. (eg. the President will remain a Board member until such time as the Board replaces that President) unless otherwise decided by the Shareholder at any time.
- (b) For Board members who are elected officials: the term will align with the term of the elected official unless otherwise decided by the Shareholder at any time.
- (c) For non-elected Region senior management staff (Commissioner or CAO): the term will align with the role/position as designated by the Region unless otherwise decided by the Shareholder at any time.
- (d) For independent Board members: Staggered terms of no less than two years unless otherwise decided by the Shareholder at any time.

7.4 Vacancies on the Board of Directors

The Board shall declare a vacancy if a director is absent from three (3) consecutive board meetings without the approval of the Board as recorded in the minutes of the meetings.

7.5 Conflict of Interest

Each director and officer of the Corporation shall inform the Board immediately when he or she has an interest in a matter to be considered by the Board or a committee of the Board and take appropriate action in accordance with the provisions of the *Municipal Conflict of Interest Act* and the OBCA, and any other Applicable Law or Board policies.

7.6 Remuneration of Directors

- (a) The remuneration of the directors of the Corporation will be determined by the Region from time to time. The Board has no authority to alter the remuneration or provide any additional remuneration to directors. However, a director may elect to receive no or a reduced remuneration.

- (b) Board members who are neither Members of Council nor Regional Staff may receive remuneration of up to \$20,000 per annum but remuneration for such Board members cannot exceed this maximum aggregate amount per annum.
- (c) Members of Council will receive additional remuneration for their service on the Board in the same amounts as Council members who are Chairs of Standing Committees or members of the Police Services Board (per By-Law # 08-2004), which is currently \$6,000 per annum.
- (d) Regional Staff who serve as members of the Board shall receive no additional remuneration beyond their salaries.
- (e) The Board shall establish an expense reimbursement policy for all Board members that is consistent with the Region's expense reimbursement policy pertaining to Councillors to provide for the reimbursement of out-of-pocket expenses incurred by Board members while conducting Board business.
- (f) The Board shall report to the Region the total remuneration and expenses paid for each member of the Board on an annual basis and the Region shall determine whether specific Regional by-laws need to be passed or amended in order to provide for the foregoing remuneration and reimbursement, and, if such by-law or amendments for remuneration or reimbursement policies acceptable to the Region are required, shall promptly pursue the same.

7.7 Meetings of the Board of Directors

- (a) Meetings of the Board and its committees may be held *in camera*, at the Board's sole discretion. The Board shall meet at least four (4) times per year.
- (b) The Board may engage recording clerk services of an outside party which initially will be the Regional Clerk or Regional Solicitor. The recording clerk shall attend all public and *in camera* portions of meetings. For clarity, the recording clerk is not required to attend briefings, orientation or other training sessions, or team building and planning meetings where no Board decisions are made.
- (c) Matters requiring the Region's approval under Sections 8.4 and 8.5 that require a council report shall adhere to the Region's scheduling process and Committee of the Whole and Council meetings schedule. If, in the opinion of the Board, a matter under Sections 8.4 or 8.5 urgently requires Council approval and the matter cannot be delayed by proceeding through the normal scheduling process and committee hearings, then the Board may instruct the President to contact the Regional liaison in order to request an urgent meeting with Council to obtain instructions from the shareholder

without going through the normal scheduling process and committee hearings. The Chair of the Board may, at his discretion, require Corporate Employees who are not members of the Board, other than the recording clerk, in attendance during the *in camera* portion of the meeting, to leave the meeting during discussion of sensitive personnel issues. Members of the Board who are Corporate Employees may be required to leave the *in camera* portion of the meeting if they personally are the personnel to be discussed.

- (d) The Board may establish committees of the Board for any purpose and delegate decision-making to those committees as permitted by Applicable Law except:
 - (i) The Board shall not delegate decision-making to any committee unless all members of that committee are current Board members; and
 - (ii) The Board shall not delegate to a committee the power to commit the Corporation's resources unless the Board has stipulated in its by-laws monetary limits on the corporate resources that may be committed by the committee.

8. SHAREHOLDER MATTERS (WHEN REGIONAL COUNCIL APPROVAL IS REQUIRED)

8.1 Decisions of the Region

Each time the Corporation wishes to seek an approval or decision from the Region, as the shareholder of the Corporation, the Corporation shall make a written request for the approval which includes all information necessary for the Region to make an informed decision. The Corporation shall submit its request and supporting Information in a timely manner to the appropriate Regional liaison. Depending upon the nature of the approval sought the Corporation may need to prepare a council report for submission to Council.

