



The Regional
Municipality
of Durham

Corporate Services
Department
Legislative Services

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Don Beaton, BCom, M.P.A.
Commissioner of Corporate
Services

December 23, 2021

The Honourable Kinga Surma
Ontario Ministry of Infrastructure
777 Bay Street
5th Floor
Toronto ON M5G 2C8

Honourable Madam:

**RE: Establishing a Municipal Services Corporation to Build and Operate the Regional Broadband Network (2021-COW-32)
Our File: O00**

Council of the Region of Durham, at its meeting held on December 22, 2021, adopted the following recommendations of the Committee of the Whole:

- “A) That the Region establish a Regional Broadband Network (the “Network”) through developing, constructing, and commercially operating a fibre optic network to provide open access fibre connectivity across Durham Region to deliver Regional services and to enable economic development and innovation across the Durham Region through improved broadband connectivity;
- B) That staff be authorized the incorporate a wholly-owned Municipal Services Corporation (“MSC”, or the “Corporation”), being an Ontario Business Corporation Act (“OBCA”) corporation pursuant to Section 203 of the Municipal Act, 2001 to develop, construct, and commercially operate the Network;
- C) That the following documents, substantially in the form attached to Report #2021-COW-32 of the Commissioner of Planning and Economic Development, Commissioner of Works, Commissioner of Corporate Services, and Commissioner of Finance, be approved and adopted to incorporate and support the establishment of the MSC:
 - i) MSC Enabling By-law (Attachment #2)
 - ii) Name Consent (Attachment #3)
 - iii) MSC By-law No. 1 (Attachment #4)
 - iv) Organizational Resolutions (Attachment #5)

- v) Consent to Act as First Director (Attachment #6)
 - vi) Authorization to file Articles of Incorporation (Attachment #7)
 - vii) Articles of Incorporation (Attachment #8)
 - viii) Municipal Capital Facilities By-law (Attachment #9)
 - ix) Municipal Capital Facilities Agreement (Attachment #10)
 - x) Asset Transfer Policy (Attachment #11)
 - xi) Shareholder's Direction (Attachment #12)
 - xii) Shareholder Resolution for Election of Director (Attachment #13);
- D) That the Initial Business Plan for the MSC (Confidential Attachment #14 to Report #2021-COW-32, under separate cover) for the purposes outlined in the Shareholder's Direction be approved;
- E) That in order to support the establishment and operations of the new MSC, capital expenditures for the planned first-year 60km build of the Network in the estimated amount of \$5.1M and related operating expenditures in the estimated amount of \$1.1M be referred to the 2022 Business Plans and Budgets process;
- F) That Council authorize expenditures up to \$500,000 to support the early establishment and network pre-build activities of the new corporation prior to the approval of the 2022 Business Plan and Budgets process, with financing to be provided at the discretion of the Commissioner of Finance;
- G) That staff be authorized to negotiate a Municipal Access Agreement with the MSC;
- H) That staff be authorized to negotiate a Corporate Services Agreement as outlined in Section 6.3 of the Shareholder's Direction with the MSC to the satisfaction of the Regional Solicitor, the Commissioner of Finance, and the Chief Administrative Officer;
- I) That the Regional Chair and Clerk be authorized to execute any required documentation to implement the recommendations of Report #2021-COW-32; and

- J) That a copy of Report #2021-COW-32 be provided to the Area Municipalities, Innovation Science and Economic Development Canada, Ontario Ministry of Infrastructure, and Infrastructure Ontario.”

Please find enclosed a copy of Report #2021-COW-32 of the Commissioner of Planning and Economic Development, Commissioner of Works, Commissioner of Corporate Services, and Commissioner of Finance, for your information.

Ralph Walton

Ralph Walton,
Regional Clerk/Director of Legislative Services

RW/np

Attach.

- c: Innovation, Science and Economic Development Canada
Infrastructure Ontario
N. Cooper, Clerk, Town of Ajax
F. Lamanna Clerk, Township of Brock
J. Gallagher, Clerk, Municipality of Clarington
M. Medeiros, Clerk, City of Oshawa
S. Cassel, Clerk, City of Pickering
B. Jamieson, Clerk, Township of Scugog
D. Leroux, Clerk, Township of Uxbridge
C. Harris, Clerk, Town of Whitby
E. Baxter-Trahair, Chief Administrative Officer
B. Bridgeman, Commissioner of Planning and Economic Development
S. Siopis, Commissioner of Works
D. Beaton, Commissioner of Corporate Services
N. Taylor, Commissioner of Finance

If this information is required in an accessible format, please contact 1-800-372-1102 ext. 2564.



The Regional Municipality of Durham Report

To: Committee of the Whole
From: Commissioner of Planning and Economic Development, Commissioner of Works, Commissioner of Corporate Services, and Commissioner of Finance
Report: #2021-COW-32
Date: December 15, 2021

Subject:

Establishing a Municipal Services Corporation to build and operate the Regional Broadband Network

Recommendation:

That the Committee of the Whole recommends to Regional Council:

- A) That the Region establish a Regional Broadband Network (the “Network”) through developing, constructing, and commercially operating a fibre optic network to provide open access fibre connectivity across Durham Region to deliver Regional services and to enable economic development and innovation across the Durham Region through improved broadband connectivity;
- B) That staff be authorized to incorporate a wholly-owned Municipal Services Corporation (“MSC”, or the “Corporation”), being an Ontario Business Corporation Act (“OBCA”) corporation pursuant to Section 203 of the *Municipal Act, 2001* to develop, construct, and commercially operate the Network;
- C) That the following documents, substantially in the form attached, be approved and adopted to incorporate and support the establishment of the MSC:
 - i) MSC Enabling By-law (Attachment #2)
 - ii) Name Consent (Attachment #3)

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- iii) MSC By-law No. 1 (Attachment #4)
 - iv) Organizational Resolutions (Attachment #5)
 - v) Consent to Act as First Director (Attachment # 6)
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 - x) Asset Transfer Policy (Attachment #11)
 - xi) Shareholder's Direction (Attachment #12)
 - xii) Shareholder Resolution for Election of Director (Attachment #13)
- D) That the Initial Business Plan for the MSC (Confidential Attachment #14 under separate cover) for the purposes outlined in the Shareholder's Direction be approved;
- E) That in order to support the establishment and operations of the new MSC, capital expenditures for the planned first-year 60km build of the Network in the estimated amount of \$5.1M and related operating expenditures in the estimated amount of \$1.1M be referred to the 2022 Business Plans and Budgets process;
- F) That Council authorize expenditures up to \$500,000 to support the early establishment and network pre-build activities of the new corporation prior to the approval of the 2022 Business Plan and Budgets process, with financing to be provided at the discretion of the Commissioner of Finance;
- G) That staff be authorized to negotiate a Municipal Access Agreement with the MSC;
- H) That staff be authorized to negotiate a Corporate Services Agreement as outlined in Section 6.3 of the Shareholder's Direction with the MSC to the satisfaction of the Regional Solicitor, the Commissioner of Finance, and the CAO;
- I) That the Regional Chair and Clerk be authorized to execute any required documentation to implement the recommendations of this report; and
- J) That a copy of this report be provided to the Area Municipalities, Innovation Science and Economic Development Canada, Ontario Ministry of Infrastructure, and Infrastructure Ontario.
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Report:**1. Purpose**

1.1 The purpose of this report is to:

- a. Provide an update on the rationale and design of the Network;
- b. Set out the rationale for the MSC and activities undertaken in support of it;
and
- c. Outline the activities and approvals necessary to establish the MSC to develop, construct, and commercially operate the Network.

2. Background

2.1 Regional staff has been actively pursuing opportunities to achieve the vision of the [Broadband Strategy](#) which was approved by Council in 2019. The vision articulates that “Durham’s residents, businesses, and institutions will have access to fast, reliable and affordable broadband services so that they may fully participate, compete and thrive in the 21st century.”

2.2 Staff have been pursuing several senior government funding opportunities to fund the development and construction of the Network, including:

- a. Investing in Canada Infrastructure Program – Federal and Provincial Governments;
- b. Improving Connectivity for Ontario – Provincial Government; and
- c. Universal Broadband Fund – Federal Government.

2.3 To date, the Region has been successful in being awarded grants from all of the above listed grant programs and is in the process of negotiating or meeting the conditions of the respective funding agreements.

2.4 In January 2021 (#2021-COW-18), Council directed staff to explore the formation of an MSC for the purpose of operating the Network.

2.5 Staff engaged the support of third party technical and legal subject matter experts and have undertaken a detailed examination of the benefits and considerations of creating an MSC to operate the Network.

2.6 As noted in #2021-COW-18, one of the legislative requirements to establish an MSC was developing a Business Case Study for a Broadband MSC and conducting public consultation on the matter. This Business Case Study was developed by staff

and made available for public consultation on the Regional website and advertised in local media requesting public review and feedback. One comment was received from the Whitby Chamber of Commerce supporting the initiative in contributing to the viability of our communities. This report and its attachments are also available to the public through the Region's broadband web page and members of the public will be afforded the opportunity to make delegations at the meeting of the Regional Council which will consider this report.

3. Previous Reports and Decisions

- [#2019-P-3](#) - Connecting Our Communities; A Broadband Strategy for the Region of Durham;
- [#2020-INFO-5](#) - Durham Region Broadband Program Update;
- [#2020-EDT-6](#)- Regional Broadband Network Business Case Development and Endorsement of Grant Funding Application;
- [#2020-INFO-91](#) - Durham Region Broadband Program Update – Improving Connectivity for Ontario (ICON) Program, Stage 1 Application Status;
- [#2020-COW-29](#) - Durham Broadband Stage Two Funding Application for the Provincial Improving Connectivity for Ontario (ICON) Program;
- [#2020-EDT-11](#) – Pickering-Uxbridge Broadband Fibre Trunk Project;
- [#2021-COW-2](#) - Regional Broadband Network, Applications for Provincial and Federal Funding;
- [#2021-COW-18](#) – Update on Regional Broadband Program; Authority to Accept Improving Connectivity for Ontario (ICON) or Universal Broadband Fund (UBF) Grant Awards; and Authority to Make Project Commitments During Summer Recess; and
- #2021-COW-23 – **CONFIDENTIAL** Regional Broadband Program: Grant Application Status Update.

4. Update on the Rationale and Design of the Regional Broadband Network

- 4.1 In 2017, the Economic Development Strategy and Action Plan was endorsed by Regional Council, recognizing the importance of broadband as an indispensable

component of infrastructure required to drive economic growth across Durham Region.

- 4.2 Access to reliable Internet connectivity in underserved areas is critical for achieving most, if not all, of the other policy objectives the Region has outlined in its Strategic Plan (2020-2024). These include environmental sustainability, quality of life, improving health outcomes of vulnerable populations, building an inclusive, age friendly, safe community, leverage Durham Region's location, high-quality jobs, support agriculture, poverty reduction, value for money and quality of public service delivery.
- 4.3 Since the advent of the COVID 19 pandemic, broadband has become an essential service as it has been the means through which students have been accessing online education, individuals accessing healthcare, employees being able to work remotely, and businesses to service and reach their customers and suppliers.
- 4.4 The digital divide that exists in Durham Region and across Canada is too large for the private sector to solve on its own. The private sector has been primarily focused on enhancing broadband service availability in densely populated urban areas and communities, where acceptable rates of return can be more readily realized.
- 4.5 Both federal and provincial governments have recognized this issue and have launched several grant funding programs investing billions of dollars over the past number of years to help address the growing digital divide.
- 4.6 These programs have begun to show success, especially where regional and municipal governments have gotten involved. Regional initiatives such as SWIFT, and efforts in Peel Region and York Region have successfully leveraged existing network assets, expanded them, and made them available to private-sector internet service providers ("ISPs") to support their communities.
- 4.7 The needs of the Region are no different than other businesses. Demand for bandwidth continues to increase with the continued advances in efficiency and collaboration tools, remote video meeting applications and other internet accessed applications. It is forecasted that the Region's aggregate need for bandwidth at existing Regional sites is expected to grow by 200+% over the next 5 years.
- 4.8 The ability to meet the bandwidth needs in rural Region sites is a concern as some of those sites currently rely on more traditional low-speed connectivity solutions at relatively high prices. This is no different from other businesses and residences in those areas as they are currently considered either unserved or underserved by the

CRTC with respect to broadband access. Many of these areas and communities have no view or timeframe on when a sustainable broadband solution will be available to meet current needs or the increased bandwidth needs in the not-so-distant future.

- 4.9 The Region's existing fibre network is currently used in urban areas for traffic signal control and monitoring as well as traffic camera surveillance. The expansion of this network into rural areas has begun with the launch of the Uxbridge-Pickering backbone project. In addition, this backbone is planned to be further extended as part of senior government funding applications awards noted in #2021-COW-23 in 2022-2023. Evolving into the Network, this backbone is envisioned to grow to approximately 700km to serve the increasing need for more sites to be connected including depots, water and waste treatment plants, transit shelters, emergency and police facilities and provide the foundation for a more intelligent community.
- 4.10 In addition to connecting the Region's facilities, the Network will bring high-speed fibre connectivity to underserved communities across Durham and be built as an open access network, one that allows multiple service providers to use a common underlying fibre infrastructure. The Network will be made available to ISPs, under commercial agreements, enabling them to accelerate the delivery of retail broadband services to those communities. It should be noted that it is the ISPs that will deliver broadband service to individual homes and businesses, not the MSC.

5. Rationale for a Broadband Municipal Services Corporation

- 5.1 Staff, with support from third party technical subject matter experts, developed a comprehensive Business Case Study for a Broadband MSC which included a jurisdictional scan and best practices on possible ownership models and governance structures for the Network.
- 5.2 The Region set the following objectives in establishing possible ownership and governance structures for the Network infrastructure and services:
- a. Establishing an entity that builds value through collaboration with other levels of government and the private sector, that strengthens the individual and collective position of Region-owned and other assets;
 - b. Establishing a business and governance environment that provides focus and flexibility to react quickly to market needs and attract private sector broadband management expertise at the board and staff levels;
 - c. Providing a mechanism through which to encourage private sector investment and secure senior levels of government funding; and

- d. Delivering transparency and accountability to the Region, as the sole shareholder.
- 5.3 From the analysis conducted and contained in the Business Case Study, the MSC model was identified as being best aligned with the Region's objectives and guiding principles and is consistent with best practices adopted by many municipalities across Canada.
- 5.4 The recommended ownership and governance structure to develop, construct, and commercially operate the Network involved establishing the MSC under the Ontario Business Corporations Act (OBCA) with the Region of Durham being the sole shareholder.

6. Legislative Requirements in Support of Establishing the MSC

- 6.1 The firm of WeirFoulds LLP was been engaged to assist the Region to incorporate a wholly-owned OBCA corporation pursuant to Section 203 of the *Municipal Act, 2001* to develop, construct, and commercially operate the Network. The remainder of this section outlines the legislative requirements and highlights select pertinent details of each of the documents that have been produced to establish the MSC.
- 6.2 Durham Region Business Case Study for a Broadband MSC and Public Consultation (Attachment #1):
- a. A Durham Region Business Case Study for a Broadband MSC was developed by staff and made available for public consultation on the Regional website and advertised in local media requesting public review and feedback; and
 - b. The posted public consultation period was advertised from September 2, 2021 to September 17, 2021. Staff extended the comment period for an additional two-week period. One comment was received from the Whitby Chamber of Commerce supporting the initiative in contributing to the viability of our communities.
- 6.3 MSC Enabling By-law (Attachment #2):
- a. A by-law to establish the MSC for the purposes of establishing, creating, and operating a Regional Telecommunications and Broadband Network in the Regional Municipality of Durham; and
 - b. The Regional Chair John Henry is nominated and authorized to act as the incorporator and initial director and to elect Elaine Baxter-Trahair, Chief

Administrative Officer, as a second director to serve with the Regional Chair on the board of directors.

6.4 Name Consent (Attachment #3):

- a. A Name Consent request to the Ministry of Government Services is required to use a specified corporate name. As part of the Name Consent and the Articles of Incorporation process, a newly upgraded automated name search for “Durham OneNet Inc.” was completed to investigate if this name can be used as the legal registered name of the Corporation. The search results indicated no reasonable risk of conflict and “Durham OneNet Inc.” is recommended and is used in the Name Consent request.

