

MEMORANDUM OF UNDERSTANDING

BETWEEN:

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

-AND-

TECHNICAL STANDARDS AND SAFETY AUTHORITY

RECITALS

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

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

AND WHEREAS the Corporation is accountable to the Minister and the government for activities under its statutory mandate;

Recognizing the Corporation administers the Act and regulations on behalf of the Minister and can provide valuable information to the government regarding the operational effectiveness of the Act and the regulations and that both parties acting in the public interest are dependent on a collaborative relationship.

Recognizing that the Minister is responsible for recommending legislative and regulatory changes to the Lieutenant Governor in Council.

Recognizing the Corporation is not funded by the government and that the Corporation is not self-regulating.

AND WHEREAS it is the intention of the Minister and the Corporation that they shall exercise their powers and duties under the Act and regulations in such a manner as to protect, enhance and improve public safety, public health and the environment and carry out and perform this agreement in a manner consistent with the objective and principle of ensuring a fair, safe and informed marketplace that supports a competitive economy;

NOW THEREFORE the parties hereby enter into this Memorandum of Understanding.

1. DEFINITIONS

(1) In this memorandum of understanding:

- a) “Act” means the *Technical Standards and Safety Act, 2000* as amended and its associated regulations;
- b) “Board” means the board of directors of the Corporation;
- c) “Chair” means the chair of the Board;
- d) “Corporation” means the Technical Standards and Safety Authority established under section 3.1 of the Act;
- e) “Crown” means Her Majesty the Queen in Right of the Province of Ontario as represented by the Minister;
- f) “CSRO” means the Chief Safety Risk Officer as defined under section 3.11 of the Act;
- g) “Minister” means the Minister responsible for the administration of the Act by Order in Council of the Lieutenant Governor;
- h) “MOU” means the Memorandum of Understanding entered into between the Minister and the Corporation and includes all attached schedules and any agreement or schedule in writing supplementing or amending this MOU or any schedule.

2. PURPOSE OF THE MOU

- (1) The MOU between the Minister and the Corporation clarifies the roles, duties, and responsibilities of the parties in relation to the administration of the Act and administrative matters under the Act.
- (2) The MOU clarifies the administrative, financial, auditing, accountability, legislative and regulatory development, and working and reporting relationships between the parties.

3. STATUTORY MANDATE

The statutory mandate of the Corporation are the objects of the Corporation as set out in subsections 3.6 (1) to (6) of the Act.

4. OBJECTS

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

5. NON-REGULATORY BUSINESS

- (1) Under section 3.6(7) of the Act the Minister has the authority to create additional objects permitting the Corporation to undertake non-regulatory business. Additional objects approved by the Minister are outlined in Schedule “A”.
- (2) The Corporation shall only enter into new business arrangements that promote and enhance public safety. For this purpose the Corporation shall comply with Schedule “B”.

6. ACCOUNTABILITY RELATIONSHIPS

- (1) The Minister is accountable to the legislature for the fulfilment of the statutory mandate by the Corporation and for reporting to the legislature on the affairs of the Corporation.
- (2) The Chair is accountable to the Minister for the performance of the Corporation. The Chair acknowledges that accountability to the government means accountability to the Minister.
- (3) The Board acknowledges that accountability to the government means accountability to the Minister through the Chair.

7. ROLES AND RESPONSIBILITIES OF THE PARTIES

The Minister

- (1) The Minister is responsible for overseeing the performance of the Corporation with respect to its statutory mandate. It is the Minister’s role to report publicly on the Corporation’s activities. For this purpose, the Minister requires timely access to information from the Corporation as set out in Schedule “C”.
- (2) The Minister may conduct a review in accordance with section 3.21 of the Act.

