MEMORANDUM OF UNDERSTANDING

BETWEEN

THE ONTARIO NORTHLAND TRANSPORTATION COMMISSION

AND

THE MINISTRY OF NORTHERN DEVELOPMENT AND MINES
THIS MEMORANDUM OF UNDERSTANDING
made as of the 23rd day of March, 2012 (the “Effective Date”)

BETWEEN:

THE ONTARIO NORTHLAND TRANSPORTATION COMMISSION
AND

THE MINISTRY OF NORTHERN DEVELOPMENT AND MINES

WHEREAS the Province of Ontario has established the Ontario Northland Transportation Commission (the “ONTC”) to provide rail freight, rail passenger, marine and bus services and telecommunications services in Northern Ontario;

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

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

AND WHEREAS the Province of Ontario has directed that the ONTC be wound down, alternative service delivery be established for identified Transportation Services and the assets and business lines of the ONTC be divested or liquidated;

AND WHEREAS the Ontario Infrastructure and Lands Corporation is a provincial Crown agency amalgamated and continued under the Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011, c. 9, Sch. 32, and acts under the direction of the Minister of Infrastructure to deliver projects and execute transactions on behalf of the Province of Ontario;

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

NOW THEREFORE the Parties agree as follows:

ARTICLE 1

PURPOSE

1.1 Purpose. The purpose of this Memorandum of Understanding is to set out the accountability relationship between the Parties. The Memorandum of Understanding shall:

a) Clarify the roles and responsibilities of the Minister, the Deputy Minister and the Commissioners, the Chair, and the Chief Executive Officer of the ONTC; and

b) Set out the operational, administrative, financial, auditing and reporting arrangements between the ONTC and the Ministry of Northern Development and Mines.

ARTICLE 2

DEFINITIONS
1.1 Definitions. In this Memorandum of Understanding (MOU), terms shall have the following meanings:

"Act" means the Ontario Northland Transportation Commission Act, R.S.O. 1990, c. O. 32, and any regulations made pursuant thereto;

“Business Day” means a day other than a Saturday, Sunday or any statutory holiday in the Province of Ontario;

“Business Plan” means the ONTC’s multi-year business plan submitted annually by the ONTC to the Province;

"Cabinet" means the Executive Council of the Province of Ontario;

“Capital Plan” means the ONTC’s annual capital plan submitted annually by the ONTC to the Province;

"CEO" means the Chief Executive Officer of the ONTC;

"Chair" means the Chair of the ONTC;

"Commissioners" means the commissioners/members of the Board of Directors of the ONTC;

“Communication” means any and all forms of communication, reporting and exchanges of information in the following contexts:

between the Parties, internally within the ONTC respecting the implementation of the ONTC’s mandate or any other communication, reporting or exchange of information not in the ordinary course of business, and externally with any ONTC stakeholder or any other member of the public including respecting the routine business and operations of the ONTC;

“Communications Protocol” means the protocol established by the Ministry from time to time to govern all Communications;

"Contribution Agreement" means an annual funding and service level agreement between MNDM and the ONTC;


"Deputy Minister" means the Deputy Minister of Northern Development and Mines;

“Direction” means any written direction to the ONTC from the Lieutenant Governor in Council or the Minister expressing the policy of the Government of Ontario;

“IO” means Ontario Infrastructure and Lands Corporation;

"Legislative Assembly" means the Legislative Assembly of Ontario;

“LGIC” means the Lieutenant Governor in Council of Ontario;

“Mandate” means the revised mandate for the ONTC, approved by Cabinet, as described in Section 3.3 of this MOU;

“Minister” means the Minister of Northern Development and Mines or such other Minister as may from time to time be responsible for the administration of the Act;

"Ministry" or "MNDM" means the Ministry of Northern Development and Mines;
"MOU" means this Memorandum of Understanding;

"OFA" means the Ontario Financing Authority, a corporation without share capital established under the Capital Investment Plan Act, 1993, S.O. 1993, c. 23;

"ONTC" means the Ontario Northland Transportation Commission;

"Party" or "Parties" mean a signatory or the signatories to this MOU as the context requires;

"Prescribed Services" means the services prescribed for the ONTC set out at Schedule "B" to this MOU;

"Province" means the Province of Ontario;


"Reporting Protocol" means the protocol established by the Ministry from time to time which sets out the Ministry’s reporting requirements of the ONTC and governs the reporting relationship between the ONTC, the Ministry and IO;

"TB/MBC" means the Treasury Board/Management Board of Cabinet of Ontario; and

"Transportation Services" means the rail service between Cochrane and Moosonee and any bus passenger services currently being provided by the ONTC as of the Effective Date of this MOU to areas where no other similar such transportation services exist.

ARTICLE 3

LEGAL AUTHORITY AND MANDATE

3.1 Legal Authority. The legal authority of the ONTC is set out in the Act. The MOU, any Directions and the Act should be read together to determine how the ONTC should govern itself. The MOU shall not affect, modify, limit or interfere with the responsibilities of any of the Parties under the Act or any other applicable law. In the event of conflict between the MOU and any law, the law takes precedence.

3.2 The Railways Act. Pursuant to the Act, the ONTC also exercises certain powers under the Railways Act, R.S.O. 1950, c. 331.