6.5 By-Law No.1 (Attachment #4):

- a. By-law #1 addresses matters generally pertaining to the transaction of the business and affairs of the Corporation and to establish the duties and powers of the directors and officers of the Corporation.

6.6 Organizational Resolutions (Attachment #5):

The following Organizational Resolutions be adopted:

- a. The Region, as the initial shareholder, be issued one hundred (100) common shares in the capital of the Corporation for the consideration of ten dollars (\$10.00), so that the Region is the shareholder of the Corporation.
- b. Regional Chair John Henry be appointed as the initial director, Chair, and initial President of the Corporation until such time a President is hired by the Board.
- c. Regional Solicitor Jason Hunt be appointed as the initial Secretary of the Corporation.
- d. WeirFoulds LLP be appointed solicitors for the Corporation.
- e. Deloitte Canada is appointed as auditors of the Corporation.

6.7 Consent to Act as First Director (Attachment #6):

- a. Form 2 of the OBCA that Chair John Henry consents to act as the first director of Durham OneNet Inc.

6.8 Authorization to file Articles of Incorporation (Attachment #7):

- a. Authorization by Regional Chair John Henry to file Articles of Incorporation with the Ministry of Government & Consumer Services.

6.9 Articles of Incorporation (Attachment #8):

- a. Incorporate “Durham OneNet Inc.” as the name of the Corporation located at 605 Rossland Rd East, Whitby, Ontario Canada, L1N 6A3 with the initial first director as Regional Chair John Henry.

6.10 Municipal Capital Facility By-law and Municipal Capital Facility Agreement (Attachment #9 and Attachment #10):

- a. The *Municipal Act, 2001* prohibits “bonusing” any commercial enterprise through the granting of financial assistance, unless certain circumstances exist. One such circumstance is that the enterprise has entered into an agreement with the municipality to provide “municipal capital facilities”;
- b. Accordingly, WeirFoulds LLP has prepared a Municipal Capital Facilities Agreement between the Region and the Corporation to allow for the transferring of network facilities in the future and assistance by the Region to the Corporation for items including without limitation: funding of annual capital and operating expenses; support services; office space; and access to Regional rights of way; and
- c. The *Municipal Act, 2001* requires that Council enact a bylaw authorizing that a municipal capital facilities agreement be entered into and requires that the Clerk provide notice of the by-law to the Ontario Minister of Finance and any other party to whom notice is required to be given pursuant to the Act or Regulations.

6.11 Asset Transfer Policy (Attachment #11):

- a. The applicable Regulation under section 203 of the *Municipal Act, 2001* requires the Region to adopt and maintain policies on asset transfers to corporations, and for such a policy to be in place before any assets are transferred to a corporation and only following Council approval. There are no assets being transferred at this time.

6.12 Shareholder's Direction (Attachment #12):

- a. The Shareholder's Direction sets out for the board of directors, the Region's expectations of and objectives for the Corporation and the Corporation's mandate; scope of responsibility and reporting requirements; the relationship between the Corporation and the Region; and constitutes, where applicable, a unanimous shareholder declaration by the Region, as the sole shareholder of the Corporation, pursuant to subsection 108(3) of the OBCA;
- b. A Corporate Services Agreement between the Region and the Corporation will be created under which Regional employees and/or contractors of the Region will provide the necessary services to the Corporation;
- c. The board shall be comprised of a maximum of six directors which will consist of up to one elected member of Regional Council and up to one senior management staff of the Regional Municipality of Durham. The remaining board members will be comprised of the President of the Corporation and select independent members with expertise needed on the board;
- d. Remuneration of the directors of the Corporation will be determined by the Region from time to time and will be initially set as follows:
 - Board members who are neither members of Council nor Regional staff may receive remuneration of up to \$20,000 per annum;
 - Members of Council will receive additional remuneration for their service on the board in the same amounts as Council members who are Chairs of Standing Committees or members of the Police Services Board (per By-Law # 08-2004), which is currently \$6,000 per annum; and
 - Regional staff who serve as members of the board shall receive no additional remuneration beyond their salaries.

6.13 Shareholder Resolution for Election of Director (Attachment #13):

- a. Resolution to elect Elaine Baxter-Trahair, Chief Administrative Officer, as a director to serve with John Henry, Regional Chair, as the two (2) initial directors of the Corporation.

7. Financial Implications

- 7.1 The MSC for the Network will be a wholly owned subsidiary of the Region. This new business entity will be responsible for both the acquisition of capital assets and ongoing operational expenditures for the delivery of new Regional broadband

services that will require significant financial resources over the 10-year forecast period.

- 7.2 The MSC's funding requirements will eventually be established by the management and board of directors of the new entity and addressed through an annual business plan and budget process which will be subject to the Region's approval as the sole shareholder. These requirements will be revisited on an annual basis, in consideration of senior government funding program opportunities (e.g., Improving Connectivity for Ontario, Universal Broadband Fund Grant Awards), alignment with other Regional capital projects and potential partnerships with the private sector, including arrangements for fibre swaps or joint builds to reduce capital and ongoing operational costs.
- 7.3 Upon Regional Council approval of the MSC, funds will be required to establish the new Corporation and hire staff. Regional funding in the amount of up to \$1.1M is required to cover the cost of management and staff, incorporating the organization, and developing the tools, processes, and procedures necessary to launch the new entity by January 1, 2022.
- 7.4 Financing arrangements of MSC expenditures will be defined by the following key principles:
- a. Continue to pursue and secure senior level government funding from existing and new programs promoting broadband connectivity in unserved and underserved areas. In 2021 the Region:
 - Secured \$2.8M from Invest in Canada Infrastructure Program for the 38km Uxbridge-Pickering build.
 - Received senior levels of government grant awards for broadband funding that will partially fund the 2022-2023 build program.
 - Regional staff are currently pursuing ways to participate in the Provincial Government's Accelerated High Speed Internet Program for 2023+ builds.
 - b. Seek partnership opportunities with private sector carriers/ISPs on joint builds to share network construction and operating costs.
 - Currently working on a joint network build opportunity with an ISP as part of the proposed 2022-2023 build program that could significantly reduce network construction and operating costs.

- Continue to engage with all private carriers operating in Durham Region on joint build opportunities to significantly reduce network construction and operating costs.
- c. Leverage existing and expanded network fibre infrastructure capacity and engage in network fibre swaps with other fibre network operators to eliminate the need for new builds where possible.
- d. Pursue opportunities to negotiate lower cost construction methods in rural areas (e.g., trenching vs horizontal boring) to reduce overall build costs.
- e. Seek 'Dig Once' opportunities and coordinate fibre deployments with other capital works infrastructure projects led by the Region, Municipalities and Province.

7.5 By pursuing these key principles, it is estimated that approximately \$20M to \$40M could be realized in potential cost savings to reduce the total estimated cost of the current proposed network build over the 10-year forecast period, as outlined in the Initial Business Plan.

Capital Plan

7.6 Over the first ten years of operation, the primary capital assets to be acquired by the MSC include dark fibre for the backbone network, connections, and networking equipment.

Year 1 (2022)	Year 1 - Year 5 (2022 to 2026)	Year 1 - Year 10 (2022 to 2031)
\$6.7M Total	\$62.0M Total	\$79.7M Total
<u>-\$1.6M Grant funded*</u>	<u>-\$3.6M Grant funded*</u>	<u>-\$3.6M Grant funded*</u>
\$5.1M MSC funded	\$58.4M MSC funded	\$76.1M MSC funded

* This is based on the current grant funding that has been awarded and is being negotiated with senior levels of government. No additional grant funding has been factored into the capital forecast.

Operating Plan

7.7 Over the ten-year operating plan, the primary expenditures for the MSC will include network operations, leases, insurance, human resource, support services, OSS/BSS, and marketing.

Year 1 (2022)	Year 1 - Year 5 (2022 to 2026)	Year 1 - Year 10 (2022 to 2031)
\$1.1M	\$11.6M	\$28.5M

Revenue Projections

7.8 Revenue for the MSC will be generated from leasing connectivity to Regional and other MUSH customers as well as to private sector carriers and ISPs.

7.9 Over the ten-year forecast period, the primary sources of revenue for the MSC will include Regional IT connections, other MUSH circuits, traffic connections, dark fibre to ISPs, conduits, and connection fees.

Year 1 (2022)	Year 1 - Year 5 (2022 to 2026)	Year 1 - Year 10 (2022 to 2031)
\$0	\$8.9M	\$43.5M

7.10 Based on the current business plan, including the assumptions for capital, operating, and revenue projections, it is anticipated that by year 5 the MSC revenues will cover the operating expenses and the MSC will be cash flow positive position by year 8.

Total Costs

7.11 As outlined in the Initial Business Plan, the estimated total costs (excluding grants) of the proposed RBN and MSC will be the sum of the estimated capital and operating expenses less anticipated revenues.

Year 1 (2022)	Year 1 - Year 5 (2022 to 2026)	Year 1 - Year 10 (2022 to 2031)
\$7.8M	\$64.7M	\$64.7M

7.12 It is recommended that in order to support the establishment and operation of the new MSC, capital infrastructure for the planned Network in the estimated amount of \$5.1M and related operating expenditures in the estimated amount of \$1.1M be referred to the 2022 Business Plans and Budgets process. Companion Report #2021-COW-36 provides a recommended application for the 2021 federal gas tax allocation to broadband initiatives.

7.13 In order to support the early establishment and network pre-build activities of the new corporation prior to the approval of the 2022 Business Plan and Budgets process, it is recommended that authorization be granted to incur expenditures up to \$500,000 with financing to be provided at the discretion of the Commissioner of Finance.

8. Risks

- 8.1 A comprehensive risk analysis exercise has been conducted and a list of the most common risks along with their likelihood of occurrence and severity is included in the Initial Business Plan.
- 8.2 For each risk identified, a risk mitigation strategy has been developed to reduce the likelihood of occurrence or the severity of its impact in the case of occurrence.
- 8.3 The high-impact risks to consider fall under the following categories and include the following:
- a. Financial and Funding Risks
 - The current cost modeling is based on preliminary designs. As more detailed designs evolve there is a risk that project costs may increase. To mitigate this risk, staff have engaged professional services providers to provide advice and market information to build a robust financial model. The expertise of these consultants will continue to enable staff to update the financial model as the detailed design is completed. Additionally, lessons learned from the Region's ongoing Uxbridge-Pickering fibre backbone project will be applied to the model to increase the confidence in our estimates.
 - General economic conditions and competing priorities can limit access to Regional funding causing a slowdown in construction activity. To address this risk the MSC will have to adopt a conservative business plan for initial years and maintain accurate long-term forecasts.
 - Due to the extensive competition for broadband funding, there is a risk that the MSC may be unsuccessful in securing significant external funding through future grant programs, and as such there has not been any new grant funding factored into the 10-year capital plan forecast. Without additional grant funding, the Region will need to be willing to self-fund the capital outlined in the capital plan and rely on the other financing key principles outlined in Section 7.4 to reduce the amount of required capital to build the target Network.
 - There is also the risk that the MSC may need ongoing operating subsidies, if there is not a strong uptake within the current proposed network, or the related services fails to be competitive with existing carriers or ISP offers in the market.

b. Construction Risks

- Due to increased government funding of broadband projects, it is expected that there will be a high volume of broadband construction activity nationally and specifically across Ontario over the next 3 years. This increase in demand may impact the availability of material and/or resources which may adversely impact the project schedule and/or impact the construction cost. To mitigate this risk, the MSC will seek to accelerate design activities and place early orders for some long-lead time material and plan out network builds well in advance to allow greater participation in contractor bidding and securing contractor resources.

c. Business and Market Risks

- There is a risk of overbuilding where areas in which the MSC had planned a build may already be served by a carrier/ISP or situations where a carrier/ISP may start building in response to the MSC's plans. The MSC is open to partnering with interested carriers/ISPs to carry out joint builds or negotiate network fibre swaps. This will further reduce the MSC's capital build costs.
- There is a risk that the proposed network will not cover all areas leading to a negative public sentiment from residents who are left unserved. It should be noted that the MSC is only building a backbone network and the building of the last-mile network that services homes and businesses is left to ISPs. As one of the MSC's mandates, it will collaboratively work with both carriers and ISPs to maximize their reach to all underserved premises across Durham Region.
- There is a risk that due to increased competition, the revenues forecasted may not be realized. The MSC will actively monitor the competitive landscape and the pricing strategies employed by other carriers and ISPs.
- There is the risk that as the Network buildout may be viewed as competitive threat by private ISPs. To mitigate this risk, the MSC has positioned its buildout primarily to serve Regional requirements and providing the backbone into communities. The delivery of Internet services to the end customer will be left to the retail ISPs.

d. Operational Risks

- There is a risk that the MSC may not have the appropriate experience to enable it to operate the Network assets in a manner that is satisfactory to paying customers. To mitigate against this risk the MSC intends to hire qualified staff with prior telecommunications experience and leverage best practice operational processes.
- In light of the impacts of climate change, there is an additional risk of service impact caused by Network outages due to weather events. These risks can be mitigated by adopting an underground design that is less prone to wind and ice storm events. Additionally, by keeping accurate as-built records of installed infrastructure and providing precise locate services, the MSC aims to reduce the chances of accidental damage by other parties.

9. Relationship to Strategic Plan

9.1 This report aligns with/addresses the following strategic goals and priorities in the Durham Region Strategic Plan:

a. Economic Prosperity

- Section 3.1 Position Durham Region as the location of choice for business; and
- Section 3.3 Enhance communication and transportation networks to better connect people and move goods more effectively, supporting a full-service broadband network across the region.

b. Service Excellence

- Section 5.1 Optimize resources and partnerships to deliver exceptional quality services and value; and
- Section 5.4 Drive organizational success through innovation, a skilled workforce, and modernized services.

10. Conclusion

10.1 The establishment of the MSC and the implementation of the Network is expected to deliver numerous economic and social benefits to Durham Region which includes bridging the digital divide by connecting Durham's underserved communities with

high-speed fibre optic backbone and setting the stage for ISPs to build superior services to both residents and businesses.

- 10.2 Building and operating the Network will be most effectively achieved by the MSC that is wholly owned by the Region as it enables flexible partnerships in a competitive landscape.
- 10.3 The MSC will provide the necessary agility to make decisions quickly to grow the business within the defined strategy and defined budgets while allowing for future joint ventures, strategic partnerships, and pilot projects.
- 10.4 Through this work, the Region can achieve its broadband vision where Durham Region's residents, businesses and institutions will have access to fast, reliable, and affordable broadband services so that they may fully participate, compete, and thrive in the 21st century.

11. Attachments

Attachment #1: Durham Region Business Case Study for a Broadband MSC

Attachment #2: MSC Enabling By-law

Attachment #3: Name Consent

Attachment #4: By-law No. 1

Attachment #5: Organizational Resolutions

Attachment #6: Consent to Act as First Director

Attachment #7: Authorization to file Articles of Incorporation

Attachment #8: Articles of Incorporation

Attachment #9: Municipal Capital Facilities By-law

Attachment #10: Municipal Capital Facilities Agreement

Attachment #11: Asset Transfer Policy

Attachment #12: Shareholder's Direction

Attachment #13: Shareholder Resolution for Election of Director

Attachment #14: Initial Business Plan (Confidential under separate cover)

Respectfully submitted,

Original signed by

Brian Bridgeman, MCIP, RPP
Commissioner of Planning and Economic
Development

Original signed by

Susan Siopis, P. Eng.
Commissioner of Works

Original signed by

Don Beaton, BCom, M.P.A.
Commissioner of Corporate Services

Original signed by

Nancy Taylor, BBA, CPA, CA
Commissioner of Finance/Treasurer

Recommended for Presentation to Committee

Original signed by

Elaine C. Baxter-Trahair
Chief Administrative Officer



Durham Region Business Case Study for
**Broadband Municipal
Services Corporation
(MSC)**

September 2, 2021

Table of Contents

1	Introduction	2
2	Purpose.....	2
3	Objectives.....	3
4	Guiding principles	3
5	Alternatives	5
	5.1 Potential Models	5
	5.2 Best Practice Summary	8
6	Proposed Structure	12
	6.1 Legal Entity	14
	6.2 Entity Ownership.....	14
7	Governance	14
	7.1 Organizational Structure	14
	7.2 Board of Directors and Staff.....	14
	7.3 Strategic Governance Considerations	15
8	Conclusions	15

1 Introduction

In 2017, the Economic Development Strategy and Action Plan was endorsed by Regional Council, recognizing the importance of broadband as an indispensable component of infrastructure required to drive economic growth across the region. Stakeholder consultations highlighted the exponential growth of demand across the Region, as well as the state of penetration of broadband services, which were focused primarily within urban areas. With the reluctance of internet service providers to upgrade infrastructure to deliver broadband services to more rural areas of the region, the viability of businesses in those areas, over the long-term, was noted to be hindered due to the inability to leverage new and innovative internet-based technologies.