- (3) In relation to the Act, the Minister is responsible for recommending regulatory changes to the Lieutenant Governor in Council or legislative changes in the legislature.
- (4) The Minister shall endeavour to engage the Corporation throughout the policy development process. The Minister shall endeavour to work with the Corporation to coordinate public and stakeholder communications regarding any proposed legislative, regulatory, or policy changes.
- (5) The Minister may issue policy directions to the Corporation under section 3.14 of the Act on giving reasonable notice to the Corporation in the circumstances. The parties acknowledge that a policy direction issued to the Corporation is binding on it.
- (6) The Minister shall make reasonable efforts to consult with the Corporation in respect of current or proposed Ontario government legislation or policy, which will directly impact on the Corporation's administration of the Act.
- (7) The Minister may, where the Minister deems appropriate, delegate, make or assign to the Corporation such additional authority, appointments or consents as are within the Minister's control and assist the Corporation in obtaining any additional authorities, appointments or consents, where the granting of such are not within the Minister's control.
- (8) The Minister may, where the Minister deems appropriate, work with other ministries in facilitating agreements and relationships with the Corporation.
- (9) The Minister may, where the Minister deems appropriate in consultation with the Corporation and as approved by the Lieutenant Governor in Council or such other government personnel or bodies as are required, conduct intergovernmental relations and negotiate trade and other binding intergovernmental agreements.
- (10) The Minister shall make best efforts to meet from time to time with the Chair.

The Corporation

- (11) The Corporation shall carry out its duties and responsibilities in accordance with the Act, this MOU, the law, and with the purpose of protecting public safety, public health and the environment and advancing the principle of ensuring a fair, safe and informed

marketplace that supports a competitive economy.

- (12) The Corporation is responsible for ensuring that it has adequate resources, including financial resources, to comply with the Act, this MOU, and in accordance with the business plan that it has provided to the Minister under clause 10(1)(b) of this MOU.
- (13) The Corporation is responsible for maintaining appropriate performance measurements, governance, and financial management processes with sound internal controls to conduct the Corporation's operations effectively, efficiently and economically. In addition, the Corporation shall maintain an effective system for responding to and assisting in the resolution of consumer and other complaints received by the Corporation related to the Act.
- (14) The Corporation is responsible for providing the Minister with timely information in relation to any matter requested by the Minister and shall also provide the information prescribed in Schedule "C".
- (15) The Corporation when able and appropriate shall facilitate any review required by the Minister under section 3.21 of the Act with its best efforts and provide a report on any such review.
- (16) It is the role of the Corporation when able and appropriate to coordinate its enforcement activities in relation to the investigation of serious incidents with the enforcement activities of other provincial and federal enforcement authorities.
- (17) The Corporation shall execute a protocol to be followed in the investigation of incidents under the Act as set out in Schedule "D".
- (18) The Corporation shall participate in the development of policy in a manner as requested by the Ministry with respect to proposed legislative, regulatory, or policy changes related to the Act or the administration of the Act. The Corporation shall work with the Ministry to coordinate public and stakeholder communications regarding any proposed legislative, regulatory, or policy changes.
- (19) The Corporation shall provide timely information to the Minister of any arising issues or concerns related to the administration of the Act that may require legislative, regulatory or policy changes to resolve.
- (20) The Corporation shall provide the CSRO with access to any information and records required to perform the duties of the CSRO.

8. BOARD COMPOSITION, APPOINTMENT, CHAIR AND VICE-CHAIR

Board Composition and Appointment of Directors

- (1) The Corporation shall maintain competency criteria for the Board, setting out the types of skills and competencies that are required on the Board, which shall be approved by the Minister as attached as Schedule “E”. The Minister shall have regard to the competency criteria used by the Board when making appointments to the Board. The competency criteria shall be made available to the public and posted on the Corporation’s website.
- (2) The Minister shall endeavour to make appointments to the Board in a timely manner.
- (3) The Minister may consult with the Corporation regarding any proposed changes to the composition of the Board.
- (4) The by-laws of the Corporation shall not grant to any person who is not a director, the right to notice of meetings of the Board nor the right to attend meetings of the Board.
- (5) The Corporation shall continue to demonstrate excellence in corporate governance and shall provide the Minister with reasonable advance notice of any by-law changes related to its governance structure.
- (6) The Board recognizes that members appointed by the Minister under subsections 3.7(3) and (4) of the Act may include representatives of consumer groups, business, government organizations or such other interests as the Minister determines.
- (7) Board members appointed by the Minister shall be paid by the Corporation in an amount and on a basis that is equivalent to all other members of the Board. Where such Board members are employed by the Crown the Board member shall not receive any remuneration.