3.3 Mandate. The Province of Ontario has approved a revised mandate for the ONTC and has directed that the assets of the ONTC be divested, that alternative service delivery models be implemented to deliver Transportation Services in Northern Ontario and that the ONTC be dissolved. The revised mandate of the ONTC is to:

- divest its assets and business units subject to the approval of the Province of Ontario;

- wind up and liquidate any assets and obligations which cannot be so divested; and

- until the completion of the divestiture process, to continue to provide efficient, safe and reliable services in Northern Ontario as directed by the Province of Ontario through the Minister from time to time.
Prescribed services as of the date of this MOU are set forth in Schedule B to the MOU and may be amended from time to time by a Direction or upon agreement by the Parties.

ARTICLE 4

CROWN AGENCY CLASSIFICATION

4.1 Crown Agency Status and Classification. The ONTC is a Crown Agency within the meaning of the Crown Agency Act, R.S.O. 1999, c. C.48, classified by TB/MBC as an Operational Enterprise Agency. The ONTC will comply with the policies and procedures set out in applicable TB/MBC directives, as may be amended from time to time.

4.2 Accounting Classification. The ONTC is designated for accounting purposes by the Public Sector Accounting Board as an Other Government Organization. The ONTC is subject to, and shall comply with, all existing directives, policies and guidelines of the Province applicable to an Other Government Organization, as amended from time to time.

ARTICLE 5

GUIDING PRINCIPLES

5.1 Guiding Principles. The Parties share the following principles in their relationship that:

(a) the Minister recognizes that the ONTC is a statutory entity which exercises powers and performs duties in accordance with its Mandate, any Directions and this MOU. As an Operational Enterprise Crown Agency, the ONTC has an ability to make decisions, enabling it to operate its businesses in a commercially competent environment subject to the Mandate and any Directions. As with any Board of private concern, the Commissioners must have sufficient authority to meet their responsibilities for the efficient management of the ONTC and the ONTC’s businesses subject to the Mandate, this MOU and any Directions;

(b) the Province of Ontario has approved the revised Mandate for the ONTC and the Chair recognizes that the role of the Commissioners is to oversee the implementation of the Mandate and cooperate with the Ministry and IO during the divestment process to ensure that the Mandate is implemented in an effective, accountable, transparent and timely way;

(c) the Chair and the Commissioners acknowledge that accountability, fairness, transparency, value for money and the protection of public assets are fundamental principles to be observed in the management, administration and operations of the ONTC and in the implementation of the Mandate; and

(d) the ONTC and the Ministry agree to avoid duplication of services wherever possible, including without limitation the duplication of rail and bus services provided by the ONTC between the same destinations.

ARTICLE 6

ACCOUNTABILITY RELATIONSHIPS

6.1 Minister. The Minister is accountable:

(a) to Cabinet and the Legislative Assembly for reporting and responding to the Legislative Assembly on the affairs of the ONTC;
for attesting, reporting and responding to TB/MBC on the ONTC’s performance and compliance with the Province’s applicable directives and operational policies;

to the Cabinet for the performance of the ONTC and its compliance with the Province’s operational policies and broad policy directions; and

for receiving and ensuring that the ONTC’s Annual Report is made available to the public after tabling it in the Legislative Assembly.

6.2 Deputy Minister. The Deputy Minister is accountable:

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

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

6.3 The Chair. The Chair is accountable:

(a) to the Minister for ensuring that the ONTC fulfills its Mandate in a timely manner and complies with and carries out the roles and responsibilities assigned to it under the Act and other applicable law, this MOU, Directions and applicable TB/MBC and Ministry of Finance directives;

(b) to the Minister for the ONTC’s compliance with any and all Directions in a timely manner;

(c) to the Minister for the ONTC’s adherence to the established Communications Protocol and the Reporting Protocol;

(d) for reporting to the Minister as requested on the ONTC’s activities; and

(e) for ensuring timely communications with the Minister regarding any issue that affects or can reasonably be expected to affect, the Minister’s responsibilities for the ONTC.

6.4 The Commissioners. The Commissioners are accountable:

(f) to the Minister through the Chair for ensuring that the ONTC fulfills its Mandate in a timely manner and complies with and carries out the roles and responsibilities assigned to it under the Act and other applicable law, this MOU, Directions and applicable TB/MBC and Ministry of Finance directives;

(g) to the Minister through the Chair for the compliance with any and all Directions in a timely manner;

(h) to the Minister through the Chair for the ONTC’s adherence to the established Communications Protocol and the Reporting Protocol; and

(i) to the Minister through the Chair for the oversight, direction and governance of the ONTC, setting goals, objectives and strategic direction for the ONTC within its Mandate and for carrying out the roles and responsibilities assigned to it by the Act and any other applicable law, applicable TB/MBC and Ministry of Finance directives, Directions and this MOU.

6.5 The CEO. The CEO is accountable:

- to the Commissioners for the ONTC’s compliance with the Mandate in a timely manner;
• to the Commissioners for the ONTC’s compliance with any and all Directions in a timely manner;

• to the Commissioners for the ONTC’s adherence to the established Communications Protocol and the Reporting Protocol;

• to the Commissioners for the management of the ONTC’s operations and the management and supervision of the ONTC’s staff subject to the Mandate. The CEO works under the direction of the Chair to implement policy and operational decisions, including Directions. The CEO reports the ONTC’s performance results to the Commissioners; and

• to the Commissioners for the accuracy of financial projections and meeting operational and financial targets.

