

**ONTARIO ONE CALL**

**By-law No. 2**

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# ONTARIO ONE CALL

## BY-LAW NO. 2

### **Recitals**

**WHEREAS** Ontario One Call (the “Corporation”) is a not-for-profit corporation presently governed by the *Ontario Underground Infrastructure Notification System Act, 2012* and by Part III of the *Corporations Act (Ontario)*, and will be governed by the *Not-for-Profit Corporations Act (Ontario)* upon its proclamation;

**AND WHEREAS** it is intended that all organizations who are responsible to ensure delivery of “locates” based on requests conducted through Ontario One Call become Members of the Corporation;

**AND WHEREAS** five broad membership groups have been identified and include the Gas and Oil Pipeline Industry, the Electricity Industry, the Telecommunications and Cable Industry, the Municipalities and Government Industry and a category of other owners or operators of underground infrastructure (“Others”), and that those organizations are to become voting members in the Corporation with rights as prescribed by statute, in the accompanying Members Bill of Rights and this By-law, and be subject to terms and conditions as set out in Schedule 2 to this By-law;

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

**NOW THEREFORE THIS BY-LAW IS HEREBY ENACTED AS BY-LAW NO. 2.**

### ARTICLE I - DEFINITIONS

#### Section 1.01            Definitions.

“**Act**” means the *Corporations Act (Ontario)* and when it is proclaimed in force, the *Not-for-Profit Corporations Act (Ontario)*, and any successor legislation thereto.

“**Board**” means the board of directors of the Corporation elected in accordance with Article XII of this By-law.

“**Electricity Members**” means the members of the electricity industry as determined by the Governance and Nominating Committee and the Executive Director.

“**Executive Director**” means the person employed by the Corporation as Executive Director but the position is neither a director position on the Board nor a corporate officer position. However, the Executive Director is entitled to attend meetings of the Board unless otherwise excluded therefrom by the Board.

“**Gas and Oil Pipeline Members**” means the members of the gas and oil pipeline industry as determined by the Governance and Nominating Committee and the Executive Director.

“**Legacy Members**” means Bell Canada, Enbridge Gas Distribution Inc. and Union Gas Limited.

“**locates**” means markings on the ground made by the owner or operator of underground infrastructure indicating the location of its underground infrastructure; and providing to the Excavator a written document containing information respecting the location of the underground infrastructure.

“**Members**” means all of the voting members and consisting of the five sub-categories of voting members being (1) Electricity Members; (2) the Gas and Pipeline Members; (3) the Municipal and Government Members; (4) the Telecommunications and Cable Members; and (5) Other Members.

“**Members Bill of Rights**” means the bill of rights annexed as Schedule 1 to this By-law which may be amended and replaced from time to time on approval of the Board and Members.

“**Municipalities and Government Members**” means the members of the municipality and government industry as determined by the Governance and Nominating Committee and the Executive Director.

“**One Call Act**” means the *Ontario Underground Infrastructure Notification System Act, 2012*.

“**Other Members**” means the other Members of the Corporation who are not any of Electricity Members, Gas and Oil Pipeline Members, Municipalities and Government Members or Telecommunications and Cable Members as determined by the Governance and Nominating Committee and the Executive Director.

“**Special Resolution**” means a resolution passed at a meeting of Members and approved in accordance with Section 10.03 by at least sixty-six and two thirds votes in favour of the matter.

“**Specifications**” means the specifications annexed as Schedule 4 to this By-law which may be amended and replaced from time to time by the Board and approved by the Members.

“**Telecommunication and Cable Members**” means the members of the telecommunication and cable industry as determined by the Governance and Nominating Committee and the Executive Director.

“**Voluntary Members**” means persons who are not mandated under the One Call Act to become Members but who own or operate some form of underground infrastructure and choose to

voluntarily seek membership in the Corporation and are admitted to Membership in one of the five subcategories of Membership by the Board.

## **ARTICLE II- INTERPRETATION AND LANGUAGE**

Section 2.01            Interpretation. In this By-law, words importing the singular number shall include the plural and vice versa. Words importing the masculine gender shall include the feminine and neuter genders. References to persons shall include firms and corporations.

Section 2.02            Language. This By-law has been drafted in English; any French language version will be a translation. In the case of conflicting interpretation, the English version shall prevail.

## **ARTICLE III – HEAD OFFICE**

Section 3.01            Head Office. Until changed in accordance with the Act, the head office of the Corporation shall be in the City of Guelph in the Province of Ontario.

## **ARTICLE IV – FISCAL YEAR**

Section 4.01            Fiscal Year. The fiscal year of the Corporation shall terminate on the 31<sup>st</sup> day of December in each year or on such other date as the Board may from time to time by resolution determine.

## **ARTICLE V– AGENTS AND ATTORNEYS**

Section 5.01            Agents and Attorneys. The Board shall have power from time to time to appoint agents or attorneys for the Corporation in or out of Canada with such powers of management or otherwise (including the power to sub delegate) as may be thought fit and permitted under the Act and the One Call Act.

## **ARTICLE VI– FIDELITY BONDS**

Section 6.01            Fidelity Bonds. The Board may require such officers, employees and agents of the Corporation as the Board deems advisable to furnish bonds for the faithful discharge of their duties, in such form and with such surety as the Board may from time to time prescribe.

## **ARTICLE VII – CONTRACTS**

Section 7.01            Cheques, drafts, notes. All cheques, drafts or orders for the payment of money and all notes and acceptances and bills or exchange shall be signed by such officer or

officers or person or persons, whether or not officers of the Corporation and in such manner as the Board may from time to time designate by resolution.