Information required from the Board

- (8) The Board shall conduct a Board member evaluation no later than once every two (2) years in accordance with best practices. The review shall be facilitated by an independent third party and a copy of the review shall be provided to the Chair.
- (9) The Board shall adopt a binding code of conduct for its Board members, which addresses, among other matters, situations where actual or perceived conflict of interest exists, to limit the possibility of any Board

member advancing his or her personal or business interests or the interests of another organization, ahead of the interests of the Corporation. The code of conduct for Board members is subject to the approval of the Minister. Upon approval by the Minister, the code shall be attached to this MOU as Schedule "F".

- (10) The annual general meeting, where the Board shall present its annual report and audited financial statements, and report to the members of the Corporation on the affairs of the Corporation for the immediately preceding year, shall be open to the general public and the Board shall make reasonable efforts to inform the general public of such meeting.

Minister's Appointment of Chair and Vice-Chair

- (11) The Minister shall appoint the Chair and Vice-Chair of the Board from among the directors of the Board as soon as practical in advance of the annual general meeting and for this purpose the Minister may consider the views of the Board, competency criteria, succession planning, and any other matter the Minister considers advisable in the circumstances.
- (12) The term of the Chair and Vice-Chair of the Board shall be concurrent with their term as director of the Board.
- (13) The first Chair and Vice-Chair of the Board shall be appointed after the first annual general meeting occurring after the signing of this MOU and thereafter the Minister shall appoint the Chair in advance of the annual general meeting.

Regulatory Affairs Oversight

- (14) The Board shall be responsible for carrying out the following regulatory governance functions:
 - a) Review the adequacy and effectiveness of the Corporation's safety framework to ensure compliance with the Act;
 - b) Review implementation of and reporting on the safety framework;
 - c) Provide strategic advice on potential or proposed policy changes.

9. STATUTORY DIRECTORS

- (1) The Corporation shall make and maintain all statutory appointments required by the Act.

- (2) The Corporation agrees that the position and functions of the statutory director under the Act shall be exercised by an appointee of the Corporation and will not be exercised by the Board or a member of the Board or the President and CEO, or the CSRO.
- (3) The Corporation acknowledges that the inspectors, investigators, statutory directors and other officers exercising statutory and regulatory duties require independent decision-making and, for that purpose, the Corporation agrees that the Board, and the President and CEO, shall not interfere with the independent exercise of these statutory functions but reserves the right to review how those functions are carried out, consistent with its duty to supervise the management of the business affairs of the Corporation and ensure it is consistent with the Corporation's statutory mandate and objects. In addition the CSRO and the Minister shall not interfere with the independent exercise of these statutory functions.

10. CORPORATE REPORTING: STRATEGIC PLAN, BUSINESS PLAN and ANNUAL REPORT

- (1) The Corporation shall:
 - a) provide the Minister each year, not later than one hundred twenty (120) days before the end of its fiscal year, a strategic plan for the forthcoming year (as described in Schedule "G") in a format acceptable to the Minister;
 - b) provide the Minister each year, not later than one hundred twenty (120) days after the end of its fiscal year, a business plan for the forthcoming year (as described in Schedule "G") in a format acceptable to the Minister;
 - c) provide the Minister each year, not later than one hundred twenty (120) days after the end of its fiscal year, an annual report for the preceding year (as described in Schedule "G") in a format acceptable to the Minister;
 - d) provide the Minister with at least thirty (30) days to review and comment on the documents referred to in clauses (a), (b), and (c) after approval of the Board but prior to publication.
 - e) make all publications referred to in clauses (a), (b), and (c) available to the public including posting on the Corporation's website.