ARTICLE 7

ROLES AND RESPONSIBILITIES

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

• recommending and obtaining the necessary authority from the Province, as may be required from time to time, to enable the ONTC to carry out its Mandate;

• recommending the appointment and reappointment of individuals as Commissioners pursuant to the process for public appointments established by TB/MBC;

• receiving the ONTC’s Annual Report, tabling it in the Legislative Assembly and ensuring that the Annual Report is made available to the public after tabling it in the Legislative Assembly;

• reporting and responding to the Legislative Assembly on the affairs of the ONTC;

• attesting, reporting and responding to TB/MBC on the ONTC’s performance in delivering its Mandate, and its compliance with applicable TB/MBC directives, the Province’s operational policies and Directions;

• informing the Chair of the Province’s priorities and policy directions for the ONTC, including providing the ONTC with Directions;

• where required, recommending to TB/MBC any change to the ONTC’s Mandate or dissolution of the ONTC, and the powers to be given to or revoked from the ONTC when a change in the Mandate is being proposed;

• reviewing and approving annually the Business Plan and Capital Plan;

• At a minimum of once every year, recommending to TB/MBC the approval of the Business Plan and Capital Plan;

• when appropriate or necessary, issuing Directions, taking action or directing that action be taken in respect of the ONTC’s interpretation of its Mandate or the ONTC’s operations or administration;

• developing an MOU with the Chair, recommending approval to TB/MBC before it is signed by the parties, and signing it into effect after it has been signed by the Chair;
• recommending to TB/MBC any provincial funding to be allocated to the ONTC;

• determining at any time the need for a review or audit of the ONTC, and recommending to TB/MBC any changes to the governance or administration of the ONTC resulting from any such review or audit; and

• directing the Chair to undertake periodic reviews of the ONTC and making subsequent recommendations to TB/MBC as may be required.

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

• provide the Minister with advice and assistance to meet his or her assigned responsibilities regarding the ONTC;

• advise the Minister on the requirements of the Agency Establishment and Accountability Directive, the Government Appointees Directive and other directives that apply to the ONTC;

• establish a framework for reviewing and assessing the ONTC’s Business Plans, Capital Plans and other reports, with consultation with the ONTC as considered desirable in the Deputy Minister’s sole discretion;

• advise the Minister on agency documents submitted to the Minister for review, approval or both;

• keep the Minister advised in respect of issues or events that fall within the responsibilities of the ONTC;

• consult with the Chair, as needed, on matters of mutual importance, including on any services provided by the Ministry and compliance with TB/MBC directives and Ministry policies and priorities;

• undertake and/or cooperate with reviews of the ONTC as may be directed by the Minister or TB/MBC;

• monitor the ONTC on behalf of the Minister and, where warranted, identify needs for corrective action and recommend to the Minister ways of resolving issues;

• ensure an accountability framework, that includes without limitation an approved memorandum of understanding, Business Plan and Capital Plan, and Contribution Agreement, is in place in accordance with the applicable directives of the Province;

• arrange for administrative, financial, and other support to the ONTC as specified in the MOU;

• advise the Chair of required timelines for the ONTC to submit its Business Plan and Capital Plan and its operating budget;

• apprise the ONTC of decisions of the Province with respect to the ONTC’s annual allocation and any Direction and/or any potential impact on delivery of services as reflected in the Mandate;

• approve, on behalf of the Ministry an annual Contribution Agreement between MNDM and the ONTC setting out:

• any Cabinet direction and where appropriate any Direction with respect to the ONTC,
the approved annual operating subsidy, capital funding, service levels and performance measures for the Prescribed Services as needed, and

if appropriate, any changes that may be required in the ONTC’s Business Plan and Capital Plan to reflect the Cabinet direction referred to at paragraph (i) above.

recommend to the Minister, as may be necessary, the evaluation or review, including a risk-based review, of the ONTC or any of its programs, or changes to the management framework or operations of the ONTC;

facilitate briefings and consultations between the Chair and the Minister, and between Ministry staff and the ONTC staff as appropriate;

attest to TB/MBC as required, to the ONTC’s compliance with the mandatory accountability requirements set out in the Agency Establishment and Accountability Directive;

ensure that the Ministry and the ONTC have the capacity and systems in place for ongoing risk-based management, including appropriate oversight of the ONTC;

ensure that the ONTC has an appropriate risk management framework and a risk management plan in place;

undertake timely risk-based reviews of the ONTC, its management or operations as may be directed by the Minister or TB/MBC;

support the Minister in reviewing the performance targets, measures and results of the ONTC;

submit to the Minister, as part of the annual planning process, a risk assessment and management plan for each risk category;

meet with the Chair as needed or as directed by the Minister;

inform the Chair in writing of new directives of the Province and any exceptions to or exemptions in whole or in part from TB/MBC directives or Ministry administrative policies; and

when required, submit a report to the Secretaries of TB/MBC on the wind-down of the ONTC, the disposition of any assets, the completion of any outstanding responsibilities by the ONTC and the termination of any Commissioner appointments.