Section 7.02            Execution of Instruments. Contracts, agreements, deeds, leases, mortgages, hypothecs, charges, conveyances, transfers and assignments of property, releases and discharges for the payment of money or other obligations, conveyances, transfers and assignments of shares, stocks, bonds, debentures, or other securities, agencies, powers of attorney, instruments of proxy, voting certificates, returns, documents, reports, or any other instruments in writing to be executed by the Corporation shall be executed by any two directors or officers of the Corporation, or such other person or persons that the Board may designate by resolution, and any such instruments in writing so signed shall be binding on the Corporation without any further authorization or formality. In addition, the Board may from time to time direct the manner in which the person or persons by whom any particular instrument or class of instruments may or shall be signed. The Board may give the Corporation's power of attorney to any registered dealer in securities for the purposes of transferring and dealing with any stocks, bonds and other securities of the Corporation. The seal of the Corporation, when required, may be affixed to contracts, documents and instruments in writing signed as aforesaid or by any officer or officers appointed by resolution of the Board.

#### **ARTICLE VIII- AUDITORS**

Section 8.01            Designation. At each annual meeting of the Corporation, the Members shall appoint an auditor to audit the accounts and financial statements of the Corporation for report to the Members at the next annual meeting and to hold office until the next annual meeting, provided that the Board may fill any vacancy in the office of the auditor. If an appointment is not so made, the auditor in office shall continue until a successor is appointed. The remuneration of the auditor shall be fixed by the Board. The auditor may not be a director, officer or employee of the Corporation without the consent of all the Members.

#### **ARTICLE IX - CORPORATE SEAL**

Section 9.01            Seal. The seal, an impression whereof is stamped in the margin hereof, shall be the seal of the Corporation.

#### **ARTICLE X - MEMBERSHIP**

Section 10.01            Admission and Designation. The persons who have made application for Membership or are deemed to be Members under the One Call Act, shall be admitted to membership in the Corporation by resolution of the Board in one of the following subcategories:

- (a)    Electricity Members;
- (b)    Gas and Oil Pipeline Members;
- (c)    Municipalities and Government Members;



- (d) Telecommunications and Cable Members; and
- (e) Other Members.

Each subcategory of Members ranks equally with the other subcategories of Members.

Section 10.02            Members. Each Member shall be entitled to attend all Members' meetings ("Members' meetings" shall refer throughout to both annual meetings of the Members and special meetings of the Members of the Corporation). At all Members' meetings each Member shall be entitled to cast one (1) vote on every question. However, in order to ensure that no one subcategory prevails over the others by size of its membership, the votes will be weighted and tabulated on each matter in accordance with Section 10.03 of this By-law. Each Member shall be entitled to cast such vote(s) by proxy through a proxyholder, which proxyholder must be another Member of the Corporation. Each proxy shall be executed in the form provided for in the notice of Members' meeting and deposited with the Secretary of the Corporation prior to the meeting.

Section 10.03            Weighting of Votes. If the majority of the votes cast by Members in one of the five subcategories is "yes" or "no" or "abstain", that result will be cast for 20 votes out of 100 votes (100 representing all of the five Member subcategories). Each of the five subcategories of Members will have 20 votes and be treated in like manner. The result of the tabulation of 20 votes from each of the five Member subcategories will decide the matter being voted upon (for example, if 3 groups (60 votes) voted yes, then the matter is approved, if a majority is required by law to approve the matter, or if a matter by law requires a Special Resolution, then 4 groups (80 votes) would need to have voted in favour to approve it). If a majority of a subcategory votes to abstain, that subcategory will then not be counted in the total and the vote will be out of a total that is 20 votes less (eg:  $100 - 20 = 80$  vote total). The foregoing does not apply to Section 27 of Part I of Schedule 2, which is intended to be an exception from this Section 10.03.

Section 10.04            Fees. Any membership fees must be determined by resolution of the Board.

Section 10.05            Termination. Membership in the Corporation shall be terminated if:

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

Section 10.06            Non-Transferable. Membership in the corporation is not transferable.

## **ARTICLE XI- MEMBERS' MEETINGS**

Section 11.01            Annual Meetings. The annual meeting of Members shall be held annually at such time, at such place in Ontario and on such day as shall be determined by the Board. At the annual meeting, the most recent financial statements shall be reviewed, auditors shall be appointed, directors shall be elected in accordance with the provisions hereof, the directors' report shall be received and any other business transacted. All of the transactions as may properly be brought before the annual meeting in accordance with this by-law, the *Act* and the *One Call Act* shall be done so.

Section 11.02            Special Meetings. Unless otherwise provided in this By-law, special Members' meetings may be called by:

- (a) the Chair of the Corporation upon written request to the Secretary of the Corporation;
- (b) by a majority vote of the Board upon written request to the Secretary of the Corporation, or
- (c) by written request to the Secretary of the Corporation of not less than ten percent (10%) of all Members eligible to vote.

Upon receipt of such request, the Secretary of the Corporation shall forthwith call the special Members' meeting in accordance with the provisions hereof.

Section 11.03            Notice of Annual Meetings. Notice of the time, date and place of each annual meeting shall be provided to all Members and directors and auditors of the Corporation as hereinafter described. Such notice shall state the general nature of the matters to be considered at the annual meeting. Notice shall be provided to the Members eligible to vote at their last known addresses as indicated on the membership rolls at the head office of the Corporation by written notification. Notice shall be provided to the Members at their last known addresses by email or other special posting or electronic method at least forty-five (45) calendar days prior to the annual meeting. Only such forms of written notice as are described herein shall be accepted. Subject to the provisions hereof, all notices of an annual meeting shall indicate that Members shall be entitled to vote by proxy as described herein.