The Region has identified the first steps for the delivery of a Regional Broadband Network and services. In an effort to ensure that strong governance practices are adopted to guide the development and oversight of the Regional Broadband Network, the Region proposes establishing a Municipal Services Corporation (MSC) that is intended to serve as a governance vehicle to support the Region's plans for a broadband network. The development of such an entity is permitted under the 2001 Municipal Act Legislation and has become a common best practice for many municipalities as a preferred governance vehicle for municipal broadband networks. Throughout the remainder of this document, the proposed Durham Regional Broadband MSC will be referred to as DRB- MSC.

2 Purpose

This document provides additional information on the proposed new governance model, setting out the objectives, mandate, and guiding principles of DRB-MSC. It further discusses governance options, structure, required support, relationship to the Region, and reporting activities; constituting the provincially required business case study for a proposed Municipal Services Corporation.

Further details regarding the specific role of the Region, DRB-MSO and other entities including private sector participants, will be developed and brought back to Council for decisions and direction at a later time.

3 Objectives

The Region's objectives in establishing the DRB-MSO for broadband infrastructure and services are as follows:

- Establish an entity that builds value for the Region through collaboration with other levels of government and the private sector, that strengthens the individual and collective position of Region-owned and other assets.
- Establishing a business and governance environment that provides flexibility to react quickly to market needs and attract private sector broadband management expertise at the board and staff levels.
- Provide a mechanism through which to encourage private sector investment.
- Provide a mechanism through which to secure senior government funding.
- Provide transparency and accountability to the Region, as the sole shareholder.

4 Guiding principles

The Directors and Officers of all Ontario Business Corporations Act (OBCA) corporations have a duty to act honestly, in good faith and in the best interests of the corporation. DRB-MSO will be wholly owned by the Region of Durham and will be subject to established objectives aligned with the Region's interests. The following six (6) principles will govern the operations, services, and activities of DRB-MSO in that context:

1. **Ubiquitous:** Encouraging Internet Service Providers (ISPs) to be in rural areas and assessing opportunities to provide “last mile” connectivity where ISPs do not see opportunities.
2. **Affordable and Inclusive:** Broadband should be available at affordable rates, and the DRB-MSO should seek opportunities to influence and offer affordable services.
3. **Open Access:** The network should be open for all ISPs to deliver services, and foster competition with the private sector.
4. **Fast and Reliable:** Design a future-proof, scalable and resilient network to cater to future demand.
5. **Improve Service Delivery:** Leverage the network as a Regional Asset to enable more impactful services for residents.
6. **Collaborative:** Achieving the ambitious outcome requires private and public partnership(s) aligned to the vision of a Regional Broadband Network connecting our communities. The DRB-MSO will advocate other levels of government for funding.

The Region will support the DRB-MSO in achieving its objectives and adhering to the guiding principles delineated above. It will:

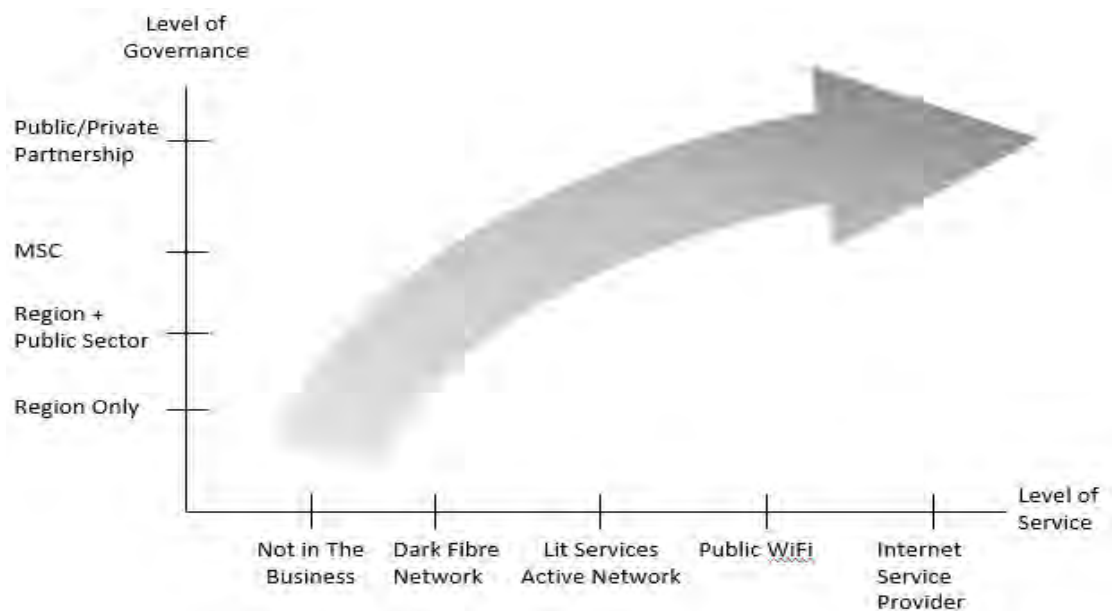
- Make available its existing fibre optic infrastructure assets, in part or in whole, (while maintaining control of those assets for which it has incurred debt), to the DRB-MSO to influence the development of a broadband network across the region.
- Consider lowest lifecycle cost of capital in acquisition of assets.
- Provide support to the DRB-MSO on a full cost-recovery basis.

As a corporation established under the OBCA, the DRB-MSO will have a full business and financial plan, and experienced board of directors. The Region will provide funding during the setup and early subscription phase.

5 Alternatives

5.1 Potential Models

To accomplish the objectives set forth for Durham Region, several structures and governance models were explored, including Region-only, Region and public sector partnerships, and several options for public/private collaboration/partnerships. In general, the required level of governance varies with the complexity of services delivered, requiring some form of public/private partnership to successfully deliver internet broadband services to the retail market, as depicted below:

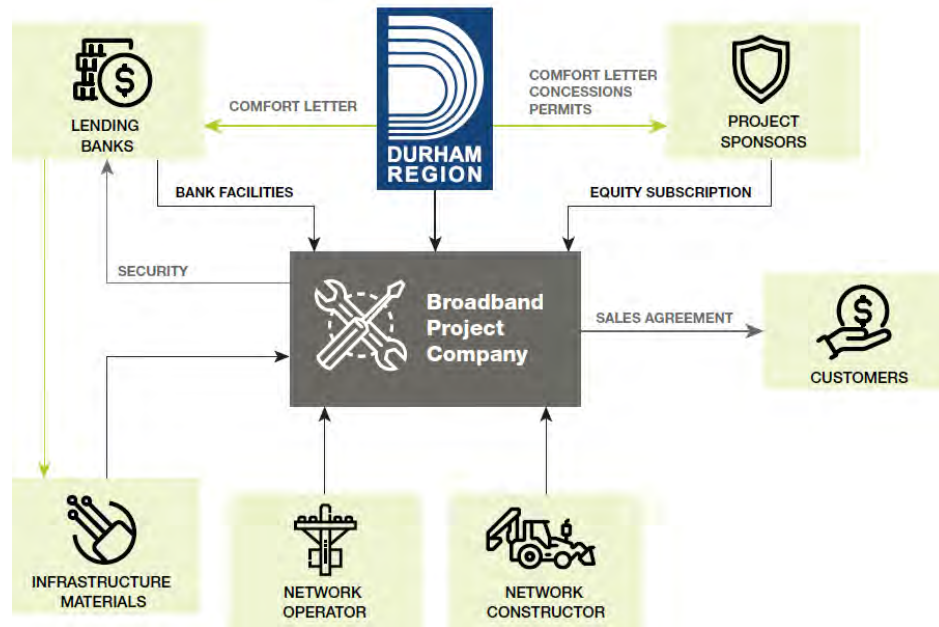


Several governance models exist that would provide the Region with the ability to influence broadband rollout, including:

- Region-only
 - The Region builds fibre infrastructure and operates the network for its own use, and leases some spare capacity to the wholesale service providers and Municipality, Universities, School boards, Health (MUSH) customers.

- Budgets and business plans are set and approved by Council.
- Assets are held by the Region.
- The organization is accountable to the Region.
- This structure does not permit private equity ownership and therefore largely prevents private co-investment.
- Region-Public Sector Partnership (Not for Profit)
 - This option would most likely be structured as a not-for-profit corporation, jointly owned by the Region and other public sector entities such as lower-tier MUSH entities, and is focused on providing benefits to the MUSH sector only.
 - Assets are held by the not-for-profit corporation, but a third neutral party could be contracted to manage and maintain the network.
 - The organization is accountable to the multiple shareholders.
 - This structure does not allow for private equity ownership and therefore largely prevents private co-investment.
- Municipal Services Corporation
 - The Region establishes a Municipal Services Corporation under OBCA to collaborate with private sector ISP(s) (through project agreements), to build and manage a network, focused on a variety of markets (MUSH, Commercial, Residential) throughout the region.
 - The Region maintains control of its assets and may license or transfer assets to the MSC to use them for various projects.
 - The ISP(s) maintain control of their assets related to the project but licence the project to use them.
 - Ability to partner with private sector in many grant funding programs.

- The MSC provides some insulation for the Municipality with respect to project/ business risk, as well as on telecommunications regulatory compliance.
- Public-Private Partnership



Source: Universita Bocconi – Financing and Investing in Infrastructure

- A Public-Private Partnership (P3) is defined as a contractual partnership agreement that is formed between private and public partners. P3s are a structure commonly found in project finance deals, whereas the public sector partner, in this case the Region of Durham, as the host government and major project stakeholder, and would provide concessions, permissions to construct and potentially become a financial sponsor of the project (equity, debt, grants). The private sector partners include industry sponsors who would provide operational knowledge and expertise to design, build and operate the project assets, along with possibly contributing financial support to alleviate the public sector partner from bearing all of the financial risk of the project.


- If we consider the diagram above, the project company or what is often referred to as a Special Purpose Vehicle (SPV), is a separate legal entity and commonly structured as a partnership.
- This SPV would be formed to own the infrastructure, and have the benefit of non-recourse financing, as the credit risk (risk of default) is specific to the project and its assets, and is not secured to the assets on the balance sheet of the sponsor. Therefore, if the project fails, the sponsor's other assets are insulated. This does not apply if the sponsor provides guarantees, and if the value of the debt exceeds the value of the collateral assets.
- As this applies to Durham Region, the Region would need to establish an MSC as a contracting vehicle to sponsor the Broadband Service Company as financial sponsor (debt, equity and grant), along with providing the necessary permits to build the infrastructure. The Region would establish contracts with industrial sponsors to provide the design, build and operate elements of the project. The Region can be a co-financial sponsor with an industrial sponsor (likely Telecom/ISP providers) and leverage external financing from other financial sponsors, such as Infrastructure Ontario, Canada Infrastructure Bank etc. as needed.
- The creation of an MSC is an important prerequisite for the Region to participate in a future P3 project structure and carries benefits of some insulation for the Municipality with respect to project/business risk, as well as on telecommunications regulatory compliance.


5.2 Best Practice Summary

Several reference organizations have been observed, providing beneficial insight to current industry best practices. There are several key themes that can be taken from these and others within the industry. Below is a summary of these key themes, the associated best practice, and related references.

Although it is understood that these entities are not identical to Durham, these themes and best practices provide a good sense on how the Region could foster the development of network connectivity and increase bandwidth to meet the needs of the region moving forward.


MANDATE OF THE BOARD OF DIRECTORS	
Best Practice:	Board approves strategy, evaluates, and mitigates risk, and approves annual business plan, operating budgets, and large opportunities not foreseen in the annual budget. Board appoints Officer(s) of the Corporation (President/CEO/Secretary/General Manager).
Reference Entity:	

COMPOSITION OF BOARD OF DIRECTORS	
Best Practice:	<p>Board is comprised of the Corporate Officer(s), representation from elected officials*, private sector industry members with industry expertise, and the MUSH sector.</p> <p>*Note: QNet and Kingston do not have elected officials on their respective Board of Directors.</p>
Reference Entity:	

TERM OF BOARD OF DIRECTORS	
Best Practice:	<p>Corporate Officer(s) with role/position(s) appointed by the Board. Staggered terms of no less than two (2) years for elected officials, members of the public and MUSH sector.*</p> <p>*Note: QNet and Kingston do not have elected officials on their respective Board of Directors.</p>
Reference Entity:	

LEGAL STRUCTURE	
Best Practice:	<p>For profit corporation under OBCA to provide for maximum flexibility in future mandate. Owned by the Region as a sole shareholder.</p>
Reference Entity:	

ROLE OF MUNICIPAL COUNCIL	
Best Practice:	Informed of strategy, and business plan and operating budget, as recommended by the Board of Directors. Receive regular updates from Corporate Officer(s) on progress towards plan.
Reference Entity:	

ASSET OWNERSHIP	
Best Practice:	Corporation holds the assets (fibre optic cable and duct).
Reference Entity:	

6 Proposed Structure

The four representative models were assessed to identify the level to which each model meets the stated objectives and aligns with the guiding principles, as exhibited below.

Objective/Guiding Principal	Region- only	Region- Public Sector Partnership (Not for Profit)	Municipal Services Corporation (MSC)	Public- Private Partnership (P3)
Ubiquitous:				
Improve broadband coverage to unserved/underserved areas				
Influence delivery of retail services but not necessarily be a retail service provider				
Leverage existing relationships with MUSH sector, establishing anchor clients to provide a stable revenue stream				
Collaborative:				
Leverage funds from higher levels of government to improve broadband coverage to unserved/underserved areas				
Partner with experienced private sector parties to operate network				
Joint applications with ISP(s) for senior government grants				
Affordable and Inclusive:				
Enable delivery of affordable services to all market segments				
Consider lowest cost of capital in acquisition of assets				

Objective/Guiding Principal	Region-only	Region-Public Sector Partnership (Not for Profit)	Municipal Services Corporation (MSC)	Public-Private Partnership (P3)
Entity to have an independent, transparent, and sustainable financial plan				
Provide mechanism to influence private-sector investment				
Region to provide support on cost-recovery basis				
Maintain control of existing assets				
Improve Service Delivery:				
Improve connectivity to municipally-owned assets to enable improved delivery of public services				
Open Access:				
Encourage ISP(s) to use the network where possible				
Fast and Reliable:				
Attract private sector broadband management expertise				
Flexibility to react quickly to market needs				



From the analysis, the model most closely aligned with the stated objectives and guiding principles is one of an MSC.

6.1 Legal Entity

The proposed structure would involve establishing the MSC under the OBCA, that would have access to Region-owned fibre assets and would be charged with influencing the rollout of broadband infrastructure across the region, especially to unserved and underserved rural areas. The resulting network could be operated under contract by a qualified network operator. The MSC would also be charged with collaborating with one or more ISP(s) to deliver retail services to public sector, residential and commercial customers.

6.2 Entity Ownership

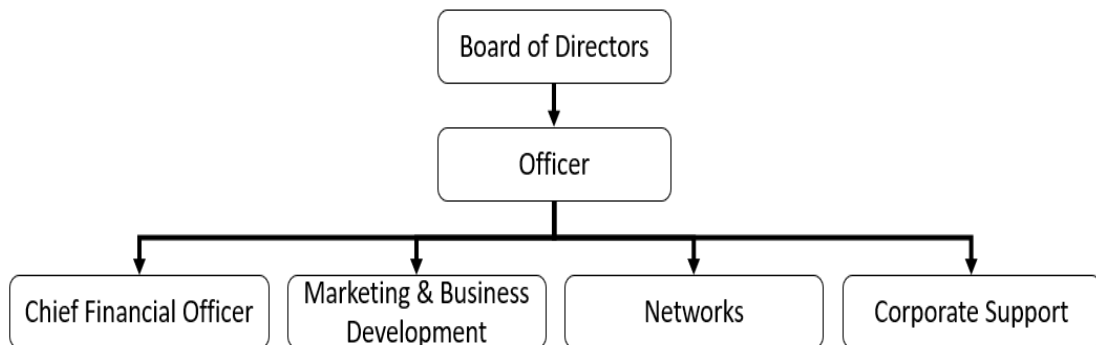
The Region of Durham would be the sole shareholder of the DRB-MSC.