6.1 Chair. The responsibilities of the Chair of the ONTC are to:

provide leadership and oversight to the ONTC and to the Commissioners and monitor the Commissioners’ performance;

monitor the performance of the ONTC;

ensure the ONTC adheres to the established Communications Protocol and the Reporting Protocol;

cooperate and ensure the ONTC cooperates with the Ministry and IO to facilitate the divestment process;

keep the Ministry informed of the status of the implementation of the Mandate within two Business Days of the information being provided to the Commissioners;
• provide to the Ministry at least two day’s prior written notice of board meetings and all material circulated to directors and invite a Ministry representative to attend each board and any committee meetings, including in camera sessions, as an observer and to act as a liaison between the Ministry and the ONTC;

• provide oversight responsibility to ensure that all Directions from the Minister or the Lieutenant Governor in Council are carried out by the ONTC promptly and efficiently and report back to the Ministry on the implementation by ONTC of the activities required by any Directions;

• keep the Minister advised in a timely fashion of issues or events relating to the ONTC that may concern or be reasonably expected to concern the Minister in the exercise of his or her responsibilities;

• ensure that the ONTC responds to requests for information from the Ministry or IO promptly;

• account to the Minister for the overall operating and financial performance of the ONTC and ensure that an evaluation of operating and financial performance is submitted to the Minister on an annual basis or as required;

• keep the Ministry informed of any financial or operational variances in the ONTC Business Plan and Capital Plan and provide this information promptly after it has been reported to the Commissioners;

• arrange for the preparation and submission to the Minister of all reports, plans, strategies and programs required under this MOU, any Directions or the Act in accordance with prescribed or required, or otherwise requested by the Minister;

• review and approve the Business Plan and Capital Plan, budget, Annual Report and financial reports, and submit them to the Minister in accordance with the timelines specified in the applicable TB/MBC and Ministry of Finance directives, and this MOU;

• cooperate with any review or audit of the ONTC as directed by the Minister or TB/MBC;

• sign the ONTC’s memorandum of understanding as authorized by the Commissioners;

• approve, on behalf of the ONTC, a Contribution Agreement between MNDM and the ONTC;

• notify Minister of upcoming appointment vacancies and if requested provide recommendation for appointments or reappointments;

• evaluate the performance of the CEO in consultation with the Commissioners and pursuant to performance criteria established by the Commissioners and the Chair;

• ensure the implementation of actions that support the Mandate of the ONTC;

• seek strategic policy direction(s) for the ONTC from the Minister;

• consult with the Minister in advance regarding any activity or activities which may have an impact on the Province and Ministry’s policies, Directions, directives or procedures or on the Mandate;
• ensure that the ONTC operates within its approved budget allocation in fulfilling its Mandate and in maintaining operations of all of its services including without limitation the Northlander;

• provide both the Minister and the Minister of Finance with a copy of every audit report, a copy of the ONTC’s response to each of the audit reports and the recommendations made in those reports;

• advise the Minister annually on any outstanding audit recommendations;

• conduct regular assessments with respect to the effectiveness and the contribution of each individual Commissioner;

• ensure that a process is in place for responding to and resolving complaints from the ONTC customers about quality of service in accordance with section 17.1;

• consult with the Deputy Minister as needed on matters of mutual importance including on the Prescribed Services and on TB/MBC directives, Ministry policies and Directions;

• ensure that the ONTC avoids duplication of services wherever possible, including without limitation the duplication of rail and bus services provided by the ONTC between the same destinations; and

• fulfill the role of ethics executive for public servants who are government appointees to the ONTC by promoting ethical conduct and ensuring that Commissioners are informed of their responsibilities under the PSOA including without limitation with respect to:

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

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

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

• set the goals, objectives and strategic directions of the ONTC within its Mandate as defined by the Act, Directions and approved MOU;

• ensure the ONTC adheres to the established Communications Protocol and the Reporting Protocol;

• cooperate and ensure that the ONTC cooperates with the Ministry and IO to facilitate the divestment process;

• review the divestment proposals/bids submitted by prospective purchasers for the assets of ONTC with respect to criteria including but not limited to the impacts on:
  o the current employees and/or future employment prospects,
  o levels of service,
  o value for Ontario taxpayers, and
  o economic impact in Northern Ontario.

• ensure that no ONTC employment contracts, severance packages, new material obligations or any other contracts outside of the ordinary course of business are approved without the prior written approval of the Ministry;
• establish a risk management framework to improve the effectiveness and consistency of its risk management process;

• direct the preparation of and approve the Business Plans, Capital Plans and annual reports within the timelines agreed upon with the Ministry;

• set policies whereby, and to ensure that that the ONTC uses public funds:

• prudently and only for the business of the ONTC based on the principles of value for money, and in compliance with applicable law, any Directions and TB/MBC directives,

• in conformance with the Act, the Pension Benefits Act, R.S.O. 1990, c. P.8, other applicable law and this MOU, and

• with integrity, honesty, fairness and effective controllership;

(h) establish performance measures and targets for ONTC and management systems for monitoring and assessing the ONTC’s performance;

(i) conduct regular assessments with respect to the effectiveness of the Commissioners as a whole and the contribution of each Committee of Commissioners;

(j) conduct an annual assessment of the Commissioners to ensure compliance with this MOU and other obligations of the Commissioners;

(k) arrange for audits and reviews, including risk-based audits and reviews of the ONTC as needed and cooperate with and share any relevant information on any risk-based or periodic review directed by the Minister or TB/MBC;

(l) direct the affairs of the ONTC and set overall priorities so as to fulfill its Mandate and ensure that the ONTC manages its affairs in compliance with applicable TB/MBC directives, Directions and any Cabinet directions;