Section 11.04            Notice of Special Members' Meetings. Notice of the time, date and place of each special Members' meeting of the Corporation shall be provided to all Members eligible to vote and directors and auditors of the Corporation as hereinafter described. Such notice shall state the nature of the matters to be considered at the special Members' meeting in sufficient detail to allow those Members eligible to vote to form a reasoned judgment in respect of such matters and the notice shall include a draft copy of any resolution or by-law to be considered at such meeting. Notice shall be provided to Members at their last known address indicated on the membership rolls at the head office of the Corporation by written notification. Notice shall be provided to the Members by email or other special posting or electronic method at least forty-five (45) calendar days prior to the special meeting. Only such forms of written notice as are described herein shall be accepted. Subject to the provisions hereof, all notices of special

Members' meetings shall indicate that Members eligible to vote shall be entitled to vote by proxy as described herein.

Section 11.05            Meetings Without Notice. Members' meetings may be held at any time and place without notice if all Members eligible to vote waive in writing the right to notice of such Members' meetings.

Section 11.06            Invalidation of Proceedings. No error or omission in giving notice of any Members' meeting or adjourned members' meeting shall invalidate such meeting or make void any proceeding taken thereat and any Member may at any time waive notice of any such meeting and may ratify, approve and confirm any or all proceedings taken or had thereat. For the purpose of sending any notice to any Member for any Members' meeting or otherwise, the address of the Member shall be his last address recorded on the membership rolls at the head office of the Corporation.

Section 11.07            Quorum. For a duly constituted meeting of Members to be held, a quorum of at least five (5) of the Members of each of the five subcategories of Members must be present at such meeting in person or represented by proxy.

Section 11.08            Voting. Subject to Sections 10.02 and 10.03 of this By-law, at every Members' meeting, every question, unless otherwise required by the *Act*, the *One Call Act* or bylaws of the Corporation, shall be determined by a majority of votes cast, unless a higher percentage is required by the *Act* or *One Call Act* on the question. In the case of a tie, the chair presiding over the Members' meeting shall have the deciding vote on any such matter. Voting shall be by show of hands, except in respect of elections or in situations where a ballot is specifically requested. Any Member eligible to vote may demand a poll and a demand for a poll may be withdrawn at any time prior to the taking thereof. Written resolutions and mail ballots shall be permitted except where they involve any matter required by the *Act* or *One Call Act* to be dealt with at a meeting of Members.

Section 11.09            Teleconference and Electronic Meetings of Members. The Members of the Corporation may meet by teleconference provided that either a majority of each subcategory of the Members consent to meeting by teleconference or meetings by teleconference have been approved by resolution passed by the Board at a meeting of the Board of the Corporation and ratified at a meeting of the Members. The Members of the Corporation may meet by other electronic means that permit each Member to communicate adequately with each other, provided that:

- (a) the Members of the Corporation eligible to vote have passed a resolution addressing the mechanics of holding such a meeting and dealing specifically with how security issues should be handled, the procedure for establishing quorum and recording votes;
- (b) each Member has equal access to the specific means of communication to be used; and
- (c) each Member has consented in advance to meeting by electronic means using the specific means of communication proposed for such meetings.

Section 11.10            Chair of Members' Meetings. The chair of any meeting of Members shall be the first mentioned of the following Officers (if appointed) present at the meeting: Chair, Vice-Chair or Treasurer. If none of the foregoing Officers is present, the meeting shall not proceed but shall be rescheduled.

Section 11.11            Procedure at Meetings. The chair of any meeting of Members shall conduct the proceedings thereat in all respects in accordance with the Act and One Call Act.

Section 11.12            Proxies. Votes at meetings of the Members may be given either personally or by a general or limited proxy, including electronically. Upon a poll, every member who is entitled to vote at the meeting and who is present in person shall have one (1) vote and every person appointed by proxy shall have one (1) vote for each member who is entitled to vote at the meeting and who is represented by such proxyholder.

A proxy shall be executed by the Member in writing.

A person appointed by proxy must be a Member.

A Member who appoints another Member as its proxy may do so either by way of a limited proxy or a general proxy. A limited proxy may restrict the kinds of matters on which the proxyholder may vote on behalf of the Member, contain a time limit regarding the time during which the proxy shall be effective or contain any other restriction that the Member considers to be desirable.

A general proxy may be in the following form:

“The undersigned member of Ontario One Call hereby appoints \_\_\_\_\_ of \_\_\_\_\_ or failing the person appointed above, \_\_\_\_\_ of \_\_\_\_\_ as the proxy of the undersigned to attend and act at the \_\_\_\_\_ meeting of the Members of the said corporation to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and at any adjournment or adjournments thereof in the same manner, to the same extent and with the same power as if the undersigned were present at the said meeting or such adjournment or adjournments thereof.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Member”

A limited proxy may be in the following form:

“The undersigned member of Ontario One Call hereby appoints \_\_\_\_\_ of \_\_\_\_\_ or failing the person appointed above, \_\_\_\_\_ of \_\_\_\_\_ as the proxy of the undersigned to attend and act at the \_\_\_\_\_ meeting of the Members of the said corporation to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and at any adjournment or adjournments thereof to vote only in respect of the following matters: \_\_\_\_\_  
\_\_\_\_\_

in the same manner, to the same extent and with the same power as if the undersigned were present at the said meeting or such adjournment or adjournments thereof.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Member”

The directors may from time to time make regulations regarding the lodging of proxies at some place or places other than the place at which a meeting or adjourned meeting of Members is to be held and for particulars of such proxies to be sent in writing, or by facsimile transmission or by another form of electronic transmission where there is a record that the proxy has been sent, (“Written or Electronic Proxy”) before the meeting or adjourned meeting to the Corporation or any agent of the Corporation for the purpose of receiving such particulars and providing that proxies so lodged may be voted upon as though the proxies themselves were produced at the meeting or adjourned meeting and votes given in accordance with such regulations shall be valid and shall be counted. The chair of any meeting of Members may, subject to any regulations made as aforesaid, in the chair’s discretion accept the Written or Electronic Proxy as to the authority of any person claiming to vote on behalf of and to represent a member notwithstanding that no proxy conferring such authority has been lodged with the Corporation, and any votes given in accordance with such Written or Electronic Proxy accepted by the chairperson of the meeting shall be valid and shall be counted.