8.2 Governance Liaison

For matters requiring the Region's approval or other action regarding governance matters set out in Article 7 (Board of Directors), Sections 8.4 and 8.5 (Matters Requiring Shareholder Approval), and Section 11.2 (Amendments), the designated Regional liaison is the Regional CAO.

8.3 Financial Liaison

For matters set out in Article 9 (Reporting) and Article 10 (Financial Performance), the designated Regional liaison is the Regional Treasurer, who is also the Authorized Region Signatory for matters set out in Subsections 8.5 (d), (e) and (f) which have obtained the required Region approval.

8.4 Matters Requiring Shareholder Approval under the OBCA or Otherwise

The Corporation shall not take any of the following actions without the prior written approval of its shareholder, the Region:

- (a) amend its Articles;
- (b) amalgamate with another corporation, apply to continue as a body corporate under the laws of another jurisdiction, merge, consolidate or reorganize, or approve or effect any plan of arrangement, in each case whether statutory or otherwise;
- (c) take or institute proceedings for any winding up, arrangement, reorganization or dissolution;
- (d) create new classes of shares or reorganize, consolidate, subdivide or otherwise change its outstanding securities or issue common shares and/or preference shares;
- (e) sell or otherwise dispose of, by conveyance, transfer, lease, sale or leaseback, or other transaction, or grant security, charges or mortgages upon the assets of the Corporation in respect of all, substantially all or a material amount or value of its assets or undertaking or in any transaction or series of transactions at variance with or not provided for in the Corporation's Annual Business Plan;
- (f) enter into any other transaction or take any other action that requires shareholder approval pursuant to the OBCA; or
- (g) take any action or make any decision which is at variance with or does not comply with the Corporation's Annual Business Plan.

The Board may recommend to Council the making, amendment, or repeal any of its by-laws and the changes take effect at such time of the Region's approval as Shareholder. Such changes shall be submitted to the Region, as Shareholder, for Council's approval.

8.5 Other Matters Requiring the Region's Approval

In addition to the matters set out in Section 8.4, the Corporation shall not, without the prior approval of Council:

- (a) Exceed the Corporation's capital or operating spending authority that was approved by Council in the Corporation's Annual Business Plan;
- (b) Sell, transfer or otherwise dispose or encumber all, substantially all or a material amount or value of the Corporation's assets or undertaking or

undertake any transaction or series of transactions which are at variance with or are not provided for in the Corporation's Annual Business Plan;

- (c) Issue or transfer shares to a third party entity;
- (d) Enter into any business arrangements which impose financial obligations on the Region or which are at variance with or are not provided for in the Corporation's Annual Business Plan;
- (e) Make representations or promises of any financial incentives or similar inducements that are binding on the Region;
- (f) Enter into a loan arrangement that may have a negative impact on the Region's credit rating in the opinion of the Regional Treasurer or which are at variance with or not provided for in the Corporation's Annual Business Plan;
- (g) Enter into any loan agreement, guarantee or grant any security or convey any assets that are not provided for in or do not conform to the Corporation's Annual Business Plan;
- (h) Enter into any contract or commitment involving monetary obligations which may exceed the overall amount provided or in the Corporation's Annual Business Plan; or
- (i) Acquire or invest in a business not provided for in or at variance with the Corporation's Annual Business Plan.

9. REPORTING

9.1 Business Plan

The Board shall annually approve Corporation's proposed Annual Business Plan to be presented to Council for approval by Council which will include, in respect of the period covered by such business plan the following. Once approved by Council the proposed Annual Business Plan shall constitute the Annual Business Plan for the period covered thereby:

- (a) The key objectives, priorities, and business initiatives that the Corporation will undertake over the next three (3) year period and any amendments to the strategic plan;
- (b) A financial and business plan and the metrics for monitoring accomplishments and financial performance including liquidity and debt coverage;
- (c) Operating and capital budgets in conformance with the Region-approved operating and capital budget for the next Fiscal Year and an operating and

capital budget projection for each subsequent Fiscal Year covered by the Corporation's Annual Business Plan, including the resources necessary to implement the Corporation's Annual Business Plans and any financial impact to the Region;

- (d) Pro forma Financial Statements;
- (e) Any material variances in the projected ability of any business activity to meet or continue to meet the Corporation's objectives;
- (f) Any material variances from the previous Annual Business Plans; and
- (g) Any additional information that the Regional Treasurer may reasonably specify from time to time.