- (2) The Corporation's business plan shall set out the means by which services related to the administration are provided in the French language and the Corporation's annual report shall account for how these French language services were provided.
- (3) The Corporation's business plan shall set out the means by which complaints related to the administration are responded to and resolved and the Corporation's annual report shall account for how these complaints were responded to and resolved.
- (4) The Corporation shall conduct a client satisfaction / value survey of its clients and stakeholders at least once every two (2) years. The client satisfaction / value survey shall be facilitated by an independent third party. A summary of the survey produced by the third party shall be shared with the Ministry and posted to the Corporation's website.
- (5) The Corporation's annual report shall include a section on data integrity, data quality, and implementation of data quality control and assurance processes and procedures throughout the organization.
- (6) The Corporation shall provide to the Minister such performance measures as agreed upon regarding the administration on a quarterly basis each year. These measures will be based on a stable set of performance metrics that will reflect all regulated sectors and enable a year to year comparison. Where a year to year comparison is not possible because of a change in performance metrics, the Corporation shall provide to the Ministry sufficient information to enable a comparison.

11. CORPORATION AND THE AUDITOR GENERAL

- (1) The Auditor General appointed under the *Auditor General Act*, R.S.O. 1990, c.A.35, may conduct a value for money audit of the Corporation as set out in section 3.22 of the Act.
- (2) Upon the Auditor General conducting an audit under subsection 11(1) of this MOU, the Corporation shall provide the Auditor General and its employees access to all records and any information required to conduct the audit, as referenced in Schedule "H".
- (3) Each party shall forthwith notify the other party upon receiving notice from the Auditor General of an audit conducted on the Corporation.
- (4) In the event that the Auditor General conducts an audit, the Minister shall assist the Corporation in responding to the audit.

12. FINANCIAL ARRANGEMENTS

- (1) The Corporation acknowledges that fines imposed by a court under the Act further to proceedings taken by the Corporation under the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33 as amended, cannot be collected or retained as revenue by the Corporation.
- (2) The Corporation shall develop fees, costs or other charges related to its duties, roles and responsibilities under the Act in accordance with the process and criteria approved by the Minister, to be set out in Schedule "I".
- (3) The Corporation agrees to pay to the Minister such amounts as set out in Schedule "I".
- (4) Any payments by the Corporation to the Minister shall be made by cheques payable to the Minister of Finance drawn on the account of the Corporation on a timely basis and on the terms as set out in Schedule "J".
- (5) The Minister shall charge interest on any late payments on the terms set out in Schedule "J".
- (6) The Corporation shall report to the Minister at the earliest opportunity if there is any reason for concern about the financial state of the Corporation.

13. RECORDS, PRIVACY ACCESS

- (1) All records obtained, created, or maintained by the Corporation in the course of carrying out its duties are the property of the Corporation and the Corporation is the sole owner and custodian of such records and information and may use them for its legitimate purposes in the administration of the Act.
- (2) The Corporation shall have an access and privacy code addressing issues of access to information, protection of personal information, and effective procedural remedies. The Code shall protect privacy and provide access in accordance with the principles of the *Freedom of Information and Protection of Privacy Act*, and provide effective remedies. Upon approval by the Minister the code shall be attached to this MOU as Schedule "K".

14. THE CHIEF SAFETY AND RISK OFFICER

Appointment

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

Accountability

- (4) The CSRO shall report directly to the Board and the Board shall review/evaluate the performance of the CSRO, on an annual basis.
- (5) The Board and the Minister acknowledge that the CSRO exercises an independent role, pursuant to the Act and that the duties of the CSRO requires independent decision making. For this purpose, the Board and the Minister shall not interfere with the independent exercise of the CSRO's role. For this purpose, the parties acknowledge that it is the explicit employment duty of the CSRO to report to the Board or the Minister, as the case may be, any interference in the CSRO's discharge of its duties.