7 Governance

7.1 Organizational Structure

The proposed organizational structure of DRB-MSC should factor in the creation of a Board of Directors, Officer and management of the DRB-MSC

The following exhibit provides a high-level functional organizational structure for the DRB-MSC.



7.2 Board of Directors

For purposes of establishing the DRB-MSC, it is recommended to appoint an inaugural board to establish the DRB-MSC and utilize the board nomination committee to attract and nominate the remaining board positions.

7.3 Strategic Governance Considerations

To conclude the governance discussion, the Region is focused on the following key strategic considerations when ultimately deciding to proceed with the DRB-MSB for broadband infrastructure and services.

- 1. Create the ability to attract private sector industry specific management, and governance expertise to an independent and skills-based board of directors and management team.**
- 2. Enable agility to make decisions quickly to grow the business within the defined strategy and to-be-defined budgets.**
- 3. Keep council and public informed, providing public transparency without allowing special interests to derail the corporation's mandate/strategy.**
- 4. Allow for future joint ventures, strategic partnerships and pilot projects.**
- 5. Create future exit strategy for Council (leave options open to sell/divest).**

8 Conclusions

Risks associated with the approach to establish a DRB-MSB are low. In fact, most other regions across the province have proceeded in the same manner to address broadband demand and improve management of Regional assets.

Approval to proceed does not imply that the Region is going to spend Regional funds on broadband. It does not imply that the Region will partner with any specific service provider(s), nor market services to specific market sectors. It simply acknowledges that an MSB is the preferred vehicle through which to execute the Region's plan for the deployment of broadband infrastructure and services, and authorizes staff to take the necessary preliminary steps to set up that vehicle.

It is therefore recommended that the Region:

- Secure approval for staff to establish a DRB-MSD, with the Region as the sole shareholder.
- Appoint the inaugural board of the corporation; and
- Provide direction to staff to complete due diligence and return to Council with a detailed recommendation report.

By-law Number **-2021
of The Regional Municipality of Durham

Being a by-law to establish a Municipal Services Corporation for the purposes of establishing, creating, and operating a Regional Telecommunications and Broadband Network in the Regional Municipality of Durham.

Whereas under subsection 203 of the Municipal Act, 2001, S.O. 2001, c.25 a municipality may establish a municipal services corporation for the purpose of providing a municipal service and may nominate and authorize a person to act as an incorporator, director, officer or member of a municipal services corporation and may acquire securities in such municipal service corporation and exercise powers as the holder of such securities.

And Whereas under Regulation 599/06, a municipality may establish and create a municipal service corporation by following the requirements under Regulation 599/06 including the requirement to pass an enabling by-law for the municipal service corporation.

Now therefore, the Council of The Regional Municipality of Durham hereby enacts as follows:

Municipal Services Corporation

1. That Regional Municipality of Durham be authorized to establish, incorporate and create a municipal services corporation for the purpose of providing a telecommunications and broadband service and network, including the service of installing, maintaining and operating all required infrastructure to operate a telecommunications and broadband network in the Regional Municipality of Durham, and to acquire and hold shares in the capital of the municipal services corporation as the sole shareholder thereof.
2. That Regional Municipality of Durham staff be authorized to prepare all materials and corporate documents and minutes and take all steps necessary to establish a municipal services corporation for the purpose of providing a telecommunications and broadband service and network in the Regional Municipality of Durham, including, without limitation, the completion and filing of Articles of Incorporation for the municipal services corporation, the corporate by laws of the municipal services corporation and the documents necessary or desirable to organize the municipal services corporation to give effect to paragraph 1 above.

3. The Regional Chair is nominated and authorized to act as the incorporator and initial director of the municipal services corporation and to sign (both in the Regional Chair's capacity as the incorporator and initial director of the municipal services corporation and on behalf of Regional Municipality of Durham as shareholder, as required) the Articles of Incorporation of the municipal services corporation, the corporate by laws of the municipal services corporation and initial organizational minutes and proceedings required or desirable to give effect to paragraph 1 above (including those set out in paragraph 2 above) and to elect Elaine Baxter-Trahair, Chief Administrative Officer, as a second director to serve with the Regional Chair on the board of directors of the MSC pending the further constitution of the Board.
4. The Regional Municipality of Durham is authorized to execute and deliver a Shareholder's Direction to the MSC which is to take effect in accordance with and subject to the terms and conditions of the Shareholder's Direction.

This By-law Read and Passed on the ----th day of -----, 2021.

J. Henry, Regional Chair and CEO

R. Walton, Regional Clerk

CONSENT

TO: MINISTRY OF GOVERNMENT & CONSUMER SERVICES

**Re: Articles of Incorporation under the *Business Corporations Act* (Ontario) for
DURHAM ONENET INC.**

The undersigned hereby consents to the following name for use by a corporation,
pursuant to the *Business Corporations Act* (Ontario):

DURHAM ONENET INC.

DATED the ____ day of _____, 2021.

**THE REGIONAL MUNICIPALITY
OF DURHAM**

Per: _____

Name:

Title:

I have authority to bind the Municipality

BY-LAW NO. 1

A by-law relating generally to the transaction of the business and affairs of
DURHAM ONENET INC.
(herein called the "**Corporation**")

CONTENTS

One	Interpretation
Two	Directors
Three	Committees
Four	Officers
Five	Protection of Directors, Officers and Others
Six	Meetings of Shareholders
Seven	Securities
Eight	Dividends and Rights
Nine	Notices
Ten	Borrowing Powers of the Directors
Eleven	Business of the Corporation

BE IT ENACTED as a by-law of the Corporation as follows:

ARTICLE 1 INTERPRETATION

- 1.1 Definitions. In this by-law, unless the context otherwise requires:
- (a) "**Act**" means the *Business Corporations Act* (Ontario), and includes the regulations made pursuant thereto, and every other act or statute incorporated therewith or amending the same, or any act or statute substituted therefor, and in the case of such substitution the reference in the by-laws of the Corporation to non-existing acts or statutes shall be read as referring to the substituted provisions in the new act or statute;
 - (b) "**board**" means the board of directors of the Corporation;
 - (c) words and expressions defined in the Act shall have the applicable definitions when used herein; and
 - (d) in all by-laws of the Corporation where the context so requires or permits, the singular shall include the plural and the plural shall include the singular. The word "**person**" shall include firms and corporations, and the masculine gender shall include the feminine and neuter genders.

ARTICLE 2 DIRECTORS

2.1 Powers. Subject to any unanimous shareholder agreement, the board shall manage or supervise the management of the affairs and business of the Corporation. So long as a quorum of directors remains in office no vacancy or vacancies in the board shall affect the power of the continuing directors to act.

2.2 Number and Quorum. The board of directors shall consist of such number of persons as are from time to time determined by special resolution or, if the special resolution empowers the board to determine the number, by resolution of the board. The board of directors shall determine the quorum, provided in no event shall a quorum be less than 2/5 of the number of directors or minimum number of directors, as the case may be, subject to the limitations contained in the Act including the limitation that, if the Corporation has fewer than three (3) directors, the quorum shall consist of all directors.

2.3 Qualification. No person shall be qualified for election as a director if he: (i) is less than eighteen years of age; (ii) is of unsound mind and has been so found by a court in Canada or elsewhere; (iii) is not an individual; or (iv) has the status of a bankrupt. A director need not be a shareholder. At least 25 per cent of the directors of the Corporation shall be resident Canadians provided that if the number of directors is less than four at least one director shall be a resident Canadian.

2.4 Election and Term of Office. Unless the Articles otherwise provide, the directors shall be elected yearly at the annual meeting of the shareholders and shall hold office until the annual meeting next following. The whole board shall be elected at each annual meeting and all the directors then in office shall retire, but, if qualified, shall be eligible for re-election. The election may be by a show of hands or by resolution of the shareholders unless a ballot be demanded by any shareholder. If after nomination there is no contest for election, the persons nominated may be elected by declaration of the chairman to that effect. If an election of directors is not held at the proper time, the directors then in office shall continue in office until their successors are elected or appointed.

2.5 Vacancies. Subject to the Act, a quorum of the board may fill a vacancy in the board, except a vacancy resulting from an increase in the number of directors or in the maximum number of directors or from a failure of the shareholders to elect the number of directors required to be elected at any meeting of shareholders. In the absence of a quorum of the board, or if the vacancy has arisen from the failure of the shareholders to elect the number of directors required by the Articles, or if the vacancy has resulted from an increase in the number of directors or in the maximum number of directors, the board shall forthwith call a special meeting of shareholders to fill the vacancy. If the board fails to call such a meeting or if there are no such directors, then in office, any shareholder may call such meeting. A director appointed or elected to fill a vacancy holds office for the unexpired term of his predecessor.

2.6 Vacation of Office. A director ceases to hold office when: (i) he dies; (ii) he is removed from office by the shareholders; (iii) he ceases to be qualified for election as a director; or (iv) his written resignation is received by the Corporation provided if a time subsequent to its date of receipt by the Corporation is specified in such written resignation the resignation shall become effective at the time so specified. Until the first meeting of shareholders, no director named

in the Articles shall be permitted to resign his office unless at the time the resignation is to become effective a successor is elected or appointed.

2.7 Removal of Directors. Subject to the provisions of the Act, the shareholders may by resolution passed at an annual or special meeting remove any director before the expiration of his term of office and the vacancy created by such removal may be filled at the same meeting failing which it may be filled by the directors pursuant to Section 2.5 of this By-law.

2.8 Place of Meetings. Meetings of the board may be held at any place within or outside Ontario. The board need not hold any meetings within Canada.

2.9 Calling of Meetings. Meetings of the board may be held at any time without formal notice being given if all the directors are present, or if a quorum is present and those directors who are absent signify their consent to the holding of the meeting in their absence. Any resolution passed, or proceeding had, or action taken at such meeting shall be as valid and effectual as if it had been passed at or had been taken at a meeting duly called and constituted.

Subject to the Act, no notice of a meeting of the board shall be necessary if the meeting is the first meeting of the board held immediately following a meeting of shareholders at which such board was elected or if the meeting of the board is a meeting which follows immediately upon a meeting of shareholders at which a director was appointed to fill a vacancy on the board, provided at any such meeting of the board a quorum of directors is present.

2.10 Notice of Meeting. The Chairman, the President or a Vice-President who is a director or any two directors may at any time by notice call a meeting of the board. Such notice shall be given in the manner provided in Section 9.1 to each director not less than forty-eight (48) hours before the time when the meeting is to be held. A notice of a meeting of directors need not specify the purpose of or the business to be transacted at the meeting except where the Act requires such purpose or business to be specified. A director may in any manner and at any time waive notice of or otherwise consent to a meeting of the board. Attendance of a director at such a meeting is a waiver of notice of meeting except where the attendance is for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called.

2.11 Adjourned Meeting. Notice of an adjourned meeting of the board is not required if the time and place of the adjourned meeting is announced at the original meeting or the adjourned meeting preceding the applicable adjourned meeting, if the original meeting is adjourned on more than one occasion.

2.12 Regular Meetings. The board may appoint a day or days in any month or months for regular meetings of the board at a place and hour to be named. A copy of any resolution of the board fixing the place and time of such regular meetings shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meeting except where the Act requires the purpose thereof or the business to be transacted thereat to be specified.

2.13 Absent Directors. Any director of the Corporation may file with the Secretary of the Corporation a written waiver of notice of any meetings of the directors and may at any time withdraw such waiver, and until such waiver is withdrawn, no notice of meetings of directors need be sent to such director, and any and all meetings of the directors of the Corporation shall (provided

a quorum is present) be validly constituted notwithstanding that notice shall not have been given to such director.

2.14 Chairman. Subject to Section 4.7 hereof, the chairman of any meeting of the board shall be the President and, in his absence, a director who is a Vice-President present at the meeting. If no such officer is present, the directors present shall choose one of their number to be chairman.

2.15 Voting at Meetings. Questions arising at any meeting of directors shall be decided by a majority of votes. In the case of an equality of votes, the chairman of the meeting, in addition to his original vote, shall not have a second or casting vote.

2.16 Resolution in Writing. A resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of directors or a committee of directors, is as valid as if it had been passed at a meeting of directors or a committee of directors.

2.17 Meetings by Telephone. If all the directors present at or participating in a meeting consent, a meeting of the board or of a committee of the board may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and a director participating in such a meeting by such means is deemed to be present at the meeting. Any such consent shall be effective whether given before or after the meeting to which it relates and may be given with respect to all meetings of the board and of committees of the board held while a director holds office.

2.18 Interest of Directors and Officers in Contracts. Provided the applicable director or officer shall have complied with the applicable requirements of the Act in respect of disclosure of interest and otherwise, no director or officer shall be disqualified by his office from 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 any director or officer is in any way interested be liable to be voided nor shall any director or officer so contracting or being so interested be liable to account to the Corporation for any profit realized by any such contract or arrangement by reason of such director's or officer's holding that office or of the fiduciary relationship thereby established.

ARTICLE 3 COMMITTEES

3.1 Managing Director and Committee of Directors. The board may in its discretion appoint a managing director and such committees of the board as it deems appropriate, and delegate to such managing director and committees any of the powers of the board except those which the board is prohibited by the Act from delegating.

3.2 Transaction of Business. The powers of a committee of directors may be exercised by a meeting at which a quorum is present or by resolution in writing signed by all the members of such committee who would have been entitled to vote on that resolution at a meeting of the committee. Meetings of such committee may be held at any place within or outside Ontario.

3.3 Procedure. Unless otherwise determined by the board, each committee shall have the power to fix its quorum at not less than a majority of its members, to elect its chairman and to regulate its procedure.

ARTICLE 4 OFFICERS

4.1 Appointment. Subject to the Act, this by-law and any other applicable by-laws of the Corporation and any unanimous shareholder agreement:

- (a) the directors may designate the offices of the Corporation, appoint officers, specify their duties and delegate to them powers to manage the business and affairs of the Corporation;
- (b) a director may be appointed to any office of the Corporation; and
- (c) two or more offices of the Corporation may be held by the same person.

4.2 The President. The President shall be the chief executive officer of the Corporation and, subject to the authority of the board, shall be charged with the general supervision of the business and affairs of the Corporation. He shall be ex officio a member of all standing committees and, if no chairman of the board has been appointed, or if appointed is not present, chairman of all meetings of shareholders and of all meetings of directors of the Corporation, if a director. The President shall perform all duties incident to his office and shall have such other powers and duties as may from time to time be assigned to him by the board of directors.

4.3 Vice-President. During the absence or disability of the President his duties may be performed and his powers may be exercised by the Vice-President, or if there are more than one, by the Vice-Presidents in order of seniority (as determined by the board), save that no Vice-President shall preside at a meeting of the board or at a meeting of shareholders who is not qualified to attend the meeting as a director or shareholder, as the case may be. If a Vice-President exercises any such duty or power, the absence or disability of the President shall be presumed with reference thereto. A Vice-President shall also perform such duties and exercise such powers as the President may from time to time delegate to him or the board may prescribe.

4.4 Secretary. The Secretary shall give, or cause to be given, all notices required to be given to shareholders, directors, auditors and members of committees provided that the validity of any notice shall not be affected by reason only of the fact that it is sent by some person other than the Secretary. He shall attend all meetings of the directors and of the shareholders and shall enter or cause to be entered in books kept for that purpose minutes of all proceedings at such meetings. He shall, subject to any specific appointment to the contrary, be the custodian of the stamp or mechanical device generally used for affixing the corporate seal of the Corporation, if any, and of all books, papers, records, documents and other instruments belonging to the Corporation, and he shall perform such other duties as may from time to time be prescribed by the board.

4.5 Treasurer. The Treasurer shall keep or cause to be kept proper books of account and accounting records with respect to all financial and other transactions of the Corporation and, under the direction of the board, shall control the deposit of money, the safekeeping of securities and the disbursement of the funds of the Corporation. He shall render to the board at the meetings thereof, or whenever required of him, an account of all his transactions as Treasurer and of the financial position of the Corporation and he shall perform such other duties as may from time to time be prescribed by the board.