(m) make decisions consistent with the Business Plan approved for the ONTC and ensure that the ONTC operates within its allocations;

(n) approve the MOU for the ONTC in a timely manner and authorize the Chair to sign it on behalf of the ONTC;

(o) approve for submission to the Minister within the timelines agreed to with the Ministry the ONTC’s plans, reports, and reviews;

(p) direct action(s), including corrective actions to be taken if needed with respect to the effectiveness of the ONTC and the ONTC’s compliance with the Mandate, all applicable laws, policies and directives and Directions;

(q) ensure that Directions are implemented promptly and efficiently;

(r) advise the Minister, through the Chair, on issues within or affecting the ONTC’s implementation of the Mandate or operations;

(s) where applicable, ensure that conflict of interest rules that the ONTC is required to follow, as set out in Ontario Regulation 381-07 (or as have been approved and published by the Conflict of Interest Commissioner) are in place for the members of the Commissioners and employees of the ONTC; and

(t) establish such board committees or oversight mechanisms as may be required to advise the Board on effective management, governance or accountability procedures for the ONTC.
7.5 The CEO. The responsibilities of the CEO are to:

- provide leadership and management to the ONTC’s staff including financial resource management;

- manage the daily activities of the ONTC in accordance with the Mandate, sound business and financial management practices, Directions and applicable TB/MBC and Ministry of Finance directives;

- ensure the ONTC adheres to the established Communications Protocol and the Reporting Protocol;

- cooperate and ensure that the ONTC cooperates with the Ministry and IO to facilitate the divestment process;

- keep the Ministry informed of the status of the implementation of the Mandate promptly following a request from the Ministry for such information;

- ensure that the ONTC responds to requests for information from the Ministry or IO promptly;

- ensure that any and all Directions from the Minister are carried out by the ONTC promptly and efficiently and report back to the Commissioners on the implementation by ONTC of the activities required by the Directions;

- permit access to ONTC premises by Ministry or IO staff and any other person authorized by the Ministry upon request;

- prepare a Business Plan, annual operating budget and Capital Plan for approval by the Commissioners within timelines prescribed by the Ministry;

- establish systems to ensure that the ONTC operates within its approved Business Plan, Capital Plan and budgets;

- establish management reporting and analysis systems to improve management planning, risk management, and performance assessments and to ensure proper action is taken, resulting from these analyses;

- keep the Chair and the Commissioners informed of the ONTC’s operational matters;

- prepare annual reports for the ONTC as directed by the Commissioners;

- prepare and provide for approval to the Chair and the Commissioners quarterly operating and financial reports, including:

  - cash flow statements of revenues and expenses,

  - line of credit and other financing activities, and

- actual and projected variances in all income statement items from the ONTC’s multi-year Business Plan and an explanation of these variances;

- establish a system for the retention of the ONTC documents (to include but not be limited to the audited financial statements, annual reports, Business Plans, and Capital Plans) and for appropriately making such documents publicly available;

- apply policies so that public funds are used with integrity and honesty;
• establish and apply a financial management framework for the ONTC in accordance with applicable Minister of Finance controllership directives, policies and guidelines;

• support the Chair and the Commissioners in meeting their respective responsibilities;

• carry out in-year monitoring of the ONTC’s operational performance and report on it to the Chair and the Commissioners;

• advise the Chair and the Commissioners on the requirements of and compliance with the Agency Establishment and Accountability Directive as well as all other TB/MBC and Ministry of Finance directives and policies, Ministry policies and procedures and the ONTC’s by-laws and policies;

• seek advice and support from the Ministry, as appropriate regarding management issues the Ministry might reasonably be expected to have an interest in;

• cooperate with any periodic review directed by the Minister or TB/MBC;

• prepare financial reports for approval by the Commissioners;

• prepare and establish, for approval by the Commissioners, a performance review system for the ONTC’s staff and implement this system when approved;

• ensure that the ONTC has the oversight capacity and an effective oversight framework in place for monitoring its management and operations;

• put in place and maintain a system for ensuring that the ONTC is kept informed of any applicable laws, policies and directives;

• ensure that a system is in place for the creation, collection, maintenance and disposal of records in accordance with section 21.1 of this MOU;

• ensure that an appropriate framework is in place for the ONTC staff and appointees to receive adequate orientation and training;

• ensure that ONTC staff and appointees are aware of and comply with applicable TB/MBC and Ministry of Finance directives; and

• fulfill the role of ethics executive for public servants who are not government appointees to the ONTC by promoting ethical conduct and ensuring that Commissioners are informed of their responsibilities under the PSOA including without limitation with respect to:
  
  (i) the rules of ethical conduct (Part IV of the PSOA),
  (ii) the political activity rules (Part V of the PSOA),
  (iii) conflict of interest, and
  (iv) the protected disclosure of wrongdoing,

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

ARTICLE 8

EXCHANGE OF INFORMATION AND COMMUNICATION

8.1 Communications. All Communications shall be conducted in accordance with the Communications Protocol. The Communications Protocol may be amended by the Ministry from time to time in the Ministry’s sole discretion.
8.2 Exchange of Information between the Parties. The Parties recognize that the timely exchange of information regarding the operations and administration of the ONTC is essential to:

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

8.3 Reporting Protocol. Without limiting any provisions of this MOU respecting information exchange, the ONTC shall at all times adhere to the Reporting Protocol. The Reporting Protocol may be amended by the Ministry from time to time in the Ministry’s sole discretion.