## **ARTICLE XII- BOARD OF DIRECTORS**

Section 12.01            Composition of the Board. The affairs of the Corporation shall be managed by a Board who may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation and are not by the by-laws or any resolution of the Corporation or by statute expressly directed or required to be done by the Corporation at a meeting of Members or any subcategory of Members. Each director shall be not less than eighteen (18) years of age and have capacity under the Act.

Section 12.02            Number of Directors. Until changed in accordance with the Act and commencing with the election of directors at the first Annual Meeting of Members following the coming into force of this By-law, the number of directors shall consist of fifteen (15) directors or such other number of directors as may be determined from time to time by special resolution.

The directors shall be elected from time to time by the Members from among those persons put forward by the Nominating Committee of the Corporation as follows. Three directors will be elected from and represent each of the following four subcategories of Members:

- (a)     the Electricity Members;
- (b)     the Gas and Oil Pipeline Members;
- (c)     the Municipalities and Government Members; and

(d) the Telecommunications & Cable Members.

In addition, one director will be elected from and represent the Other Members subcategory of Members and two directors will be elected by all Members from the non-Members sector of excavators. The directors representing each of the above Members subcategories and non-Member sector will be elected from a slate of candidates prepared by the Nominating Committee (see Section 16.08). Each Member from the above four subcategories of Membership shall vote to ensure that three directors from their particular subcategory of Membership and the two directors from the non-Member sector are elected, and in the case of the subcategory of “Other Members” the Members in that subcategory will vote to ensure that one director from their subcategory of Membership is elected, for a total of fifteen (15) directors.

Nominations for directors representing each Member subgroup and the non-Member sector on the Board shall be deposited by the respective Member subgroups with the Secretary of the Corporation prior to each annual meeting for the election of directors who shall work with the Nominating Committee to prepare a slate of directors for presentation to and election by the Members as aforesaid.

Section 12.03 Term. The term of each director shall be for a period of three (3) years. A director may serve for successive terms up to a total of six (6) years in the aggregate, if so elected. In order that not all directors’ terms will be the same, the Board will by resolution, approve an initial chart of directors’ staggered terms to take effect at the first annual meeting of Members to be held following the coming into effect of this By-law. The Board will direct the Governance and Nomination Committee to use the approach so approved by the Board in its approach to the on-going process of selecting nominees for director positions and staggered terms for such directors across the various subcategories of Membership, as part of their process of creating a slate of nominees, and their terms, to be put forward to the Members for election at the annual meetings of Members, until and unless modified by the Board and approved by Special Resolution.

Section 12.04 Vacation of Office. The office of director shall be vacated upon the occurrence of any of the following events:

- (i) the director resigns by delivering written notice of such resignation to the Secretary of the Corporation, which resignation shall take effect upon delivery;
- (ii) he or she is found by a court to be of unsound mind;
- (iii) he or she becomes bankrupt or insolvent within the meaning of the *Bankruptcy and Insolvency Act* (Canada) as amended or replaced from time to time;
- (iv) such director is removed from office in accordance with the Act; or
- (v) on death;

provided that if any vacancy shall occur for any reason, the Board shall, by appointment, fill the vacancy with a new director representing the same Member subgroup from which such director leaving was elected to the Board.

Section 12.05            Validity of actions. No act or proceeding of any director or Board shall be deemed invalid or ineffective by reason of the subsequent ascertainment of any irregularity in regard to such act or proceeding or the qualification of such director or Board.

Section 12.06            Directors' reliance. Directors may rely upon the accuracy of any statement or report prepared by the Corporation's auditors and shall not be responsible or held liable for any loss or damage resulting from acting upon such statement or report.

Section 12.07            Reimbursement of Expenses. Directors shall serve as such without remuneration. However, Directors are entitled to be reimbursed for reasonable expenses incurred in attending Board meetings as determined by Board policy from time to time.

### **ARTICLE XIII- MEETINGS OF THE BOARD OF DIRECTORS**

Section 13.01            Quorum. A majority of the Board present in person or by teleconference or other electronic means shall constitute a quorum.

Section 13.02            Frequency of Meetings. The Board shall meet no less than four (4) times in each financial year of the Corporation, which meetings shall be held at a time and place to be determined by the Chair of the Corporation.

Section 13.03            Place of meeting. Meetings of the Board may be held either at the head office of the Corporation or at any place within the Province of Ontario as determined by the Board from time to time.

Section 13.04            Notice of meeting. Meetings of the Board shall be held from time to time at the call of the Board or the Chair or any two directors. Notice of any meeting of the Board shall be delivered or e-mailed or otherwise communicated to each director not less than two (2) calendar days (exclusive of the day on which the notice is delivered or e-mailed or otherwise communicated but inclusive of the day for which notice is given) before the meeting is to take place; provided always that meetings of the Board may be held at any time without formal notice if all the directors are present or those absent have waived notice or have signified their consent in writing or by fax, email or other communication addressed to the Secretary of the meeting being held in their absence. Notice of any meeting or any irregularity in any meeting or in the notice thereof may be waived by any director.