4.6 Assistant-Secretary and Assistant-Treasurer. The Assistant-Secretary and the Assistant-Treasurer or, if more than one, the Assistant-Secretaries and the Assistant-Treasurers, shall respectively perform all the duties of the Secretary and Treasurer in the absence or disability of the Secretary or Treasurer, as the case may be. The Assistant-Secretary and the Assistant-Treasurer shall also have such powers and duties as may from time to time be assigned to them by the board.

4.7 Chairman of the Board. The directors may from time to time appoint a Chairman of the Board who shall be a director. If appointed, the board may assign to him any of the powers and duties that are by any provisions of this by-law assigned to the President, and he shall, subject to the provisions of the Act, have such other powers and duties as the board may specify. The Chairman of the Board shall act as chairman of all directors and shareholders meetings at which he is present. During the absence or disability of the Chairman of the Board, his duties shall be performed and his powers exercised by the managing director, if any, or by the President.

4.8 Power and Duties of Other Officers. The powers and duties of all other officers shall be such as the terms of their engagement call for or as the board may specify. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant, unless the board otherwise directs.

4.9 Duties may be Delegated. In case of the absence or inability to act of the President, a Vice-President or any other officer of the Corporation or for any other reason that the board may deem sufficient, the board may delegate all or any of the powers of such officer to any other officer or to any director for the time being.

4.10 Remuneration and Removal. The board may determine the remuneration to be paid to the directors, officers, agents and employees of the Corporation. Any officer, agent or employee of the Corporation may receive such remuneration as may be determined notwithstanding the fact that he is a director or shareholder of the Corporation. The board may by resolution award special remuneration to any officer of the Corporation undertaking any special work or service for, or undertaking any special mission on behalf of the Corporation other than routine work ordinarily required of such office. If any director or officer of the Corporation shall be employed by or shall perform services for the Corporation otherwise than as a director or officer or shall be a member of a firm or a shareholder, director or officer of a corporation which is employed by or performs services for the Corporation, the fact of his being a director or officer of the Corporation shall not disentitle such director or officer or such firm or corporation, as the case may be, from receiving proper remuneration for such services. All officers, in the absence of written agreement to the contrary, shall be subject to removal by resolution of the board at any time with or without cause. Until such removal each officer shall hold office until his successor is elected or appointed or until his earlier resignation.

4.11 Agents and Attorneys. The board shall have power to appoint, from time to time, 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.

4.12 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, but no director

shall be liable for failure to require any bond or for the insufficiency of any bond or for any loss by reason of the failure of the Corporation to receive any indemnity thereby provided.

ARTICLE 5 PROTECTION OF DIRECTORS, OFFICERS AND OTHERS

5.1 Protection of Directors and Officers. Except as otherwise specifically provided in the Act, no director or officer of the Corporation shall be liable for the acts, receipts, neglects or defaults of any other director or officer or employee, or for joining in any receipt or other act for conformity, or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by order of the board of directors for or on behalf of the Corporation or for the insufficiency or deficiency of any security in or upon which any of the monies of the Corporation shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom any monies, securities or effects of the Corporation shall be deposited, or for any loss, conversion, misapplication or misappropriation of or damage resulting from any dealings with any monies, securities or other assets belonging to the Corporation or for any loss occasioned by any error of judgment or oversight on his part or for any other loss, damage or misfortune whatever which may happen in the execution of the duties of his office or in relation thereto unless the same shall happen by failure to exercise the powers and to discharge the duties of his office honestly and in good faith with a view to the best interests of the Corporation and in connection therewith to exercise that degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Subject to the foregoing, the directors may rely upon the accuracy of any statement or report prepared by the Corporation's auditors or accountants and shall not be responsible or held liable for any loss or damage resulting from the payment of any dividends or otherwise acting upon such statement or report.

The directors of the Corporation are hereby authorized from time to time to cause the Corporation to give indemnities to any director or other person who has undertaken or is about to undertake any liability on behalf of the Corporation and to secure such director or other person against loss by mortgage and charge upon the whole or any part of the real and personal property of the Corporation by way of security. Any action from time to time taken by the directors under this paragraph shall not require approval or confirmation by the shareholders.

5.2 Indemnity. Subject to the limitations contained in the Act, the Corporation hereby indemnifies each past, present and future director and officer of the Corporation, and each individual who is now or may hereafter be, acting or have heretofore acted, at the Corporation's request, as a director or officer or in a similar capacity of another entity and his heirs and legal representatives (each an "**Indemnified Person**"), against all costs, charges and expenses, including any amount paid to settle an action or satisfy a judgment, reasonably incurred by him in respect of any civil, criminal, administrative, investigative or other proceeding in which he is involved because of that association with the Corporation or entity, if:

- (a) he acted honestly and in good faith with a view to the best interests of the Corporation or, as the case may be, to the best interests of the other entity for which he acted as a director or officer or in a similar capacity at the Corporation's request; and

- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful.

Subject to the limitations contained in the Act, if any, the Corporation may advance money to each Indemnified Person for the reasonable costs, charges and expenses of any civil, criminal, administrative, investigative or other proceeding in which he is involved because of his association with the Corporation or other entity, provided that such director, officer or other individual shall repay the money if he did not act honestly and in good faith with a view to the best interests of the Corporation or, as the case may be, to the best interests of the other entity for which he acted as a director or officer or in a similar capacity at the Corporation's request.

5.3 Insurance. Subject to the limitations contained in the Act, the Corporation may purchase and maintain such insurance for the benefit of each Indemnified Person against any liability incurred by him in his capacity as a director or officer of the Corporation, or in his capacity as a director or officer, or a similar capacity, of any other entity, if he acts or acted in that capacity at the Corporation's request, as the board may from time to time determine.

ARTICLE 6 MEETINGS OF SHAREHOLDERS

6.1 Annual Meeting. Subject to the Articles and any unanimous shareholder agreement, the annual meeting of the shareholders shall be held at any place within or outside Ontario on such day and at such time as the board, may from time to time determine, for the purpose of hearing and receiving the reports and statements required by the Act to be read to and laid before shareholders at an annual meeting, electing directors, appointing the auditor and fixing or authorizing the board to fix the auditor's remuneration, and for the transaction of such other business as may properly be brought before the meeting.

6.2 Special Meetings. Subject to the Articles and any unanimous shareholder agreement, the board shall have the power at any time to call a special meeting of shareholders to be held at such time on such day and at any place within or outside Ontario as may be determined by the board. The phrase "special meeting of the shareholders" wherever it occurs in this by-law shall include a meeting of any class or classes of shareholders, and the phrase "meeting of shareholders" wherever it occurs in this by-law shall mean and include an annual meeting of shareholders and a special meeting of shareholders.

6.3 Notice of Meetings. Notice of the time and place of each meeting of shareholders shall be given in the manner provided in Section 9.1, and

- (a) if the Corporation is at the time of such notice offering any of its securities to the public, not less than twenty-one (21) days, and
- (b) if the Corporation is at the time of such notice not offering any of its securities to the public, not less than ten (10) days,

and in any event, not more than fifty (50) days before the date on which the meeting is to be held, to the auditor of the Corporation, to the directors of the Corporation and to each shareholder of record at the close of business on the day on which the notice is given who is entered on the

securities register of the Corporation as the holder of one or more shares carrying the right to vote at the meeting. Notice of a meeting of shareholders called for any purpose other than consideration of the financial statements and auditor's report, election of directors and reappointment of the incumbent auditor shall state the nature of such business in sufficient detail to permit the shareholder to form a reasoned judgment thereon and shall state the text of any special resolution to be submitted to the meeting.

6.4 List of Shareholders Entitled to Notice. For every meeting of shareholders, the Corporation shall prepare a list of shareholders entitled to receive notice of the meeting, arranged in alphabetical order and showing the number of shares held by each shareholder. If a record date for the meeting is fixed pursuant to Section 6.5, the shareholders listed shall be those registered at the close of business on a day not later than ten (10) days after such record date. If no record date is fixed, the shareholders listed shall be those registered at the close of business on the day immediately preceding the day on which notice of the meeting is given, or where no such notice is given, the day on which the meeting is held. The list shall be available for examination by any shareholder during usual business hours at the registered office of the Corporation or at the place where the securities register is kept and at the place where the meeting is held.

6.5 Record Date for Notice. The board may fix in advance a record date, preceding the date of any meeting of shareholders by not more than fifty (50) days and not less than twenty-one (21) days, for the determination of the shareholders entitled to notice of the meeting, provided that notice of any such record date is given not less than seven (7) days before such record date, by newspaper advertisement in the manner provided in the Act. If no record date is so fixed, the record date for the determination of the shareholders entitled to notice of the meeting shall be the close of business on the day immediately preceding the day on which the notice is given.

6.6 Waiving Notice. A shareholder and any other person entitled to attend a meeting of shareholders may in any manner and at any time waive notice of a meeting of shareholders, and attendance of any such person at a meeting of shareholders is a waiver of notice of the meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

6.7 Persons Entitled to be Present. The only persons entitled to be present at a meeting of the shareholders shall be those entitled to vote thereat, the directors and auditors of the Corporation and others who, although not entitled to vote, are entitled or required under any provision of the Act or the Articles or by-laws to be present at the meeting. Any other person may be admitted only on the invitation of the chairman of the meeting or with the consent of the meeting.

6.8 Quorum. Two persons entitled to vote at a meeting of shareholders present in person constitute a quorum.

6.9 Right to Vote. Subject to the Act, the articles and Section 6.5 hereof, each person registered as a shareholder of the Corporation at the date of any meeting of shareholders shall be entitled to one vote for each share held.

6.10 Representatives. An executor, administrator, committee of a mentally incompetent person, guardian or trustee and where a body corporate is such executor, administrator, committee, guardian or trustee, any person duly appointed by proxy for such body corporate, upon filing with

the secretary of the meeting sufficient proof of his appointment, shall represent the shares of the testator, intestate, mentally incompetent person, ward or *cestui que* trust in his or its stead at all meetings of the shareholders of the Corporation and may vote accordingly as a shareholder in the same manner and to the same extent as the shareholder of record. If there be more than one executor, administrator, committee, guardian or trustee, the provisions of clause 6.12 shall apply.

6.11 Proxies. Every shareholder, including a shareholder that is a body corporate, entitled to vote at a meeting of shareholders may by means of a proxy appoint a person, who need not be a shareholder, as his nominee to attend and act at the meeting in the manner, to the extent and with the power conferred by the proxy.

Subject to the Act, a proxy shall be executed by the shareholder or his attorney authorized in writing or, if the shareholder is a body corporate, under its corporate seal, if any, or by an officer or attorney thereof duly authorized.

A proxy may be in any form which may be prescribed from time to time by the board of directors or which the chairman of the meeting may accept as sufficient, provided that such form complies with the provisions of the Act.

Proxies shall be deposited with the secretary of the meeting before any vote is cast under the authority thereof or at such earlier time and in such manner as the board may prescribe in accordance with the provisions of the Act. A proxy in the form of a facsimile transmission may also be so deposited.

6.12 Joint Shareholders. Where two or more persons hold the same share or shares jointly, any one of such persons present at a meeting of shareholders has the right in the absence of the other or others to vote in respect of such share or shares, but, if more than one of such persons are present or represented by proxy and vote, they shall vote together as one on the share or shares jointly held by them.

6.13 Scrutineer. At each meeting of shareholders one or more scrutineers may be appointed by a resolution of the meeting or by the chairman with the consent of the meeting to serve at the meeting. Such scrutineers need not be shareholders of the Corporation.

6.14 Votes to Govern. Unless otherwise required by the provisions of the Act, the Articles or by-laws of the Corporation, at all meetings of shareholders every question shall be decided by the majority of the votes duly cast on the question.

6.15 Show of Hands. At all meetings of shareholders every question shall be decided by a show of hands unless a poll thereon is required by the chairman or be demanded by a shareholder present in person or represented by proxy and entitled to vote or unless a poll is required under the provisions of the Act. Upon a show of hands every shareholder present in person or represented by proxy and entitled to vote shall have one vote. After a show of hands has been taken upon any question the chairman may require or any shareholder present in person or represented by proxy and entitled to vote may demand a poll thereon. Whenever a vote by show of hands has been taken upon a question, unless a poll thereon is demanded, a declaration by the chairman of the meeting that the vote upon the question has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes of the proceedings at the meeting shall be prima facie evidence of the fact without proof of the number or proportion of the votes

recorded in favour of or against any resolution or other proceedings in respect of the said question, and the result of the vote so taken shall be the decision of the Corporation in annual or general meeting, as the case may be, upon the question. A demand for a poll may be withdrawn at any time prior to the taking of the poll.

6.16 Polls. If a poll is required by the chairman of the meeting or under the provisions of the Act or is demanded by any shareholder present in person or represented by proxy and entitled to vote and the demand be not withdrawn, a poll upon the question shall be taken in such manner as the chairman of the meeting directs. Upon a poll each shareholder who is present in person or represented by proxy shall, unless the Articles otherwise provide, be entitled to one vote for each share in respect of which he is entitled to vote at the meeting and the result of the poll shall be the decision of the Corporation in annual or general meeting, as the case may be, upon the question.

6.17 Casting Vote. In case of an equality of votes at any meeting of shareholders either upon a show of hands or upon a poll the chairman of the meeting shall not be entitled to a second or casting vote.

6.18 Chairman. Subject to Section 4.7 hereof, the President or, in his absence, a Vice-President who is a director shall preside as Chairman at a meeting of shareholders. If there is no President or such a Vice-President, or if at a meeting, none of them is present within fifteen minutes after the time appointed for holding of the meeting, the shareholders present shall choose a person from their number to be the Chairman.

6.19 Adjournment of Meetings. The Chairman of any meeting of shareholders may, with the consent of the meeting and subject to such conditions as the meeting may decide, adjourn the same from time to time and from place to place, and no notice of such adjournment need be given to the shareholders except as required by the Act. Any business may be brought before or dealt with at an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling such original meeting.

6.20 Resolution in Writing. A resolution in writing signed by all of the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders unless a written statement with respect to the subject matter of the resolution is submitted by a director or the auditors in accordance with the Act.

6.21 Only One Shareholder. Where the Corporation has only one shareholder or only one holder of any class or series of shares, the shareholder present in person or by proxy constitutes a meeting.

6.22 Procedure. At all meetings of shareholders questions of procedure shall be settled by reference to such publication relating to the conduct of company meetings as shall be acceptable to the chairman of the meeting.

ARTICLE 7 SECURITIES

7.1 Registers. The Corporation shall keep or cause to be kept such registers of security holders and of transfers as required by the Act.

7.2 Allotment. Subject to the provisions, if any, of the Articles, the board may from time to time allot or grant options to purchase the whole or any part of the authorized and unissued shares in the capital of the Corporation to such person or persons or class of persons as the board determines by resolution provided that no share shall be issued until it is fully paid as prescribed by the Act.

7.3 Commissions. The board may from time to time authorize the Corporation to pay a reasonable commission to any person in consideration of his purchasing or agreeing to purchase shares of the Corporation, whether from the corporation or from any other person, or procuring or agreeing to procure purchasers for any such shares.

7.4 Share Certificates. Every holder of one or more shares of the Corporation shall be entitled, at his option, to a share certificate, or to a non-transferable written acknowledgement of his right to obtain a share certificate, stating the number and class or series of shares held by him as shown on the securities register. Share certificates and acknowledgements of a shareholder's right to a share certificate, respectively, shall be in such form as the board shall from time to time approve. Any share certificate shall be signed in accordance with Section 11.4 hereof, provided that, unless the board otherwise determines, certificates representing shares in respect of which a transfer agent or registrar has been appointed shall not be valid unless countersigned by or on behalf of such transfer agent or registrar. A share certificate shall be signed manually by at least one director or officer of the Corporation or by or on behalf of the transfer agent or registrar if there is one. Any additional signatures required may be printed or otherwise mechanically reproduced. A share certificate executed as aforesaid shall be valid notwithstanding that one of the directors or officers whose facsimile signature appears thereon no longer holds office at the date of issue of the certificate.

7.5 Replacement of Security Certificates. The board or any person designated by the board shall direct the issue of a new security certificate in lieu of and upon cancellation of a security certificate that has been mutilated or in substitution for a security certificate claimed to have been lost, apparently destroyed or wrongfully taken on payment of such fee and on such terms as to indemnity, reimbursement of expenses and evidence of loss and of title as the board may from time to time prescribe, whether generally or in any particular case.