Duties and Responsibilities

- (6) The CSRO shall independently review and audit the Corporation's administration of the public safety responsibilities assigned to the Corporation pursuant to the Act, including comments on the Corporation's annual safety performance report and provide advice to the Minister and the Board on improving the corporation's effectiveness; and its ability to operate within an evidence-informed model.
- (7) The CSRO will review the Corporation's annual safety performance report for the purpose of assessing the quality, accuracy and clarity of the data used for the report.
- (8) The CSRO will assess the adequacy and reliability of scorecard metrics and any performance metric used to measure the Corporation's performance and provide the Minister and the Board with advice based on established best practices to continuously improve scorecard or performance metrics.
- (9) The CSRO may, subject to subsection 14 (11) of the MOU, prepare a report on any matter related to the Corporation's administration of the Act and the regulations delegated to the corporation if the CSRO considers it in the public interest to do so.
- (10) The CSRO shall, subject to subsection 14 (11) of this MOU, prepare a report on an annual basis as required by subsection 3.11 (4) of the Act and such other reports as may be requested by the Board or the Minister. Where either the Board or the Minister requests a report, the CSRO shall provide the report within the time indicated by the Board or the Minister as the case may be. The annual report shall include an overview of the CSRO's activities and operations, highlight key recommendations arising out of any other report issued by the CSRO in the preceding year, and any other matter the CSRO considers relevant to the public.
- (11) The reports prepared by the CSRO shall be made available at the Corporation's annual meeting and shall be made available to the public by such means as determined by the CSRO.
- (12) The CSRO shall be an advocate for evidence informed decision making and public safety issues and shall take a forward-looking approach in this role based on current best practices and trends.
- (13) The CSRO shall not at any time accept or engage in any of the following duties;
 - a) Report or comment on any finding of liability or fact or on any investigation, whether initiated by the Corporation or another enforcement body, any legal proceeding, or reasonably foreseeable legal proceeding involving the Corporation or the Ministry.

- b) Report or comment on any action, or decision, by a statutory director under the Act, nor interfere in any duty, or power of a statutory director;
- c) Investigate or review specific incidents, or individual complaints;
- d) Accept any statutory, regulatory, administrative, or enforcement responsibilities.

15. MINISTER'S POWER TO AMEND THE MOU

- (1) The Minister may amend the MOU as established under subsection 3.15 (2) of the Act. For this purpose the Minister may consult with the Corporation where advisable regarding any amendment to the MOU. The Minister shall provide reasonable notice of any amendment in writing to the Chair.
- (2) The Minister shall endeavour to make best efforts to ensure that the Corporation has sufficient time to comply with the amended terms of the MOU.

16. APPOINTMENT OF ADMINISTRATOR

The parties recognize that the Minister has the power under section 3.23 of the Act to appoint an administrator if the Minister considers it in the public interest to do so.

17. INSURANCE

- (1) The Corporation shall at all times maintain adequate insurance against liability arising out of the Corporation's carrying out its administration of the Act or its duties under the Act, or this MOU.
- (2) The Corporation shall arrange for the completion and submission of a certificate of liability insurance which shall include a provision requiring the insurer to give prior notice to the Minister in the manner set forth in the policy conditions in the event that the policy is changed or cancelled.
- (3) The Corporation shall take all reasonable steps to protect itself from and against all claims which might arise from the carrying out of its duties under the Act by the Corporation, its officers, employees and agents where bodily injury (including personal injury), death or property damages is caused and for this purpose shall, without restricting the generality of the foregoing, maintain comprehensive general liability insurance acceptable to the Minister and subject to limits of not less than \$25 million inclusive per

occurrence of bodily injury, (including personal injury), death and damage to property including loss of the use thereof, and automobile liability insurance (owned and non-owned or hired units).