Section 13.05            Chair of Board Meetings. For the period up until June 18, 2015, the chair of any meeting of the Board shall be a person representing one of the Legacy Members. Thereafter, the chair of any meeting of the Board shall be the first mentioned of the following

Officers (if appointed) present at the meeting: Chair, Vice-Chair or Treasurer. If none of the foregoing Officers is present, the meeting shall not proceed but shall be rescheduled.

Section 13.06            Invalidation. No error or omission in giving notice of any meeting of the Board or any adjourned meeting of the Board shall invalidate such meeting or make void any proceedings taken thereat and any director may at any time waive notice of any such meeting and may ratify, approve and confirm any or all proceedings taken or had thereat. For the purpose of sending notice to any director, the address of the director shall be his last address recorded on the books of the Corporation.

Section 13.07            Teleconference and Electronic Meetings. The Board may meet by teleconference provided that either a majority of the Board consents to meeting by teleconference or meetings by teleconference have been approved by resolution passed by the Board at a meeting of the Board of the Corporation. The Board of the Corporation may meet by other electronic means that permit each director to communicate adequately with each other director, provided that:

- (a) the directors of the Corporation have passed a resolution addressing the mechanics of holding such a meeting and dealing specifically with how security issues should be handled, the procedure for establishing quorum and recording votes;
- (b) each director has equal access to the specific means of communication to be used; and
- (c) each director has consented in advance to meeting by electronic means using the specific means of communication proposed for such meetings.

Section 13.08            Voting. Each director present at a meeting of the Board shall be entitled to one (1) vote on each matter. A Director is not entitled to vote by proxy or send a substitute to vote or attend at meetings of the Board. Any question arising at any meeting of the Board, or at committee meeting of the Board, shall be decided by a majority of votes.

Section 13.09            Casting Vote. In the case of an equality of votes for and against at any meeting of the Board, or at a committee meeting of the Board, the Chair shall have a second or deciding vote.

Section 13.10            Chair's Declaration Conclusive. A declaration by the Chair of the Board or committee of the Board meeting that a resolution has been carried by a particular majority, or not carried, as the case may be, shall be conclusive.

## **ARTICLE XIV– POWERS**

Section 14.01            General. The directors of the Corporation may administer the affairs of the Corporation in all things and make or cause to be made for the Corporation, in its name, any kind of contract which the Corporation may lawfully enter into and, save as hereinafter provided,



may exercise all such other powers and do all such other acts and things as the Corporation, under the Act or One Call Act or otherwise, is authorized to exercise and do.

Section 14.02            Borrowing. The Board of the Corporation may, from time to time:

- (a) borrow money upon the credit of the Corporation;
- (b) issue, reissue, sell or pledge debt obligations of the Corporation;
- (c) give a guarantee on behalf of the Corporation to secure performance of an obligation of any person; and
- (d) mortgage, pledge or otherwise create a security interest in all or any property of the Corporation, owned or subsequently acquired, to secure any obligation of the Corporation.

The powers hereby conferred shall be effective as of the date of enactment of this By-Law and shall be deemed to be in supplement of and not in substitution for any powers to borrow money for the purposes of the Corporation possessed by its directors or officers under the Act or conferred by the Members.

## **ARTICLE XV - OFFICERS**

Section 15.01            Offices. The offices of the Corporation shall consist of the Chair, the Vice-Chair, the Treasurer, the Secretary, and any such other offices as the Board may by by-law determine. Any two offices may be held by the same person.

Section 15.02            Manner of Appointment. The Board shall within thirty (30) calendar days after the annual meeting of Members of the Corporation appoint the officers as herein described as they may consider advisable.

Section 15.03            Term. All officers of the Corporation shall hold office for a term of one (1) year from the date of appointment or until their successors are appointed. Any vacancy occurring in respect of any office may be filled at any time by the Board.

Section 15.04            Chair. For each of the period up to June 18, 2015, the Chair shall be a person representing one of the Legacy Members. Thereafter, the Chair will be appointed by the directors from among them for a one (1) year term.

The Chair of the Board shall preside over all Board meetings, setting their agenda and ensuring that they are run both effectively and efficiently (typically following Robert's Rules of Order). At meetings, the Chair will ensure that all directors have an opportunity to participate and provide perspective.

The Chair must also ensure that the governance protocols and framework outlined within the Corporation's by-laws are adhered to.

The Chair is accountable to the Board being elected by (and from among) the Board's directors.

The Chair will be the public spokesperson for the Board and will also be responsible for meeting regularly with the Executive Director and evaluating the Executive Director.

The Chair may be re-appointed for a maximum of six (6) years but no more than three (3) consecutive one year terms at a time before taking at least a year off from the position of Chair.

Section 15.05            Vice-Chair. The Vice-Chair will be appointed by the directors from their own number for a one (1) year term.

The Vice-Chair will work with the Chair in developing the agenda for Board meetings, and ensuring that items requiring Board approval (particularly matters arising from any committees) have been appropriately incorporated into the agenda.

The Vice-Chair will take on the role of Chair for meetings, in the absence of the Chair, and will become the Chair, when the current Chair's term ends (and if all eligibility criteria have been met).

The Vice-Chair should always be a director representing one of the Membership groups.

Section 15.06            President. The Corporation may, if desired, appoint a President and assign to such office such duties and powers as the Board may deem appropriate.

Section 15.07            Secretary. The Secretary will be appointed annually and, need not be a director and may continue to hold office for as long as the Board wishes.

The Secretary is responsible for the Corporation's general correspondence and communication, as well as preparing (and disseminating) meeting agenda and minutes. The Secretary must ensure that adequate notes of Board meetings and decisions are made, and are available for review when required.

The Secretary is also required to maintain the Corporation's membership list and the eligibility of Members to vote at the Corporation's Annual Meeting or for directors.