7.6 Transfer Agent and Registrar. The directors may from time to time by resolution appoint or remove a transfer agent and a registrar (who may, but need not be the same individual or body corporate) and one or more branch transfer agents and registrars (who may, but need not be the same individual or body corporate) for the securities of the Corporation and may provide for the transfer of securities in one or more places and may provide that securities will be interchangeably transferable or otherwise.

7.7 Transfer of Securities. Securities in the capital of the Corporation shall be transferable only on the register of transfers or on one of the branch registers of transfers (if any) kept by or for the Corporation in respect thereof by the registered holder of such securities in person or by attorney duly authorized in writing upon surrender for cancellation of the certificate representing such securities properly endorsed or accompanied by a properly executed transfer, subject to the provisions of the Act and subject to the restrictions on transfer (if any) set forth in the Articles.

7.8 Corporation's Lien on Shares. The Corporation shall have a first and paramount lien upon all the shares registered in the names of each shareholder whether solely or jointly with others for his debts, liabilities and engagements solely or jointly with any other person, to or with the Corporation, whether the periods for payment, fulfillment or discharge thereof have actually arrived or not. Any such lien shall extend to all dividends from time to time declared in respect of such shares. Unless otherwise agreed the registration of a transfer of shares shall operate as a waiver of the Corporation's lien, if any, on such shares. However, the Corporation shall not be entitled to enforce such lien against a transferee of the share who has no actual knowledge of it, unless such lien is noted conspicuously on such share certificate.

For the purpose of enforcing such lien, the board may sell the shares subject thereto in such manner as it thinks fit; but no sale shall be made until notice in writing of the intention to sell has been served on such shareholder, his executors or administrators, and default has been made by him or them, in payment, fulfillment or discharge of such debts, liabilities or engagements for ten days after the date of mailing of such notice.

The net proceeds of any such sale shall be applied in or towards satisfaction of the debts, liabilities or engagements, and the residue, if any, paid to such shareholder, his executors or administrators or assigns.

Upon any such sale in purported exercise of the powers hereinbefore given, the directors may cause the purchaser's name to be entered in the register in respect of the shares sold and the purchaser shall not be bound to see to the regularity of the proceedings or to the application of the purchase money, and after his name has been entered in the register in respect of such shares, the validity of the sale shall not be impeached by any person and the remedy of any person aggrieved by the sale shall be in damages only and against the Corporation exclusively.

7.9 Refusal to Register Transfer. Except in the case of shares listed on a stock exchange recognized by the Ontario Securities Commission, the board may refuse to permit the registration of a transfer of shares in the capital of the Corporation against which the Corporation has a lien until all of the debt represented by that lien has been paid to the Corporation.

7.10 Joint Shareholders. If two or more persons are registered as joint holders of any share, any one of such persons may give effectual receipts for the certificate issued in respect thereof, and for any dividend, bonus, return of capital or other money payable or warrant issuable in respect of such share, but all the joint holders of a share shall be severally as well as jointly liable for the payment of all demands payable in respect thereof.

ARTICLE 8 DIVIDENDS AND RIGHTS

8.1 Dividends. Subject to the provisions of the Act, the board may from time to time declare dividends payable to the shareholders according to their respective rights and interests in the Corporation. Dividends may be paid in money or property or by issuing fully paid shares of the Corporation.

8.2 Dividend Cheques. A dividend payable in cash shall be paid by cheque drawn on the Corporation's bankers or one of them to the order of each registered holder of shares of the class or series in respect of which it has been declared and mailed by prepaid ordinary mail to such

registered holder at his last recorded address, unless such holder otherwise directs. In the case of joint holders the cheque shall, unless such joint holders otherwise direct, be made payable to the order of all of such joint holders and mailed to them at their recorded address and if more than one address appears on the books of the Corporation in respect of such joint holding the cheque shall be mailed to such of those addresses as is selected by the person mailing such cheque. The mailing of such cheque as aforesaid, unless the same is not paid on due presentation, shall satisfy and discharge all liability for the dividend to the extent of the sum represented thereby plus the amount of any tax which the Corporation is required to and does withhold.

8.3 Non-receipt of Cheques. In the event of non-receipt of any dividend cheque by the person to whom it is sent as aforesaid, the Corporation on proof of such non-receipt and upon satisfactory indemnity being given to it, shall issue to such person a replacement cheque for a like amount.

8.4 Record Date. The board may fix in advance a date preceding by not more than fifty days the date for the payment of any dividend or the date for the issue of any warrant or other evidence of right to subscribe for shares in the capital or securities of the Corporation as a record date for the determination of the persons entitled to receive payment of such dividend or to exercise the right to subscribe for such securities, as the case may be, and in every such case only such persons as shall be security holders of record at the close of business on the date so fixed shall be entitled to receive payment of such dividend or to exercise the right to subscribe for securities and to receive the warrant or other evidence in respect of such right, as the case may be, notwithstanding the transfer of any securities after any such record date fixed as aforesaid. Where no record date is fixed in advance as aforesaid, the record date for the determination of the persons entitled to receive payment of such dividend or to exercise the right to subscribe for such securities of the Corporation shall be at the close of business on the day on which the resolution relating to such dividend or right to subscribe is passed by the board.

8.5 Unclaimed Dividends. Any dividend unclaimed after a period of six (6) years from the date on which the same was declared to be payable shall be forfeited and shall revert to the Corporation.

ARTICLE 9 NOTICES

9.1 Method of Giving. Any notice, communication or other document to be given by the Corporation to a shareholder, director, officer or auditor of the Corporation shall be sufficiently given if:

- (a) delivered personally to the person to whom it is to be given to the latest address of such person as shown in the records of the Corporation or its transfer agent; or
- (b) if sent by prepaid mail addressed to such address; or
- (c) if sent to such address by any means of transmitted or recorded communication; or

- (d) if sent by facsimile, to the latest facsimile number of the person to whom it is to be given, as shown in the records of the Corporation.

The Secretary or any person authorized by him may change the address or telecopier number on the books of the Corporation of any shareholder in accordance with any information believed by him to be reliable. A notice, communication or document so delivered shall be deemed to have been received by the addressee when it is delivered personally to the address aforesaid; and a notice, communication or document so mailed shall be deemed to have been received by the addressee on the fifth day after mailing; and a notice sent by any means of transmitted or recorded communication shall be deemed to have been received by the addressee when delivered to the appropriate communication company or agency or its representative for dispatch; and a notice sent by facsimile shall be deemed to have been received at the time of transmission; provided however that, notwithstanding the foregoing, in the case of any meeting of directors, verbal notice thereof shall be sufficient notice.

9.2 Computation of Time. In computing the date when notice must be given under any provision of the Articles or by-laws requiring a specified number of days' notice of any meeting or other event, the period of days shall be deemed to commence the day following the date the notice was given and shall be deemed to terminate at midnight of the last day of the period, except that if the last day of the period falls on a Sunday or holiday the period shall terminate at midnight of the day next following that is not a Sunday or holiday.

9.3 Omissions and Errors. The accidental omission to give any notice to any shareholder, director, officer or auditor or the non-receipt of any notice by any shareholder, director, officer or auditor or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.

9.4 Notice to Joint Shareholders. All notices with respect to any shares registered in more than one name may, if more than one address appears on the books of the Corporation in respect of such joint holding, be given to such joint shareholders at such address so appearing as is selected by the person giving such notice, and notice so given shall be sufficient notice to all the holders of such shares.

9.5 Persons Becoming Entitled by Death or Operation of Law. Every person who by operation of law, transfer, death of a security holder or by any other means whatsoever, becomes entitled to any security, shall be bound by every notice in respect of such security which prior to his name and address being entered on the books of the Corporation was duly given to the person from whom he derives his title to such security.

On the death of any security holder (not being one of several joint holders of a security) the executors or administrators of such deceased security holder shall be the only persons recognized by the Corporation as having any title to such security.

Any person becoming entitled to a security in consequence of the death, bankruptcy or insolvency of any shareholder (herein referred to as a person entitled by transmission) shall produce to the Corporation such evidence as may be reasonably required by the board to prove his title and declare in writing his election either to be himself registered as a security holder in respect

of the security, or instead of being registered himself, to make such transfer as the deceased or bankrupt person could have made.

Until any person becoming entitled to any security by transmission has complied with the terms aforesaid, the Corporation may retain any dividend or other payment declared or payable upon such security, and shall not be bound to recognize the title of the person claiming under such transmission.

9.6 Proof of Service. A certificate of the Secretary or other duly authorized officer of the Corporation in office at the time of the making of the certificate, or of any agent of the Corporation as to facts in relation to the mailing or delivery or sending of any notice to any shareholder, director, officer or auditor shall be conclusive evidence thereof and shall be binding on every shareholder, director, officer or auditor of the Corporation, as the case may be.

9.7 Waiver of Notice. Any shareholder (or his duly appointed proxy) director, officer or auditor may waive any notice required to be given under any provision of the articles or by-laws of the Corporation or of the Act, and such waiver, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in giving such notice. Any shareholder (or his duly appointed proxy) may waive any irregularity in any meeting of shareholders.

ARTICLE 10 BORROWING POWERS OF THE DIRECTORS

10.1 Borrowing Power. Without limiting the borrowing powers of the Corporation as set forth in the Act, but subject to the provisions of the Act, the board may from time to time, without authorization of the shareholders:

- (a) borrow money on the credit of the Corporation;
- (b) issue, reissue, sell or pledge debt obligations of the Corporation;
- (c) give guarantees on behalf of the Corporation to secure performance of an obligation of any person; and
- (d) mortgage, hypothecate, 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.

10.2 The directors may from time to time authorize any director or directors, officer or officers, employee of the Corporation or other person or persons, whether connected with the Corporation or not, to make arrangements with reference to the monies borrowed or to be borrowed as aforesaid and as to the terms and conditions of the loan thereof and as to the securities to be given therefor, with power to vary or modify such arrangements, terms and conditions and to give such additional debt obligations for any monies borrowed or remaining due by the Corporation as the directors of the Corporation may authorize and generally to manage, transact and settle the borrowing of money by the Corporation.

10.3 The directors may from time to time authorize any director or directors, officer or officers, employee of the Corporation or other person or persons, whether connected with the Corporation or not, to sign, execute and give on behalf of the Corporation all documents, agreements and promises necessary or desirable for the purposes aforesaid and to draw, make, accept, endorse, execute and issue cheques, promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments and the same and all renewals thereof or substitutions therefor so signed shall be binding upon the Corporation.

10.4 The words "**debt obligations**" as used in this Section 10 mean bonds, debentures, notes or other similar obligations or guarantees of such an obligation, whether secured or unsecured.

ARTICLE 11 BUSINESS OF THE CORPORATION

11.1 Registered Office. The registered office of the Corporation shall be in the municipality or geographic township within Ontario specified in its Articles, and at such place therein as the directors of the Corporation may from time to time by resolution determine.

11.2 Corporate Seal. The corporate seal of the Corporation, if any, shall be such seal as the directors of the Corporation may from time to time by resolution adopt.

11.3 Banking Arrangements. The banking business of the Corporation or any part thereof shall be transacted with such chartered banks, trust companies or other financial institutions as the board may by resolution from time to time determine.

Cheques on the bank accounts, drafts drawn or accepted by the Corporation, promissory notes given by it, acceptances, bills of exchange, orders for the payment of money and other instruments of a like nature may be made, signed, drawn, accepted or endorsed, as the case may be, by such officer or officers, person or persons as the board of directors may by resolution from time to time name for that purpose.

Cheques, promissory notes, bills of exchange, orders for the payment of money and other negotiable paper may be endorsed for deposit to the credit of the Corporation's bank account by such officer or officers, person or persons, as the board of directors may by resolution from time to time name for that purpose, or they may be endorsed for such deposit by means of a stamp bearing the Corporation's name.

11.4 Execution of Instruments. Any instruments in writing may be signed in the name of and on behalf of the Corporation by the President and Secretary and any instrument in writing so signed shall be binding upon the Corporation without any further authorization or formality. In the event that the Corporation has only one officer and director, that person alone may sign any instruments in writing in the name of and on behalf of the Corporation. The board of directors shall have power from time to time by resolution to appoint any other officer or officers or any person or persons on behalf of the Corporation either to sign instruments in writing generally or to sign specific instruments in writing. The corporate seal, if any, may be affixed to any instruments in writing on the authority of any of the persons named in this section.

The term "**instruments in writing**" as used herein shall, without limiting the generality thereof, include contracts, documents, deeds, mortgages, hypothecs, charges, security interests, conveyances, transfers and assignments of property (real or personal, immovable or movable), agreements, tenders, releases, proxies, receipts and discharges for the payment of money or other obligations, conveyances, transfers and assignments of shares, stocks, bonds, debentures or other securities and all paper writings.

11.5 Investments. In particular, without limiting the generality of the foregoing, execution as provided in Section 11.4 hereof shall be adequate to sell, assign, transfer, exchange, convert or convey any securities, rights and warrants.

11.6 Voting Securities in Other Companies. All securities carrying voting rights in any other body corporate held from time to time by the Corporation may be voted at all meetings of holders of such securities in such manner and by such person or persons as the board of the Corporation from time to time determines. In the absence of action by the board, the proper signing officers of the Corporation may also from time to time execute and deliver for and on behalf of the Corporation instruments of proxy and arrange for the issuance of voting certificates and other evidence of right to vote in such names as they may determine.

11.7 Solicitors. Either the President or the Secretary shall have power from time to time to instruct solicitors to institute or defend actions or other legal proceedings for the Corporation without any specific resolution or retainer or instructions from the board provided, however, that the board may give instructions superseding or varying such instructions.

11.8 Custody of Securities. The directors may from time to time by resolution provide for the deposit and custody of securities of the Corporation. All share certificates, bonds, debentures, debenture stock certificates, notes or other obligations or securities belonging to the Corporation, may be issued or held in the name of a nominee or nominees of the Corporation (and if issued or held in the name of more than one nominee shall be held in the names of the nominees jointly with right of survivorship) and may be endorsed in blank with endorsement guaranteed in order to enable transfers to be completed and registration to be effected.

11.9 Charging Assets. The board may from time to time charge, hypothecate, mortgage or pledge any or all of the assets of the Corporation not only by means of bonds and debentures by way of fixed charge or charges or by way of floating charge or charges, but also by any other instrument or instruments for the purposes of securing any past or existing or new or future liability direct or indirect of the Corporation or for the purpose of securing any bonds, debentures or other securities or liabilities of the Corporation or of any other body corporate.

11.10 Invalidity of Any Provisions of this By-Law. The invalidity or unenforceability of any provision of this by-law shall not affect the validity or enforceability of the remaining provisions of this by-law.

11.11 Fiscal Year. The fiscal year of the Corporation shall terminate on such day in each year as is from time to time established by the board of directors.

The undersigned, being the sole director of the Corporation, by his signature below resolves pursuant to Section 129(1) of the *Business Corporations Act* that the foregoing by-law shall be and it is hereby made a by-law of the Corporation.

DATED the _____ day of _____, 2021.

John Henry

The undersigned, being the sole shareholder of the Corporation entitled to vote in respect of the foregoing by-law, by his signature below resolves pursuant to Section 104(1) (a) and (b) of the *Business Corporations Act* that the foregoing by-law shall be and it is hereby confirmed as a by-law of the Corporation.

DATED the _____ day of _____, 2021.

**THE REGIONAL MUNICIPALITY OF
DURHAM**

PER _____

SUBSCRIPTION FOR SHARES

TO: **DURHAM ONENET INC. (the "Corporation")**

AND TO: **THE BOARD OF DIRECTORS THEREOF**

The undersigned hereby subscribes for and agrees to take up One Hundred (100) common shares (the "Shares") of the Corporation and tenders herewith the sum of Ten Dollars (\$10.00) in full payment of the subscription price for the Shares.

The undersigned hereby requests that the Shares be allotted to the undersigned, that such Shares be issued as fully paid and non-assessable and that a certificate for the said Shares be issued to the undersigned.

The undersigned hereby represents and warrants that the undersigned is subscribing for the Shares as principal and by initialling where indicated below, the undersigned fits within one of the following categories:

- (a) a director, officer, employee, founder¹ or control person² of the Corporation;
- (b) a spouse, parent, grandparent, sibling or child of a director, executive officer, founder or control person of the Corporation;
- (c) a parent, grandparent, sibling or child of the spouse of a director, executive officer, founder or control person of the Corporation;
- (d) a close personal friend³ or a close business associate⁴ of a director, executive officer, founder or control person of the issuer;
- (e) a current shareholder of the Corporation;
- (f) an "accredited investor" (if this category is applicable, please complete and submit the Accredited Investor Certificate to be provided by the Corporation in addition to this subscription form);
- (g) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in categories (a) to (f) above; or
- (h) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in categories (a) to (f) above.