8.4 No Proposed Changes Without Ministry Approval. The Commissioners shall not approve any proposed changes to the ONTC’s business or Prescribed Services without the prior written approval of the Ministry.

ARTICLE 9

FINANCIAL ARRANGEMENTS

9.1 Funding. The ONTC is funded from the Consolidated Revenue Fund pursuant to an appropriation authorized by the Legislative Assembly.

9.2 Estimates. The CEO will prepare the estimates of the ONTC’s expenditures for inclusion in the Ministry’s Results Based Plan. The Chair will deliver these estimates to the Minister in sufficient time to be analyzed and approved by the Minister. The estimates may, after appropriate consultation with the Chair, be altered as the Ministry may require.

9.3 ONTC Financial Procedures. The financial procedures of the ONTC must be in accordance with TB/MBC and Ministry of Finance directives and guidelines and other applicable direction of the Province.

9.4 The Contribution Agreement. The Parties agree to enter into an annual Contribution Agreement which will set out:
 • any Cabinet direction received with respect to the ONTC including any Directions where appropriate;
 • the approved annual operating subsidy, capital funding, service levels and performance measures for the Prescribed Services as needed; and
 • any changes as may be required in the Business Plan and Capital Plan to reflect direction of the Province.

9.5 Approval of the Contribution Agreement. The terms and conditions of the Contribution Agreement will be reviewed each year and confirmed in writing by the Chair and the Deputy Minister.

9.6 Separate Account. Allocations to the ONTC pursuant to the Contribution Agreement will be deposited into an account, which will be separate from the Consolidated Revenue Fund and will be under the control and direction of the ONTC in accordance with the provisions of the Act and this MOU.

9.7 Funding Schedule. The operating and capital allocation will be disbursed according to the Contribution Agreement.
9.8 Surplus Funding. When ordered to do so by the Minister of Finance, pursuant to Section 16.4 of the Financial Administration Act, R.S.O. 1990, c. F. 12, the ONTC shall pay into the Consolidated Revenue Fund any money that the Minister of Finance determines is surplus to its requirements.

9.9 Contingent Liability. Pursuant to Section 28 of the Financial Administration Act, R.S.O. 1990, c. F. 12, the ONTC shall not enter into any financial arrangement or commitment, guarantee, indemnity or similar transaction that may increase, directly or indirectly, the indebtedness or contingent liabilities of the Province of Ontario without the written approval of the Minister of Finance. The Minister’s approval is required before seeking statutory approval from the Minister of Finance.

9.10 Financial Arrangements in Excess of Approved Budget. The ONTC will not enter into financial arrangements or commitments which exceed the capacity of its approved budget, or could increase the Province’s direct, indirect or contingent liabilities, or affect the financial, cash and similar debt management policies of the Province, or undertake any other similar activity without a Direction, the prior approval of the Minister, the Minister of Finance and Cabinet as appropriate.

9.11 Fiscal Year. The fiscal year of the ONTC will commence on the 1st day of April in each year and will end on the 31st day of March in the succeeding year.


9.13 HST. The ONTC charges and remits HST to the federal government on the taxable goods and services that it provides, as required. HST is paid on goods and services purchased by the ONTC and claims input tax credits that are rebated back 100% from the federal government.

ARTICLE 10

AUDIT, REPORTING AND REVIEW ARRANGEMENTS

Rights of Inspection, Inquiry and Audit. The ONTC will permit persons designated by the Ministry or IO and potential purchasers of the ONTC or any of its assets or businesses to visit and inspect the ONTC’s premises and have access to management of the ONTC, to examine its books, financial records and contracts and to discuss its affairs, finances and accounts all at such reasonable times as may be requested by such persons. The ONTC will also provide regular updates to the Ministry on its progress in implementing the Mandate. The ONTC will respond to requests for information from the Ministry, its advisors or IO promptly and, in any event, no later than 2 Business Days from the date of such request and will meet with Ministry, its advisors or IO staff upon request.

Annual Financial Statements. The Chair will provide to the Minister audited annual financial statements, and will include them as part of the ONTC’s Annual Report. The statements will be provided in a format that is in accordance with the accounting policies issued by the Office of the Provincial Controller.

10.2 Periodic Review. The agency is subject to periodic review and value-for-money audit by the Auditor General of Ontario under the Auditor General Act, R.S.O. 1990, c. A.35 or by the Ontario Internal Audit Division.

10.3 The Auditor General of Ontario. The ONTC will furnish the Auditor General of Ontario with the information regarding its powers, duties, activities, organization, financial transactions and methods of business that the Auditor General of Ontario requires. The Auditor General of Ontario will have free access to all books, accounts, financial records, electronic data processing
records, reports, files and all other papers, things or property belonging to the ONTC that the Auditor General of Ontario needs to perform his or her duties.

10.4 The Ontario Internal Audit Division. The Ontario Internal Audit Division may also carry out an internal audit, if approved to do so by the Ministry’s Audit Committee or by the Corporate Audit Committee.

10.5 Minister May Direct Audit. Regardless of any annual external audit, the Minister may direct that the ONTC be audited at any time.