9.2 Region's Annual Budget Process

In accordance with the Region's annual budget process, the Corporation shall prepare and deliver to the Region the Corporation's annual operating and capital budgets for that Fiscal Year and the proposed Annual Business Plan for the Region's approval. The Corporation shall not exceed, in any Fiscal Year, the Corporation's capital or operating spending authority that was approved by the Region in the annual budget process for that Fiscal Year and in the Annual Business Plan.

9.3 Financial Impact on the Region

Prior to consideration of the proposed Annual Business Plan by the Board, the President shall brief the Regional Treasurer on the draft proposed Annual Business Plan and any potential financial consequences for the Region.

9.4 Access to Records

The duly appointed representatives of the Region (as approved by Council from time to time) may make reasonable requests to the Board for access to the Corporation's books and records during normal business hours. Such representatives shall treat all information of the Corporation with the same level of care and confidentiality as any confidential information of the Region. The Regional CAO, the Regional Treasurer, the Regional Solicitor and the Regional Auditor are deemed duly appointed representatives of the Region for matters in respect of this Section 9.4.

9.5 Audit

The Corporation shall be subject to internal audits/reviews at the request of the President, the Board or the Shareholder.

The Corporation's consolidated and unconsolidated Financial Statements shall be audited annually. The initial auditor of the Corporation is Deloitte Canada. In addition to the foregoing:

- (a) The Corporation shall establish and maintain a reasonable accounting system that enables the Corporation to readily identify its assets, expenses, costs of goods, and use of funds.
- (b) The Region's Internal Audit Division (IAD) will provide the audit and consulting services to the Corporation at the Corporation's discretion in accordance with the Internal Audit policy of the Region, subject to policy changes by the Board.

9.6 Annual Report

The Board shall approve the audited Financial Statements and submit an Annual Report to the Regional Treasurer as the designated representative of the Region within 6 months after the end of each Fiscal Year. The Annual Report shall include:

- (a) Audited Financial Statements;
- (b) Accomplishments during the Fiscal Year together with a review and report of actual performance measured against the Annual Business Plan along with explanations, notes and information as is required to explain and account for any variances between the actual results and the Corporation's Annual Business Plan in effect for that Fiscal Year;
- (c) The proposed Annual Business Plan approved by the Board for presentation to Council for Council's consideration and approval for the next period; and
- (d) If there is to be a proposed change to any part of the Corporation's strategic plan or dividend policy as part of any proposed Annual Business Plan, the report will include an analysis supporting such proposed change.

9.7 Annual and Special Update for Council

In addition to the requirement of the OBCA to hold an annual general meeting, the Corporation shall provide an annual update and report for Council of its activities for the previous Fiscal Year. The Corporation shall also update and report to Council promptly on any issue or occurrence which could give rise to a material adverse impact on the Corporation and on the commencement of any significant litigation or proceedings for or against the Corporation that could materially impact the financial status of the Corporation, and shall otherwise provide such annual or special reports from time to time as are required by the Region or Council.

10. FINANCIAL PERFORMANCE

10.1 Debt Financing

The Corporation shall manage its corporate financing in a prudent manner, consistent with best practices for comparable telecommunications businesses, with due regard for liquidity and protection of the Region's investment and always in conformance with the Annual Business Plan.

10.2 Dividend Policy

The Board will exercise its discretion in declaring dividends consistent with any dividend policy for the Corporation in effect from time to time which has been approved by the Region as part of an Annual Business Plan.

11. GENERAL

11.1 Interpretation

Wherever there is a reference to a Regional official, that reference includes any individual acting in that capacity, or any successor official appointed or designated as being responsible for the service area included in that office.

11.2 Amendments

The Region, in its sole discretion, may amend this Shareholder's Direction from time to time. The Region will provide a written amendment or the amended Shareholder's Direction, as the case may be, to the Board. The amendment will come into effect on a date specified by the Region.

11.3 Time of the Essence

Time shall be of the essence in this Shareholder's Direction.

11.4 This agreement is intended to be a Unanimous Shareholders Declaration under Section 108 of the *Business Corporations Act* (Ontario) to the extent that it restricts in whole or in part the powers of the directors of the Corporation, including, without limitation, its restrictions on the management or supervising the management of the business and affairs of the Corporation.

DATED the 10th day of February, 2022.

THE REGIONAL MUNICIPALITY OF DURHAM

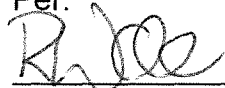
Per:



John Henry
Regional Chair

THE REGIONAL MUNICIPALITY OF DURHAM

Per:



Ralph Walton
Regional Clerk