DATED as of the ____ day of _____, 2021.

THE REGIONAL MUNICIPALITY OF DURHAM

PER _____

¹ The term "founder" means a person who takes the initiative in founding, organizing or substantially reorganizing the business of the Corporation and is actively involved in the business of the Corporation as at the date hereof.

² A "control person" means a person that holds more than 20% of the outstanding voting securities of the Corporation.

³ A "close personal friend" is an individual who knows the director, executive officer, founder or control person of the Corporation well enough and has known them for a sufficient period of time to be in a position to assess their capabilities and trustworthiness.

⁴ A "close business associate" is an individual who has had sufficient prior business dealings with a director, executive officer, founder or control person of the Corporation to be in a position to assess their capabilities and trustworthiness.

RESOLUTIONS OF THE BOARD OF DIRECTORS

OF

DURHAM ONENET INC.

(the "Corporation")

APPOINTMENT OF OFFICERS

RESOLVED THAT the offices of the Corporation and the individual or individuals appointed to such offices shall be as follows:

Name	Office
John Henry	President
Jason Hunt	Secretary

FORM OF COMMON SHARE CERTIFICATE

RESOLVED THAT the form of common share certificate annexed hereto is hereby approved and adopted as the form of common share certificate of the Corporation.

REGISTERED OFFICE

RESOLVED THAT the location of the registered office of the Corporation shall be at 605 Rossland Road E. Whitby Ontario, L1N 6A3.

FINANCIAL YEAR END

RESOLVED THAT the financial year end of the Corporation shall be on the 31st day of December in each year or on such other date as the Board of Directors may by resolution determine, the first financial year end to terminate on December 31, 2021.

ISSUANCE OF COMMON SHARES

WHEREAS the Corporation has received the following subscription for common shares, together with the aggregate subscription price therefor in the amount of Ten Dollars in the aggregate (\$10.00);

Name	Number of Shares
-------------	-------------------------

The Regional Municipality of Durham 100 common

NOW THEREFORE BE IT RESOLVED THAT:

1. Such subscription is hereby accepted.
2. The Corporation, having received payment in full for such common shares, hereby issues such common shares as fully paid and non-assessable shares in the capital of the Corporation at a price hereby fixed by the Board of Directors of \$10.00 in the aggregate.

SOLICITORS AND AUTHORITY TO SIGN NOTICES

RESOLVED THAT WeirFoulds LLP (the "**Corporation's Solicitors**") are hereby appointed solicitors for the Corporation and any partner, associate or corporate law clerk of the Corporation's Solicitors who has the relevant knowledge of the affairs of the Corporation is authorized to sign and file (electronically or otherwise):

- (i) any initial return;
- (ii) any notice of change; and
- (iii) any annual return,

as required by the *Corporations Information Act* (Ontario).

LOCATION OF MINUTE BOOK

RESOLVED THAT the minute book of the Corporation be maintained at either the Corporation's registered office or at the offices of the Corporation's Solicitors.

The foregoing resolutions are, by the signature below of the sole director of the Corporation, each passed by the Board of Directors of the Corporation pursuant to the provisions of Section 129(1) of the *Business Corporations Act* (Ontario).

DATED as of the _____ day of _____, 2021.

John Henry

RESOLUTIONS OF THE SHAREHOLDER

OF

DURHAM ONENET INC.

(the "Corporation")

NUMBER OF DIRECTORS

WHEREAS the articles of incorporation of the Corporation provide that the Board of Directors shall consist of a minimum of one (1) and a maximum of fifteen (15) directors;

AND WHEREAS Section 125(3) of the *Business Corporations Act* (Ontario) provides that the number of directors shall be determined from time to time by special resolution of the shareholders;

AND WHEREAS the directors, if so empowered by special resolution of the shareholders, may thereafter determine the number of directors of the Corporation by resolution of the board of directors;

RESOLVED, AS A SPECIAL RESOLUTION, THAT:

1. Until otherwise determined, the number of directors of the Corporation shall be one (1); and
2. The directors of the Corporation are hereby empowered to determine the number of directors of the Corporation hereafter from time to time.

ELECTION OF DIRECTOR

RESOLVED THAT John Henry, Regional Chair, is hereby elected as the sole director of the Corporation, to serve until the first annual meeting of shareholders of the Corporation or until his successor is duly elected or appointed in accordance with the *Business Corporations Act* (Ontario) and the Corporation's bylaws.

AUDITORS

 RESOLVED THAT Deloitte Canada are appointed as Auditors of the Corporation.

The foregoing resolutions are, by the signature below of the sole shareholder of the Corporation entitled to vote on such resolutions, passed pursuant to the provisions of Section 104(1) of the *Business Corporations Act* (Ontario).

DATED as of the _____ day of _____, 2021.

THE REGIONAL MUNICIPALITY OF DURHAM

PER _____

CONSENT TO ACT AS A DIRECTOR

TO: **DURHAM ONENET INC.**
(the "**Corporation**")

I, John Henry:

1. consent to act as a director of the Corporation, such consent to continue in effect from time to time until a date upon which I give written notice to the Corporation revoking such consent or cease to be a director of the Corporation;

2. consent to the holding of meetings of directors or of committees of directors by means of such telephone, electronic or other communication facilities as permit all persons participating in the meetings to communicate with each other simultaneously and instantaneously;

3. acknowledge and declare that I am at least 18 years of age and am,

a Canadian citizen ordinarily resident in Canada or a permanent resident within the meaning of the *Immigration and Refugee Protection Act* (Canada) and ordinarily resident in Canada; **or**

a Canadian citizen not ordinarily resident in Canada; **or**

none of the above;

4. undertake to advise the Corporation in writing of any change in my citizenship or residence forthwith after such change;

5. acknowledge that persons who have been found under the *Substitute Decisions Act, 1992* (Ontario) or under the *Mental Health Act* (Ontario) to be incapable of managing property or who have been found to be incapable by a court in Canada or elsewhere, and persons with the status of a bankrupt, are disqualified from being directors of a corporation and declare that I am not so disqualified;

6. undertake to advise the Corporation in writing forthwith if I become disqualified to act as a director; and

7. acknowledge that the Corporation will rely upon the foregoing information.

DATED as of the _____ day of _____, 2021.

John Henry

Form 2
Business
Corporations
Act

Formule 2
Loi sur les
sociétés par
actions

**CONSENT TO ACT AS A FIRST DIRECTOR
CONSENTEMENT DU PREMIER ADMINISTRATEUR**

I, / Je soussigné(e), John Henry
(First name, middle names and surname)
(Prénom, autres Prénoms et nom de famille)

address for service
domicile élu

605 Rossland Road East, Whitby, ON L1N 6A3
(Street & No. or R.R. No., Municipality, Province, Country & Postal Code)
(Rue et numéro, ou numéro de la R.R., nom de la municipalité, province, pays et code postal)

hereby consent to act as a first director of
accepte par la présente de devenir premier administrateur de

Durham OneNet Inc.
(Name of Corporation)
(Dénomination sociale de la société)

(Signature of the Consenting Person)
(Signature de l'acceptant)

John Henry, Regional Chair, by his signature hereto is hereby authorizing the filing of the attached Articles of Incorporation with the Ministry of Government & Consumer Services.

Dated the _____ day of _____, 2021.

John Henry, Regional Chair



Reference Info: 18113.00009
Docket Info: DRC

Printed on October 21, 2021 14:31
Requested Incorporation Date: ASAP

Articles of Incorporation

Business Corporations Act

1. Corporation Name

DURHAM ONENET INC.

2. Registered Office Address

605 ROSSLAND ROAD EAST, WHITBY, ONTARIO, CANADA, L1N 6A3

3. Number of Directors

Minimum	1
Maximum	15

4. The first director(s) is/are:

Full Name	JOHN HENRY
Resident Canadian?	Yes
Address for Service	605 ROSSLAND ROAD EAST, WHITBY, ONTARIO, CANADA, L1N 6A3

5. Restrictions, if any, on business the corporation may carry on or on powers the corporation may exercise:

The purpose of the Corporation is to provide a telecommunications system and telecommunications service, including, without limitation, a high speed broadband internet network and service. The Corporation may exercise all rights, powers and privileges of a natural person in relation to the Corporation's purpose and all matters incidental thereto, including, without limitation, carrying on business and engaging in activities in relation to the provision of a telecommunications system and telecommunications service, including, without limitation, a high speed broadband internet network and service, the acquisition, divestiture and charging of or granting a security interest in real or personal property, the development, design, construction, acquisition, operation, repair, replacement, maintenance and divestiture of the whole or any part of a telecommunications system or telecommunications service, including, without limitation, a high speed broadband internet network and service, conducting business and entering into obligations of any nature (including, without limitation, the borrowing of money or the incurring of debt) and entering into contracts of any nature in relation thereto; provided that, notwithstanding the foregoing, the Corporation may not pursue any purpose or exercise any right, power or privilege in contravention of or inconsistent with the Municipal Act, 2001, S.O. 2001, c. 25 (the "Municipal Act"), as amended from time to time, or its successor or replacement, or any regulations now or hereafter from time to time passed pursuant thereto.

6. The classes and any maximum number of shares that the corporation is authorized to issue:

The Corporation is authorized to issue an unlimited number of common shares.

7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors' authority with respect to any class of shares which may be issued in series:

COMMON SHARES (a) The holders of the common shares shall be entitled to vote at all meetings of shareholders, except meetings at which only holders of a specified class of shares other than common shares are entitled to vote. (b) The holders of the common shares shall be entitled to receive dividends as may be declared from time to time by the Board of Directors. (c) The holders of the common shares shall be entitled to receive the remaining property of the Corporation upon the liquidation or dissolution of the Corporation or upon the distribution of assets for the purpose of winding up its affairs.

8. The issue, transfer or ownership of shares is/is not restricted and the restrictions (if any) are as follows:

The right to transfer shares of the Corporation shall be restricted in that no shareholder shall be entitled to transfer any share or shares of the Corporation without the approval of: (a) the directors of the Corporation expressed by resolution passed by the votes cast by a majority of the directors of the Corporation at a meeting of the board of directors or signed by all of the directors of the Corporation; or (b) the shareholders of the Corporation expressed by resolution passed by the votes cast by a majority of the shareholders who voted in respect of the resolution or signed by all shareholders entitled to vote on that resolution.

9. Other Provisions, if any:

Reference Info: 18113.00009
Docket Info: DRC

Printed on October 21, 2021 14:31
Requested Incorporation Date: ASAP

(a) The number of security holders that beneficially own, directly or indirectly, securities of the Corporation, other than non-convertible debt securities, is limited to 50, not including employees or former employees of the Corporation or its affiliates, provided that each person is counted as one beneficial owner unless the person is created or used solely to purchase or hold securities of the Corporation in which case each beneficial owner or each beneficiary of the person, as the case may be, must be counted as a separate beneficial owner. (b) The securities of the Corporation, other than non-convertible debt securities, may be distributed only to persons described in Section 2.4 of National Instrument 45-106-Prospectus and Registration Exemptions, as promulgated by the Canadian Securities Administrators, as the same may be amended, replaced or substituted for from time to time.

10. The name(s) and address(es) of incorporator(s) are:

Full Name	JOHN HENRY
Address for Service	605 ROSSLAND ROAD EAST, WHITBY, ONTARIO, CANADA, L1N 6A3

The articles have been properly executed by the required person(s).

By-law Number **-2021
of The Regional Municipality of Durham

Being a by-law to authorize a Municipal Capital Facilities Agreement between The Regional Municipality of Durham and Durham OneNet Inc.

Whereas section 110(1) of the Municipal Act, 2001, SO 2001, c. 25, as amended (the “Act”), provides that the council of a municipality may enter into an agreement for the provision of municipal capital facilities by any person.

And Whereas paragraph 5 of section 2 of Ontario Regulation 603/06, as amended (the “Regulation”), provides that such an agreement can be entered into with respect to municipal facilities for the provision of telecommunications systems.

And Whereas The Regional Municipality of Durham (the “Region”) owns certain telecommunications facilities, including, without limitation, broadband fibre facilities (the “Facilities”) through which the Region utilizes for internal broadband connectivity within the Region.

And Whereas the Region has determined that it is in the public interest for the Facilities, in whole or in part, to be owned, operated, maintained, and expanded by Durham OneNet Inc. (“DON”).

And Whereas WHEREAS the Region intends to transfer the Facilities, in whole or in part, to DON and to provide certain financial and other assistance to DON to assist DON to own, operate, maintain, and expand the Facilities.

And Whereas it is the intention of both the Region and DON that the financial and other assistance to be provided by the Region to DON under this Agreement be for the provision of municipal capital facilities under section 110 of the Act and the Regulation.

Now therefore, the Council of The Regional Municipality of Durham hereby enacts as follows:

1. The Council hereby designates the Facilities as municipal capital facilities for telecommunications purposes.
2. The Region is authorized to enter into a Municipal Capital Facilities Agreement with DON in the form attached as Schedule “A” to this Bylaw (the “Agreement”).

3. The Regional Clerk and Regional Chair are hereby authorized to execute the Agreement on behalf of the Region.
4. In accordance with section 110(5) of the Act, the Clerk is hereby directed to give written notice of this Bylaw to the Minister of Finance and any other party to whom notice is required to be given pursuant to the Act or Regulations.
5. Schedule "A" attached is incorporated into and shall form part of this Bylaw.

This By-law Read and Passed on the ----th day of -----, 2021.

J. Henry, Regional Chair and CEO

R. Walton, Regional Clerk

SCHEDULE "A"

THIS AGREEMENT made this **XX** day of **XX**, 2021.

BETWEEN:

THE REGIONAL MUNICIPALITY OF DURHAM
(hereinafter referred to as the "**Region**")

OF THE FIRST PART

- and -

DURHAM ONENET INC.
(hereinafter referred to as "**DON**")

OF THE SECOND PART

MUNICIPAL CAPITAL FACILITIES AGREEMENT

WHEREAS the Region owns certain telecommunications, facilities, including, without limitation, broadband fibre facilities, (defined in this Agreement as the "**Facilities**") through which the Region utilizes for internal broadband connectivity within the Region;

AND WHEREAS the Region has determined that it is in the public interest for the Facilities to, in whole or in part, be owned, operated, maintained and expanded by DON;

AND WHEREAS the Region intends to transfer, in whole or in part, the Facilities to DON and to provide certain financial and other assistance to DON to assist DON to own, operate, maintain and expand the Facilities;

AND WHEREAS it is the intention of both the Region and DON that the financial and other assistance to be provided by the Region to DON under this Agreement be for the provision of municipal capital facilities under Section 110 of the Act and the Regulations thereunder pursuant to Regional By-law No. **XXXXX** designating the Facilities as such and authorizing this Municipal Capital Facilities Agreement;

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto covenant and agree as follows:

INTERPRETATION

In this Agreement,

“**Act**” means the *Municipal Act, 2001*, SO 2001, c. 25, as amended;

“**Council**” means the Council of the Region as composed from time to time;

“**Facilities**” means the telecommunications network constructed by and currently operated by the Region and which enables broadband connectivity throughout the Region;

“**Municipal Capital Facilities**” means municipal capital facilities that meet the requirements of section 110 of the Act and the Regulations;

“**Regulations**” means the regulations made under the Act; and

“**Rights-of-Way**” means highways, streets, road allowances, lanes, bridges or viaducts which are under the jurisdiction of the Region.

In this Agreement, unless the context requires otherwise, words importing the singular include the plural, and vice versa, and words importing gender include all genders.

Except where other expressly provided, all amounts in this Agreement are stated in and shall be paid in Canadian currency.

In the event that one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any application law, the validity, legality or enforceability of the remaining provisions hereof shall not be affected or impaired thereby. Each of the provisions of this Agreement is hereby declared to be separate and distinct.

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

ACKNOWLEDGEMENTS AND COVENANTS

The Region and DON agree and acknowledge that the Region intends to transfer ownership of the whole or part of the Facilities to DON by way of gift or sale, including a sale for nominal less than fair market consideration or no consideration, or to otherwise lease, licence or lend the use of the whole or part of the Facilities to DON. Such transactions and/or assistance shall be at the discretion of the Region as from time to time approved by Council.