10.6 Copy of Audit Report. The ONTC will promptly provide a copy of every report from an audit to the Minister and the Minister of Finance. The ONTC will also provide a copy of its response to the audit report and any recommendations therein. The ONTC will advise the Minister annually on any outstanding audit recommendations.

10.7 Chair may Request. The Chair may request an external audit of the financial transactions or management controls of the ONTC at the ONTC’s expense.

10.8 Annual Report. The Commissioners shall ensure that an Annual Report is submitted to the Minister within 120 days of the ONTC’s fiscal year end. The Annual Report will contain:

- analysis of the ONTC’s operational and financial performance;
- discussion of performance targets achieved or not achieved and of action(s) to be taken;
- names of the Commissioners, the date of when each was appointed, and the date of when the current term of appointment expires;
- the audited financial statements of the ONTC, prepared in accordance with generally accepted accounting principles; and
- the Auditor General of Ontario’s report on the financial statements, addressed to the Minister and the ONTC.

ARTICLE 11

INDEMNIFICATION AND INSURANCE

Indemnification. The Commissioners of the ONTC will be indemnified in accordance with the indemnity dated April 2012 approved by the Minister of Finance pursuant to section 28 of the Financial Administration Act (the “Indemnity”). The Commissioners of the ONTC will comply with all of the terms and conditions of the Indemnity.

Insurance. The Commissioners shall ensure that the business of the ONTC and all its properties and assets are covered by such policies of insurance, issued by responsible insurers, as are appropriate to such business, property and assets, in such amounts and against such risks as are customarily carried and insured against by owners of comparable businesses, properties and assets.

ARTICLE 12

OPERATING RELATIONSHIPS

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

ARTICLE 13

ADMINISTRATIVE ARRANGEMENTS

13.1 Compliance with Directives. The Chair is responsible for ensuring that the agency operates in accordance with all applicable TB/MBC, Public Service Commission, and Ministry of Finance directives, as well as applicable Ministry financial and administrative policies and procedures, any Directions and any Cabinet direction that may be issued from time to time. Schedule C to this MOU provides a list of some of the applicable directives and policies.

13.2 Financial, Administrative and Legal Services. The ONTC will provide its own financial, legal and administrative services, including internal audit services.

13.3 ONTC Staff. The ONTC staff are hired by the ONTC and are not members of the Ontario Public Service.

13.4 Retention of Outside Services. Except in the ordinary course of business when it requires expertise unavailable from ONTC staff or upon prior written approval from the Ministry, the ONTC shall not retain outside consulting and legal assistance. Legal services are to be provided in accordance with the Ministry of the Attorney General's Corporate Operating Policy on Acquiring and Using Legal Services. Consulting services are to be provided in accordance with the Province’s procurement rules.

ARTICLE 14

CONFLICT OF INTEREST

14.1 No Conflict of Interest. A Commissioner shall not use any information gained as a result of his or her appointment to the ONTC for personal interest or act in any other way that may cause an actual or perceived conflict of interest as set out in the Public Service of Ontario Act, 2006, S.O. 2006, c. 35, Sched. A.

14.2 Chair Responsible. The Chair is responsible for ensuring that appointees and staff of the ONTC are informed of the ethical rules to which they are subject to, including the rules on conflict of interest, political activity and protected disclosure of wrongdoing that apply to the ONTC.

14.3 Disclosure of Conflict. A Commissioner who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the ONTC, or a committee of the ONTC, shall disclose the nature of the conflict to the Chair of the ONTC at the first opportunity and shall refrain from further participation in the consideration of the matter.

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

ARTICLE 15

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

15.1 FIPPA. The ONTC shall comply with the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F. 31 (“FIPPA”).

15.2 All Documents and Records. All documents or records in the custody or under the control of the ONTC will be subject to, and will be maintained and
disposed of in accordance with FIPPA and any applicable TB/MBC directives relating thereto.

15.3 Head. The Chair is the institution head for the purposes of FIPPA.

ARTICLE 16

STAFFING AND APPOINTMENTS

16.1 Appointment. The Commissioners of the ONTC are appointed by the Lieutenant Governor in Council on the recommendation of the Premier of Ontario pursuant to section 3 of the Act.

16.2 Chair and Vice-Chair. The Chair and Vice-Chair are designated by the Lieutenant Governor in Council pursuant to section 4 of the Act.

16.3 Employees. ONTC employees are employed pursuant to section 22 of the Act.

ARTICLE 17

CUSTOMER SERVICE QUALITY REVIEW PROCESS

17.1 Complaints Process. The ONTC will develop and implement a process for responding to complaints from ONTC customers about quality of service. This process shall be consistent with the Ministry’s and the Province’s service quality standards.

17.2 OPS Service Directive. The Chair will ensure that the ONTC delivers its services at a quality standard that reflects the principles and requirements of the OPS Service Directive.

17.3 Business Plan. The ONTC's Business Plan will include performance measures and targets for customer service and the ONTC's response to complaints.

ARTICLE 18

AGREEMENTS WITH THIRD PARTIES

18.1 Covenants of the ONTC.

(a) Other than as contemplated under this MOU, the ONTC will, unless it receives the prior written approval from the Ministry or a Direction authorizing otherwise, conduct its business in all material respects in the ordinary course of business on a basis consistent with past practice.