- (4) The policies of liability insurance shall include as an additional insured Her Majesty the Queen in Right of Ontario as represented by the Minister but only in respect of and during the performance of the Corporation of its administration of the Act or duties under the Act and not in respect of any act or omission of the Crown including its directors, appointees, officers, employees or agents. In addition, the policy of liability shall contain a cross-liability clause or endorsement. The parties recognize that the requirement for the Crown to be named as an additional named insured does not apply to a policy of insurance in respect of Errors and Omissions.
- (5) In the event that the Minister imposes an obligation on the Corporation by way of legislative or regulatory amendments or otherwise, which gives rise to exposure to liability on the part of the Corporation for which the Corporation cannot reasonably obtain appropriate liability insurance, the Corporation shall provide immediate notice to the Minister in writing of the uninsured risk and the Corporation and the Minister shall identify appropriate measures to resolve the issue to the satisfaction of both parties.

18. INDEMNITY AND RELEASE

- (1) The Corporation shall, at all times, indemnify and save harmless the Crown, including its directors, appointees, officers, employees and agents, from and against any and all claims, demands, losses, costs, damages, actions, suits or other proceedings suffered or incurred by or brought against the Crown:
 - (a) attributable to anything done or omitted to be done by the Corporation, its directors, appointees, officers, employees or agents in connection with the carrying out of the administration of the Act or its duties under the Act, the Act, a Minister's order or this MOU, or
 - (b) in respect of any Post Period Claim.
- (2) The Crown will, at all times, indemnify and save harmless the Corporation, its directors, appointees, officers, employees and agents, from and against any and all claims, demands, losses, costs, damages, actions, suits or other proceedings suffered or incurred or brought against the Corporation:

- (a) attributable to anything done or omitted to be done by the Crown, its directors, appointees, officers, employees or agents related to this MOU, the Act or the administration of the Act, or
 - (b) in respect of any Prior Period Claim.
- (3) The indemnification in subsection 18(1) and (2) of this MOU survive termination of this MOU for the maximum period permitted by law or contract and the Corporation shall be required to have insurance and/or bonding for this purpose and shall provide the Minister with proof of same
- (4) The Corporation agrees that the Crown is not liable for any losses, bodily or personal injury or property damage of any nature whatsoever that may be suffered or sustained by the Corporation, its directors, appointees, officers, employees or agents related to, occasioned by, or in any way attributable to the Corporation's carrying out the administration of the Act or its duties under the Act, or this MOU and the Act, unless the loss, injury, or damage is caused by the negligence or wilful misconduct of a Crown employee while acting within the scope of his/her employment.
- (5) The Minister agrees that the Corporation is not liable for any loss, bodily injury or property damage of any nature whatsoever that may be suffered or sustained by the Crown, including its directors, appointees, officers, employees or agents, under this MOU and the Act, unless the loss, injury, or damage is caused by the negligence or wilful misconduct of the Corporation, its directors, appointees, officers, employees or agents.

19. LITIGATION

- (1) Notwithstanding the amendments made to the Act the following provisions address the litigation arising as a result of the Corporation's designation under the *Safety and Consumer statutes Administration Act, 1996*, as well as litigation arising after the amendments to the Act. For this purpose the Administrative Authority means the Corporation.
- (2) Civil and administrative litigation, including inquests, related to the Act in which the Crown is a defendant or an interested party, which was commenced prior to the date of designation of the Administrative Authority or which was commenced after that date but which relates in whole or in part to any event, act or omission, or to any alleged act or omission, occurring prior to that date, shall be defended or otherwise carried out by the Crown unless the parties expressly agree otherwise, and the Crown shall be responsible for all costs of the litigation and for the payment of any

damages, subject to order of the court or agreement of the parties otherwise. The parties agree that the Corporation reserves its right to defend or otherwise carry out any such litigation on its own behalf and at its own cost where it determines that it has an independent interest in the litigation.