The Secretary is responsible for meeting the Corporation's document filing deadlines and requirements.

Section 15.08            Treasurer. The Treasurer will be appointed annually, need not be a director and may continue to hold office for as long as the Board wishes.

The Treasurer is responsible for overseeing all the Corporation's financial transactions, maintaining the Corporation's bank accounts, and monitoring how the Corporation is performing with respect to its budget.

While day-to-day financial transactions are the responsibility of the Corporation's management, the Treasurer may be required to be a co-signatory on Corporation's cheques (depending on the level of authority that is delegated to management).

The Treasurer is responsible for ensuring that all the Corporation's financial reports are prepared accurately, audited and filed as required. Additionally, the Treasurer will chair the Finance and Audit sub-committee.

The Treasurer shall have custody of the funds and securities of the Corporation and shall keep or cause to be kept full and accurate accounts of all assets, liabilities, receipts and disbursements of the Corporation in the books belonging to the Corporation and shall deposit or cause to be deposited all monies, securities and other valuable effects in the name and to the credit of the Corporation in such chartered bank or trust company, or, in the case of securities, with such registered dealer in securities as may be designated by the Board from time to time. The Treasurer shall disburse or cause to be disbursed the funds of the Corporation as may be directed by proper authority taking proper vouchers for such disbursements, and shall render to the Chair and directors at a regular meeting of the Board, or whenever they may require it, an accounting of all the transactions and a statement of the financial position of the Corporation. The Treasurer shall also perform or cause to be performed such other duties as may from time to time be directed by the Board.

Section 15.09            Other. The Board may appoint such other officers as from time to time are considered advisable and assign such duties to them by resolution of the Board.

Section 15.10            Remuneration. The directors may fix the remuneration (if any) to be paid to the officers of the Corporation.

Section 15.11            Vacation of Office. The office of an officer shall be vacated upon the occurrence of any of the following events:

- (i) the officer resigns by delivering a written notice of such resignation to the Secretary of the Corporation, which resignation shall take effect upon delivery;
- (ii) the officer is found by a court to be of unsound mind;
- (iii) the officer becomes bankrupt or insolvent within the meaning of the *Bankruptcy and Insolvency Act* (Canada) as amended or replaced from time to time.;
- (iv) if at a duly called board meeting, a resolution is passed by at least 75% (seventy-five per cent) of votes cast, removing the officer; or
- (v) on death;

provided that if any vacancy shall occur for any reason, the Board by majority vote may fill the vacancy.

## **ARTICLE XVI - COMMITTEES**

**Section 16.01**            **Board Standing Committees.** The Corporation will have the following standing committees of the Board:

- (a)     Executive Committee
- (b)     Operations Committee
- (c)     Finance and Audit Committee
- (d)     Governance and Nomination Committee
- (e)     Compliance Committee
- (f)     Appeals Committee

**Section 16.02**            **Terms of Reference.** The Board shall develop terms of reference for each standing committee and approve them by resolution. Such terms of reference shall include responsibilities, membership and voting, frequency of meetings, quorum, reporting and term of appointment, if any. Amendments to such terms of reference shall also require approval by Board resolution.

**Section 16.03**            **Reimbursement of Expenses.** Committee members shall serve as such without remuneration. However, Committee members are entitled to be reimbursed for reasonable expenses incurred in attending committee meetings as determined by Board policy from time to time.

**Section 16.04**            **Appointment.** The Board shall by resolution appoint individuals to the standing committees in accordance with the terms of reference for each such committee.

**Section 16.05**            **Executive Committee.** The Executive Committee shall exercise, during intervals between meetings of the Board, all of the powers of the Board in the administration of the affairs of the Corporation, subject to the limitations of applicable law.

**Section 16.06**            **Operations Committee.** The Operations Committee will oversee the day to day operations of the Corporation. The Operations Committee will be responsible for oversight and management of:

- (a)     Call Centre Operations – including the management and provision of services, whether delivered directly by the Corporation or through a third party;
- (b)     Financial Processing – including management of accounts receivables, account payables, general ledger posting, risk management, financial controls and financial reporting;

- (c) Information Technology – including the management, development and support of the technical infrastructure and standards required to support the operations of the Corporation;
- (d) Customer Service and Membership Relations – including the management of the definition and monitoring of levels of service together with the acquisition and registration of members; and
- (e) Communications and External Relations – including management of communications with excavators and homeowners about the Corporation, its Members and services.

As the organizational structure of the Corporation evolves, it is expected that the role of the Operations Committee is more supervisory in scope because the Corporation's employees are more responsible for these functions and report to the Executive Director (the most senior employee of the Corporation). The Executive Director will also apprise both the Operations Committee and the Board as appropriate.

Section 16.07            Finance and Audit Committee. The Finance and Audit Committee will oversee all elements of the Corporation's financial reporting and make financial recommendations to the Board. The Finance and Audit Committee is responsible for reviewing the annual budget developed by management and ensuring that appropriate checks, balances and controls have been defined and are being followed. The Finance and Audit Committee will recommend and manage the relationship with the Corporation's auditors and with their advice, identify financial risks and ensure the risks are adequately mitigated.

Section 16.08            Governance and Nomination Committee.

- (a) Responsibilities

The Governance and Nomination Committee will ensure that effective Board processes, roles and policies are developed and implemented. In this respect, this Committee will also ensure that new directors are provided with the necessary support in order to be able to contribute effectively to Board meetings.

Additionally, the Governance and Nomination Committee shall make recommendations to the Board with respect to the criteria required for selection of directors and shall oversee the processes for nominating directors to be considered for election as directors. Specifically this Committee must consult with each of the five subcategories of the Members to obtain lists from them of people they wish to be considered for possible election to the Board and obtain sufficient information about each candidate to enable an informed report to be prepared and a recommendation made to the Board and Members for election to the Board of 15 directors from among all the candidates, with three representatives coming from each of the four subcategories of Members (other than the Other Members) and with one representative from the Other Members and two representatives who are from the non-Member excavator sector.