(b) Other than as contemplated under this MOU, without the prior written approval from the Ministry or a Direction authorizing otherwise, the ONTC will not, directly or indirectly:

(i) take any initiative that would result in a material change in the business of the ONTC;

(ii) purchase or acquire assets or shares of, or other interests in, any other person;

(iii) sell or dispose of any assets, by conveyance, transfer, lease or otherwise outside of the ordinary course of business;
(iv) adopt or amend any compensation plan in respect of its officers, employees or consultants or increase the compensation or benefits payable to any such person;

(v) increase any severance, change of control or termination payments that could become payable to any of its officers or employees or increase the benefits payable under any severance, change of control or termination policies;

(vi) undertake any workforce reduction initiatives or similar programs designed to reduce labour costs or terminate the employment of any member of senior management;

(vii) terminate, cancel or amend or cause to lapse any of its insurance policies or the coverage thereunder; or

(viii) make any commitment or agreement to do any of the foregoing.

(c) Subject to section 18.1 (a) and (b) above, the Chair is responsible for ensuring that the legal, financial and other interests of the Province are protected in any agreement that the ONTC may enter into with a third party.

ARTICLE 19
PROCUREMENT ARRANGEMENTS

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

ARTICLE 20
INTELLECTUAL PROPERTY

20.1 Intellectual Property. The Chair is responsible for ensuring that the legal, financial and other interests of the Province in intellectual property are protected in any contract that the ONTC may enter into with a third party that involves the creation of intellectual property.

20.2 Definition. The ONTC is to be guided by the definition of intellectual property as set out in the Managing, Distributing and Pricing Government Information (Intellectual Property) Directive.

ARTICLE 21
CREATION, COLLECTION, MAINTENANCE AND DISPOSITION OF RECORDS

21.1 ONTC Responsible. The ONTC is responsible for ensuring that a system is in place for the creation, collection, maintenance and disposal of records. Such a system must comply with all provincial and federal regulations guiding the retention of records.

21.2 ONTC Accounts and Records. The ONTC will cause books of account and records in relation thereto to be kept in accordance with generally accepted accounting principles, and efficient and effective financial management controls, information systems and management practices to be maintained.

21.3 ONTC Accounts and Records Management. The books, records, system and management practices will be kept and maintained in such a manner so as to provide reasonable assurance to the Province that:
all assets, accounts, records and information in the ONTC’s possession or control are safeguarded and controlled;

the transactions of the ONTC are in accordance with the Act, the by-laws of the ONTC any and all Directions and applicable TB/MBC requirements; and

the financial, human and physical resources of the ONTC are managed economically and efficiently and their operations are carried out effectively.

ARTICLE 22

MISCELLANEOUS

22.1 Effective Date. This MOU becomes effective upon the Effective Date and continues in effect until the Expiry Date. The “Expiry Date” shall be the earlier of: (a) a period not to exceed five years from the Effective Date, (b) the dissolution of the ONTC, or (c) the date on which a new memorandum of understanding has been approved and signed.

22.2 Review of the MOU. Subject to the dissolution of the ONTC, this MOU must be renewed or revised by the Expiry Date. A full review of this MOU will be initiated at least three months prior to the Expiry Date. This MOU shall continue to apply until a new memorandum of understanding has been approved and signed.

22.3 Change in Minister or Chair. This MOU will be affirmed or revised by the Minister and the Chair on a change in either the Minister or Chair.

Amendment. All amendments to the MOU must be in writing, approved by TB/MBC and signed by the Parties.

Compliance. The ONTC shall at all times conduct its business and carry out its roles and responsibilities in accordance with this MOU, the Mandate, any Directions all applicable TB/MBC, Ministry of Finance and other directives of the Province, the Act and all other applicable law.

This Memorandum of Understanding will be in effect as of the 23rd day of March, 2012.

THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF NORTHERN DEVELOPMENT AND MINES
(Original signed by)
Per: Rick Bartolucci
Minister
I have authority to bind the Province.

ONTARIO NORTHLAND TRANSPORTATION COMMISSION
(Original signed by)
Name: Edwin Hargreaves
Title: Chair
I have authority to bind the Corporation.

I have read and hereby acknowledge the terms and conditions of this Memorandum of Understanding:

PAUL GOULET
(Original signed by)
Paul Goulet, CEO of ONTC

SCHEDULE "A"
THE ONTC BUSINESS PLAN

The ONTC will prepare a multi-year rolling business plan on an annual basis. This business plan will contain all of the elements as set out in Schedule H "Annual Business Plan" of the January 26, 2010 Treasury Board/Management Board of Cabinet Agency Establishment and Accountability Directive:

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

SCHEDULE "B"

PRESCRIBED SERVICES OF THE ONTC AS OF THE EFFECTIVE DATE

The Prescribed Services of the ONTC shall be:

- Rail Freight
- Telecommunications
- Motor Coach Services
- Real Estate, including the Cochrane Station Inn
- Northlander passenger rail service
- Polar Bear Express passenger/excursion train service
- Freight service between Moosonee and Cochrane
- Moosonee-Moose Factory ferry service

SCHEDULE "C"
Note: Amended, revised or successive directives continue to apply to the ONTC. Where a directive applies, all associated policies, procedures and guidelines also apply.

Delegation of Authority Key Directive

Accountability Directive

Agency Establishment and Accountability Directive

Freedom of Information and Privacy Directive

Government Appointees Directive

Advertising Content Directive

Travel, Meal and Hospitality Expenses Directive

Procurement Directive

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