- (3) The Corporation shall cooperate with the Crown as the case may be for the purpose of the Crown's defence or other participation in the litigation referred to in subsection 19 (2) of this MOU including, without limiting the generality of the foregoing, providing documentation or information and providing witnesses in such litigation, where appropriate.
- (4) Civil and administrative litigation, including inquests, related to the Act in which the Crown is a defendant or an interested party, as a result of any alleged act or omission of the Corporation in its administration of any of the delegated Act and which was commenced after the date of designation of the Administrative Authority, shall be defended or otherwise carried out by the Corporation (with full right and power to choose legal counsel and with full right and power to reach a settlement which binds the Corporation and, with the Crown's consent, binds the Crown), unless the parties expressly agree otherwise. The Corporation shall be responsible for all costs of the litigation and for the payment of any settlement costs agreed to and payable by it and any damages awarded against it, as a result of any act, omission or fault of the Corporation, subject to order of the court or agreement of the parties otherwise. The parties agree that the Crown reserves its right to defend or otherwise carry out any such litigation on its own behalf and at its own cost where it determines that it has an independent interest in the litigation.
- (5) Any proceedings, and any civil, criminal or administrative litigation, including inquests, not related to the Corporation's administration of the Act, in which the Crown is a defendant or an interested party, arising from or in any way connected with any activity undertaken by, or alleged act or omission of the Corporation, shall be defended or otherwise carried out by the Corporation. The Corporation shall be responsible for all costs of the proceedings or litigation and for the payment of any settlement costs agreed to and payable by it and any damages awarded against it. The parties agree that the Crown reserves its right to defend or otherwise carry out any such proceedings or litigation on its own behalf and at its own cost where it determines that it has an independent interest in the proceedings or litigation.
- (6) The Minister or the Crown shall cooperate with the Corporation for the purpose of the Corporation's defence or other participation in the litigation referred to in subsection 19 (4) including, without limiting the generality of the foregoing, providing documentation or information and providing witnesses in such litigation, where appropriate.

- (7) For greater certainty, the Corporation shall have authority to and may carry out all prosecutions related to the Act on behalf of and in the name of the Crown, all in accordance with, pursuant to and in furtherance of the obligations of the Corporation, hereunder and under the Act, to administer the Act.
- (8) The Minister or the Crown shall keep the Corporation informed of any litigation by or against the Crown or in which the Crown is an interested party that may affect the interests of the Corporation.
- (9) The Corporation shall keep the Minister informed of any litigation by or against the Corporation or in which the Corporation is an interested party that may affect the interests of the Minister or the Crown.

20. JURISDICTION

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

21. CONFLICT

In the event of a conflict between the provisions of the MOU and the Act, the Act prevails.

22. ENTIRE AGREEMENT

The Minister and the Corporation agree that this MOU and any schedules hereto, as amended from time to time in accordance with section 15 of this MOU and subsection 3.15 (2) of the Act form the entire MOU between the parties and supersede any prior understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of the execution of the MOU.

23. PUBLIC DOCUMENT

The parties agree that this MOU, including the Schedules hereto, and any amendments, shall be made available to the public by either party upon request to that party by any member to the public and that each party will post the MOU, schedules and any amendments to that party's website.

24. TERM OF AGREEMENT

- (1) This MOU comes into effect on the date of execution of this MOU by both parties and continues until such time as this MOU is replaced.

- (2) The parties shall conduct a review of the MOU every five (5) years. Despite the foregoing, either party may initiate a review of the MOU when advisable in the public interest upon giving notice to the other.

Signed at Toronto, Ontario.

As originally signed by RJ Falconi

RJ Falconi
Chair of the Board
Technical Standards and Safety Authority

October 3, 2019
Date

**As originally signed by
The Honourable Minister Lisa Thompson**

The Honourable Minister Lisa Thompson
Ministry of Government and Consumer Services

October 7, 2019
Date