Additionally, the Governance and Nomination Committee will ensure that as director nominees are considered across the various subcategories of Members, that the staggered terms for such nominees are also staggered across the various subcategories of Members as fairly and equitably as possible.

Through the Secretary of the Board, the Committee shall also oversee the management of the Corporation's Membership lists and ensure that such lists are maintained in good standing.

(b) Deadlines

The Governance and Nomination Committee must provide notice to the Members by December 31 in each year that it is seeking recommendations from Members of potential candidates to be considered for election to the Board. Members must submit their lists of candidates to the Governance and Nomination Committee no later than March 31 in each year. The Governance and Nomination Committee will review and interview the candidates whose names are provided by Members between April 1 and April 30 in each year. The Governance and Nomination Committee will develop a set of competencies to be met by candidates whose names will be put forward for consideration as possible Directors and apply those competencies to their nomination process. The Governance and Nomination Committee will then put forward a slate of persons to be considered by the Members for election to the Board at the annual meeting of Members.

Section 16.09            Compliance Committee. The Compliance Committee shall use the powers contained within the One Call Act and its regulations to ensure broad compliance with the requirements of the One Call Act by both Members of the Corporation and excavators.

Responsibilities of the Compliance Committee include the following:

- (a) The Compliance Committee will understand the requirements of the One Call Act and its powers to enforce compliance.
- (b) It will communicate to Members on an ongoing basis around expectations and areas of concern. The objective is a "no surprises" approach to enforcement.
- (c) It will have a clear, written and escalating means of informing Members or excavators about their non-compliance and the resulting enforcement actions with appropriate policies articulating same.
- (d) It will focus on using the powers under the One Call Act to leverage consistent compliance, ahead of using the powers in a punitive manner.
- (e) It will follow the direction of the Board to examine areas of particular concern to the broader stakeholders of the Corporation.
- (f) It will determine with other enforcement agencies areas of overlapping and individual jurisdiction so that Members do not suffer undue investigations by multiple parties for the same offence.

- (g) It will ensure that Members are provided the opportunity to review evidence that the Committee will consider, and provide information regarding the matter under consideration before the Committee reviews the matter formally. Members may appear before the Committee, in person or in writing.
- (h) It will conduct hearings into non-compliance by Members.
- (i) It will avoid any possible conflicts of interests with compliance activities.

Section 16.10            Appeals Committee. The Appeals Committee shall hear appeals from the decisions of the Compliance Committee of the Corporation and render decisions thereon. The Appeals Committee will conduct fair and independent reviews of decisions of the Compliance Committee as required, permit submissions in writing and orally by the person appealing such decisions of the Compliance Committee and provide written reasons for its decisions after such review.

Section 16.11            Other Committees. The Board may create other committees of the Board by resolution. Such committees must include at least one director and may also be representatives of Members, strategic partners and members of the public as appropriate. Such committees could include:

- (a)     the Stakeholder Advisory Committee

A Stakeholder Advisory Committee, meeting once or twice a year could be created that would enable the Corporation to gain insight into the issues and concerns of stakeholders outside the Corporation.

- (b)     the Regional Advisory Committee

A Regional Advisory Committee could be created that would enable the Corporation to gain insight into issues or concerns related to geography.

- (c)     the Best Practices Committee

A Best Practices Committee could be created that could ensure that standards and best practices associated with mapping and locating underground infrastructure are developed and implemented.

- (d)     the Marketing and Public Awareness Committee

A Marketing and Public Awareness Committee could be created that would have a key role in building awareness within a variety of communities, including property owners, infrastructure owners and excavators.

The Board will develop terms of reference and reporting frameworks for such committees if and when they are created.

## **ARTICLE XVII- LIABILITY OF DIRECTORS AND OFFICERS**

**Section 17.01**            **Indemnity.** Every director and officer (or former director or officer) of the Corporation and his or her heirs, executors, administrators and estates shall from time to time and at all times be indemnified and saved harmless by the Corporation from and against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by such individual in respect of any civil, criminal, administrative, investigative or other action or proceeding in which the individual is involved because of this association with the Corporation.

**Section 17.02**            **Limitation.** A Corporation shall not indemnify an individual under Section 17.01 unless:

- (a) the individual acted honestly and in good faith with a view to the best interests of the Corporation; and
- (b) if the matter is a criminal or administrative proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that his or her conduct was lawful.

**Section 17.03**            **Derivative Actions.** The Corporation may, with the approval of the court, indemnify an individual referred to in Section 17.01, in respect of an action by or on behalf of the Corporation to obtain a judgment in its favour to which the individual is made a party because of the individual's association with the Corporation as described in Section 17.01, against all costs, charges and expenses reasonably incurred by the individual in connection with such action, if the individual fulfils the conditions set out in Section 17.02.

**Section 17.04**            **Right to Indemnity.** Despite Section 17.01, an individual referred to in that section is entitled to indemnity from the Corporation in respect of all costs, charges and expenses reasonably incurred by the individual in connection with the defence of any civil, criminal, administrative, investigative or other action or proceeding to which the individual is subject because of the individual's association with the Corporation as described in Section 17.01, if the individual,

- (a) was not judged by any court or other competent authority to have committed any fault or omitted to do anything that the individual ought to have done; and
- (b) fulfils the conditions set out in Section 17.02.