The Region covenants and agrees that it will consent to DON's use of and access to the Regional Rights-of-Way as may be required in order to construct, operate, maintain and expand the Facilities. The Region and DON covenant and agree that they will execute such further agreements as are necessary for this purpose.

The Region and DON acknowledge and agree that the Region may, at its discretion from time to time as approved by a by-law enacted by Council, provide financial or other assistance as prescribed by the Act and the Regulations thereunder to DON for the purpose of DON's ownership and operation of the Facilities.

Without limiting the generality of the foregoing, the assistance provided by the Region to DON may include any or all of the following or any other financial assistance from time to time prescribed by the Act or Regulations for Municipal Capital Facilities:

 funding of DON's annual capital and operating expenses; guaranteeing borrowing by DON;

 the use of services of employees of the Region at less than fair market value;

 the use of office space and equipment owned by the Region at less than fair market value;

 exemption of the land on which the Facilities are located from taxation for municipal and school purposes; and

 exemption of the land on which the Facilities are located from the payment of development charges.

The Region and DON acknowledge and agree that it is their common intention that the financial and other assistance being provided by the Region to DON for the purpose of owning, operating, maintaining and expanding the Facilities, is being provided by the Region pursuant to section 110 of the Act and the Regulations thereunder in order that DON provide Municipal Capital Facilities. Except for the specific assistance set forth herein, the Region is not obligated in any manner with respect to the Facilities or to provide any additional financial assistance in connection therewith.

DON shall operate, maintain and expand the Facilities so that the Facilities satisfy the requirements applicable to Municipal Capital Facilities under the Act and the Regulations. If any amendments are made to Section 110 of the Act or the Regulations thereunder after the date of this Agreement, DON and the Region covenant and agree to cooperate reasonably to try to achieve their mutual common intention that the Facilities be Municipal Capital Facilities throughout the time that this Agreement is in force.

The Region and DON covenant and agree that they will not, while this Agreement is in force, do any act or thing, or omit to do any act or thing if doing so or omitting to do so, as the case may be, that would result in the Facilities ceasing to satisfy all statutory or regulatory requirements applicable to a Municipal Capital Facility pursuant to the Act and the Regulations.

MISCELLANEOUS

No provision of this Agreement may be changed, modified or amended, other than by an agreement in writing signed by DON and the Region, and duly approved by Council of the Region.

Time is of the essence of this Agreement.

From time to time, DON or the Region, as the case may be, will execute and deliver to the other such additional documentation, and will provide such additional information, as the other may reasonably require, in order to carry out the intention and terms of this Agreement.

This Agreement shall be binding upon both the Region and DON and their respective successors and permitted assigns. This Agreement may not be assigned by DON without the prior written consent of the Region, which consent may be unreasonably withheld.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed on the date first above written.

THE REGIONAL MUNICIPALITY OF DURHAM

Per: _____
Name: John Henry
Title: Regional Chair

Per: _____
Name: Ralph Walton
Title: Regional Clerk

We have the authority to bind the Region.

DURHAM ONE NET INC.

Per: _____
Name:
Title: Chief Executive Officer

Per: _____
Name:
Title: Secretary

We have the authority to bind the Corporation.

THE REGIONAL MUNICIPALITY OF DURHAM
ASSET TRANSFER POLICY

Purpose

The purpose of this policy is to permit transfers of Regional assets to corporations owned by the Region in accordance with the requirements of applicable legislation.

Definitions

Act means the Municipal Act, 2001, SO 2001, c 25, including Regulations made under it, as amended.

Asset or Assets means real property and personal property of the Region and its agencies, boards, commissions and corporations.

Corporation means a corporation incorporated in accordance with section 203 of the Act and Ontario Regulation 599/06 made under the Act, as amended.

Policy

1. Assets may be transferred to a Corporation at any time, and from time to time, as authorized by Council, on such terms as Council may determine.
2. Any transfer of Assets must be approved by Council in advance of the transfer, based on consultation with the Regional Solicitor and the Commissioner of Finance/Treasurer, to ensure compliance with prevailing legislation, including but not limited to the Act, and municipal reporting requirements.
3. In determining whether to authorize a transfer of Assets to a Corporation, Council may have regard to the extent to which the transfer is in keeping with existing Regional financial policies and will achieve one or more of the objectives of the Region's Strategic Plan such as:
 - (a) optimizing the use and value of the Assets;
 - (b) advancing the Region's economic development, vitality and competitiveness;
 - (c) supporting community health and well-being;
 - (d) managing environmentally sustainable growth;
 - (e) providing responsive and efficient public service; and
 - (f) enhancing the quality of life for the Region's citizens.
4. Council may impose such terms and conditions on the transfer of Assets as it deems necessary, including but not limited to:
 - (a) specifying the permitted use of the Assets;
 - (b) requiring the Corporation to transfer the Assets back to the Region upon the happening of an event or events as determined by Council;
 - (c) restricting or prohibiting further transfer of the Assets;

(d) attaching a purchase price to the Asset(s), to be paid or owed to the Region by the Corporation; and

(e) such other terms or conditions as Council deems advisable and appropriate.

5. Prior to the transfer of assets, asset valuations will be determined and set in accordance with the Region's Tangible Capital Asset Policy.
6. Before any transfer of Assets, Regional staff shall determine the current fair market value of the Assets. This determination may be made using an appraiser, but such an appraisal shall not necessarily be required where staff is of the opinion that the fair market value can otherwise be accurately determined.
7. Where any Asset is transferred at less than fair market value, the Treasurer shall prepare a statement of the estimated fair market value of the Asset.
8. The Treasurer shall record all transfers of Assets in accordance with Public Sector Accounting Board financial reporting standards and the Region's accounting policies.

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

WHEREAS:

A. The Regional Municipality of Durham (the "**Region**") has established the Corporation as a Municipal Services Corporation pursuant to the provisions of the *Municipal Act* and the OBCA and is the sole shareholder of the Corporation;

B. The Region incorporated the Corporation for the purpose of providing a telecommunications and high-speed broadband internet network in Durham Region. The Corporation will register with the Canadian Radio-television and Telecommunications Commission as a non-dominant carrier;

C. The Region as the sole shareholder of the Corporation has developed a detailed initial business plan for establishing the Corporation's business and undertaking as more particularly described below which will be brought to Regional Council ("**Council**") for approval (the initial business plan once approved by Council herein called the "**Initial Plan**"); and

D. The Region, in this Shareholder's Direction, wishes to set out for the Board, the Region's expectations of, and objectives for, the Corporation's mandate, scope of responsibility, and reporting requirements in respect of its business and operations.

NOW THEREFORE it is hereby agreed and declared as follows:

1. INITIAL PLAN

1.1 The Initial Plan shall include the following, together with anything else that the Corporation or the Board may consider necessary or advisable (or that Council may require once a proposed Initial Plan is placed before Council for approval), in relation to the following:

- (a) an initial strategic plan, business and financial plan and budget (including a capital and operating budgets), including, without limitation, any transfer of assets and financial assistance that may be required in relation thereto;
- (b) a proposal for pursuing existing and future grant applications in relation to the Corporation's pursuit of its objects; and
- (c) any plan for pursuing arrangements with any third-party entity in relation to the Corporation's undertaking as a telecommunications and high-speed broadband internet network serving Durham Region.

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

2. LIMITATIONS

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

3. DEFINITIONS AND INTERPRETATION

- 3.1 In this Shareholder's Direction, the following definitions apply:
- (a) "Annual Business Plan" means the annual business plan presented by the President, approved by the Board and approved by Council which is from time to time in effect, and which includes any updates to the Corporation's strategic plan, the Corporation's business and financial plan and budgets for the Corporation (including capital and operating budgets) and such other information for the applicable period covered by such Annual Business Plan as set out in Section 9.1, required by this Shareholder's Direction or otherwise required by Council.
 - (b) "Annual Report" means the Corporation's annual report to its shareholder, the Region, as more particularly described in Section 9.6.
 - (c) "Applicable Law" means any federal, provincial or municipal statute, regulation, regulatory policy or order of any Government Authority, including all applicable by-laws, as same may be amended from time to time (including federal, provincial, or municipal government, or any entity, person, court or other body or organization exercising one more executive, legislative, judicial or regulatory functions, having jurisdiction over the matter).
 - (d) "Articles" means the Articles of Incorporation of the Corporation issued by the Province of Ontario's Ministry of Government Services on ^{***}, 2021.
 - (e) "Authorized Region Signatory" means the individual or individuals who are authorized by Council to sign written approvals or other documents relating to the Corporation on behalf of the Region.
 - (f) "Corporate Employees" has the meaning set out in Section 6.2. "Corporate Employees" does not include Regional Staff.

- (g) "Durham Region" means the geographical area of the Regional Municipality of Durham.
- (h) "Financial Statements" means, for any particular period, audited and/or (if the requisite legal exemptions are available at law and have been validly authorized and pursued) unaudited comprehensive financial statements of the Corporation consisting of not less than a balance sheet, a statement of income and retained earnings, a statement of changes in financial position, a report or opinion of the Corporation's auditor, and such other statements reports, notes and information as are required in accordance with any Applicable Law, all prepared in accordance with GAAP (meaning Canadian generally accepted accounting principles applied on a consistent basis and which are in accordance with recommendations from time to time of the Chartered Professional Accountants of Canada, at the date on which such generally accepted accounting principles are applied).
- (i) "Fiscal Year" means the twelve (12) month period commencing on January 1st and ending on December 31st.
- (j) "Municipal Act" means the *Municipal Act, 2001*, S.O. 2001 c.25, as may be amended, replaced and/or re-enacted from time to time.
- (k) "Network" means the telecommunications and highspeed broadband networks in Durham Region being a dark fibre telecommunications network consisting of fibre optic cables and other means of transmission facilities, appurtenances, and related equipment, including conduit, but excluding real property upon which the facilities are situated.
- (l) "OBCA" means the *Business Corporations Act* (Ontario), as may be amended, replaced and/or re-enacted from time to time.
- (m) "President" means the President of the Corporation.
- (n) "Regional" when used in relation to a facility, means a facility owned, operated or managed by the Region, and when used in relation to a branch or department, means a Regional branch or department of the Region.
- (o) "Regional Auditor" means the Internal Auditor of the Region.
- (p) "Regional CAO" means the Chief Administrative Officer of the Region.
- (q) "Regional Treasurer" means the Commissioner of Finance and Treasurer of the Region.
- (r) The necessary grammatical changes required to make the provisions of this Shareholder's Direction apply in the plural sense where the context comprises more than one entity and to corporations, associations, partnerships or individuals, males or females, in all cases will be assumed

as though in each case fully expressed. References to any individual shall be read with such changes in number and gender as may be appropriate.

- (s) The captions for sections of this Shareholder's Direction are for convenience only and are not to be considered a part of this Shareholder's Direction and do not, in any way, limit or amplify the terms and provisions of this Shareholder's Direction.
- (t) Where there is a reference to a director, officer or employee performing duties in respect of this Shareholder's Direction, this shall also include the individual acting in that capacity or his or her designate.
- (u) In the event of any conflict between any approval or direction given or action taken pursuant hereto or any provision of this Shareholder's Direction and any Applicable Law, the Applicable Law shall govern.

4. MISSION AND GUIDING PRINCIPLES

4.1 Mission and Guiding Principles of the Corporation

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

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

- (a) **Improve Service Delivery:** Leverage the Network to expand and enable more impactful Regional services to its residents through the use of network fibre to connect Regional facilities, assets and operations.
- (b) **Fast and Reliable:** Design and build a fibre based, future-proof, scalable and resilient network to meet current to future needs.
- (c) **Ubiquitous:** Expand the Network across Durham Region to encourage and enable service providers to deliver ubiquitous broadband services across Durham Region.
- (d) **Collaborative:** Leverage private and public partnerships aligned to the vision of a Regional Broadband Network connecting our communities.
- (e) **Open Access:** The Network should be open for all service providers to deliver a vast array of broadband services and foster competitive choice across Durham Region.
- (f) **Affordable and Inclusive:** The Corporation should seek opportunities to influence and offer affordable services across Durham Region.

5. OBJECTIVES AND PRINCIPLES

5.1 Purpose of this Shareholder's Direction

This Shareholder's Direction:

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

5.2 Regional Objectives

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

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

5.3 Mandate of the Corporation

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

- (a) The Corporation shall ensure that the connectivity requirements of Regional departments for service delivery continue to be addressed to enhance operational efficiencies and use of applications.
- (b) The Corporation shall assist municipalities, universities, schools and hospitals sector entities within Durham Region in meeting and/or optimizing their connectivity levels to foster better communications.

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

5.4 Agreements and Ownership of Assets

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

to be unreasonably denied. Any such licence granted will be irrevocable, perpetual, and royalty-free.

5.5 Operating Principles

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

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

5.6 Municipal Services Corporation Requirements under the *Municipal Act*

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

- (a) Section 18(1) of the Regulation prohibits the Corporation from incorporating another corporation.
- (b) Section 18(2) of the Regulation provides that the Corporation may only invest in securities that are prescribed under section 418 of the *Municipal Act* and any Regulation made under section 418 applies to the Corporation.
- (c) Section 19 of the Regulation provides that the directors and officers of the Corporation are deemed to be members for the purposes of the *Municipal Act*.

Conflict of Interest Act which imposes certain obligations relating to declaring interests and avoiding conflicts of interest and establishes consequences for failing to comply with those obligations. In addition, as an OBCA corporation, the directors and officers of the Corporation are required to comply with the conflict of interest requirements set out in the OBCA.

- (d) Section 20 of the Regulation provides that a wholly owned municipal services corporation is deemed to be an institution for purposes of the *Municipal Freedom of Information and Protection of Privacy Act*.
- (e) Section 21(2) of the Regulation provides that the Corporation shall be deemed to be a local board for the purposes of subsection 270(2) of the *Municipal Act*, that requires the Corporation adopt and maintain policies with respect to the following matters:
 - (i) sale and other disposition of land;
 - (ii) hiring of employees; and
 - (iii) procurement of goods and services.

5.7 Confidentiality

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

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

6. RELATIONSHIP TO THE REGION

6.1 Relationship of the Corporation to the Region

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

6.2 Corporation's Employees

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

6.3 Services Agreement between the Region and the Corporation

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

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

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

6.4 President and Secretary

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

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

7. BOARD OF DIRECTORS

7.1 Responsibilities of the Board of Directors

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

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

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

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

7.2 Composition of the Board of Directors

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

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

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

7.3 Term of a Member on the Board of Directors

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

7.4 Vacancies on the Board of Directors

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

7.5 Conflict of Interest

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

7.6 Remuneration of Directors

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

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

7.7 Meetings of the Board of Directors

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

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

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

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

8.1 Decisions of the Region

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

8.2 Governance Liaison

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

8.3 Financial Liaison

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

8.4 Matters Requiring Shareholder Approval under the OBCA or Otherwise

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

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

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

8.5 Other Matters Requiring the Region's Approval

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

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

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

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

9. REPORTING

9.1 Business Plan

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

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

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

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

9.2 Region's Annual Budget Process

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

9.3 Financial Impact on the Region

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

9.4 Access to Records

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

9.5 Audit

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

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

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

9.6 Annual Report

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

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

9.7 Annual and Special Update for Council

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

10. FINANCIAL PERFORMANCE

10.1 Debt Financing

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

10.2 Dividend Policy

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

11. GENERAL

11.1 Interpretation

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

11.2 Amendments

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

11.3 Time of the Essence

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

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

DATED the _____ day of _____, 2021.

**THE REGIONAL MUNICIPALITY OF
DURHAM**

Per:

Name:
Title:

**RESOLUTION OF THE SHAREHOLDER
OF
DURHAM ONENET INC.
(the "Corporation")**

RESOLVED that the Board of Directors of the Corporation is increased from one (1) to two (2) directors and **Elaine Baxter-Trahair, Chief Administrative Officer**, is elected as a director to serve with **John Henry, Regional Chair**, as the two (2) directors of the Corporation.

The foregoing resolution is, by the signature below of the sole shareholder of the Corporation entitled to vote on such resolution, passed pursuant to the provisions of Section 104(1) of the *Business Corporations Act* (Ontario).

DATED as of the _____ day of _____, 2021.

**THE REGIONAL MUNICIPALITY
OF DURHAM**

Per: _____