**Section 17.05**            **Insurance.** The Corporation may purchase and maintain insurance for the benefit of an individual referred to in Section 17.01 against any liability incurred by the individual,

- (a) in the individual's capacity as a director or officer of the Corporation; or
- (b) in the individual's capacity as a director or officer, if the individual acts or acted in that capacity at the Corporation's request.



## **ARTICLE XVIII- CONFLICTS OF INTEREST**

Section 18.01      Interest in Contracts. Subject to compliance with the *Act*, the *One Call Act* and the applicable provisions of the by-laws of the Corporation, no director or officer shall be disqualified from such position by reason of contracting with the Corporation, nor shall any contract or arrangement entered into, by or on behalf of the Corporation, with any director or officer (or in which such contract or arrangement any such individual is in any way interested) be subject to being voided provided that the director or officer has complied with Section 18.02.

Section 18.02      Declaration of Interest. Every director or officer who is in any way, either directly or indirectly interested in a contract, transaction or arrangement or a proposed contract, proposed transaction or a proposed arrangement with the Corporation, shall declare such interest to the extent and in the manner required by the *Act*, the *One Call Act* and any policies of the Corporation and shall refrain, to the extent required by the *Act*, the *One Call Act* or the policies of the Corporation, from voting in respect of the contract or arrangement or proposed contract or proposed arrangement.

## **ARTICLE XIX – SERVICES TO BE PROVIDED BY THE CORPORATION**

Section 19.01      Services. The Corporation will provide the following services:

- (a) provide and maintain a call system, located within the Province of Ontario and operated pursuant to the terms of the One Call Act utilizing the primary telephone number which is the telephone number designated by the Corporation from time to time to enable an excavator or Member to make a locate request by telephone or other means of communication which requires the use of a telephone number;
- (b) provide a digital voice recorder (or equivalent) to record all excavator locate requests. The recording shall identify the date and time of each such recording and tapes of conversations containing excavator locate requests shall be provided upon request of the Member, the Member to pay the cost of producing the tape;
- (c) retain possession of all original tapes, facsimiles and all other records in its possession or control of excavator locate requests relating to the Member for the period specified in the Specifications. Said tapes, facsimiles and other records shall remain the property of the Corporation at all times but originals may be requested in writing by the Member for the defence of claims or any other reason;
- (d) in the event the testimony or evidence of any of the Corporation's employees or agents is requested by the Member to appear before any tribunal, arbitrator, hearing or court of law, regarding work performed for the Member, compensation for time and expenses of any such witness for their testimony shall be negotiated between the Corporation and the Member at that time but in any event, shall not be greater than the current rate of remuneration;
- (e) provide reasonable and adequate security in connection with all information provided to the Corporation by the Member and all communications from the

Corporation to the Member and keep confidential information provided to it by Members that is confidential to the Member and made known to the Corporation as such, or a reasonable person ought to know is confidential to the Member;

- (f) ensure that any computer system which it will use to interface or communicate with any of the Member's systems does not contain any pre-programmed devices which could affect the operation and performance of the Member's computer system without the Member's authorization. The foregoing includes, without limiting the generality of the foregoing, devices such as viruses, bugs, "time bombs", "drop dead devices", and "Trojan horses";
- (g) ensure that any computer system which will interface or communicate with any of the Member's systems will provide sufficient security to prevent any unauthorized access to the Member's system through the Corporation's computer system;
- (h) ensure the primary telephone number shall be a toll-free number; and
- (i) ensure that the call system is operated in compliance with the performance standards and specifications annexed hereto as Schedule 4, as the same may be revised or replaced from time to time and approved by the Board of Directors and Members.

Section 19.02            Dispute Resolution. If a dispute arises between a Member and the Corporation, the Member shall deliver to the Corporation all information available to the Member in writing regarding the dispute to the Operations Manager of the Corporation. If the dispute is unable to be resolved or the parties are unable to meet a mutually agreed timeline by the Operations Manager of the Corporation, the dispute shall be escalated to the Executive Director of the Corporation. Should the dispute remain unresolved or the parties unable to meet a further mutually agreed timeline, the issue will be brought forth to the requisite Committee. If a resolution cannot be found at this level or the Committee is unable to meet a further mutually agreed timeline, the dispute shall be put forth to the Chair of the Board of Directors for review.

## **ARTICLE XX – TERMS AND CONDITIONS AND ENFORCEMENT**

Section 20.01            Terms and Conditions. Members are required to comply at all times with the terms and conditions annexed to this By-law as Schedule 2.

Section 20.02            Enforcement. Failure by Members to comply with the terms and conditions annexed as Schedule 2 to this By-Law will be dealt with in accordance with Part II of Schedule 2 annexed to this By-Law.

Section 20.03            Enforcement - excavators. The Corporation will follow the process set out in Schedule 3 to this By-law in respect of enforcing the One Call Act against excavators.

**ARTICLE XXI - BY-LAWS**

Section 21.01            Creation of By-Laws. The Board may from time to time enact by-laws not contrary to the One Call Act or the Act or may formulate, amend, vary or repeal the same. Such enactments, repeals, amendments or variations must be confirmed or approved by a vote of two-thirds of the Members of the Corporation at a Members' meeting duly called for that purpose as set out in Sections 10.02 and 10.03 of this By-law.

Section 21.02            Repeal and Amendment. No repeal, amendment or variation in respect of this by-law or any subsequent repeal, amendment or variation of this by-law shall be in force or acted upon until it has received the two-thirds approval described in Section 21.01 of this By-law.

Section 21.03            Repeal of By-Law No.1. By-law No. 1 is repealed on the coming into force of this By-law No. 2.

Section 21.04            By-Law No. 2. The By-law will come into effect on the date when the Lieutenant Governor in Council of Ontario first makes regulations under the One Call Act.

MADE as of February 10, 2014.

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary