

SCHEDULE "B"

E-SUBMISSION AGREEMENT

MEMORANDUM OF AGREEMENT made the ____ day of _____, _____.

BETWEEN:

_____, a member of the Association of New Brunswick Land Surveyors, carrying on the practice of the profession of land surveying at _____ in the Province of New Brunswick,
(the "Subscriber")

OF THE FIRST PART,

- and -

SERVICE NEW BRUNSWICK, a body corporate under and by virtue of the laws of the Province of New Brunswick, having an office at the City of Fredericton, in the Province of New Brunswick

(the "Corporation"),

OF THE SECOND PART.

WHEREAS:

- (a) the Association of New Brunswick Land Surveyors (the "Association") and the Corporation have entered into Amended Master Agreement dated May 1, 2018, (the "Master Agreement") regarding the participation of Association and its practising insured members in the implementation of a land titles system in the Province of New Brunswick and for the authentication and submission of a digitally scanned image of a plan under the *Land Titles Act* and the *Registry Act*;
- (b) the Master Agreement contemplates that eligible members of the Association would enter into agreements with the Corporation defining the relationship between, and the obligations of, the subscriber and the Corporation and setting out the terms and conditions by which subscribers will authenticate and submit a digitally scanned image of a plan under the *Land Titles Act* and the *Registry Act*;
- (c) the Subscriber and the Corporation agree that the terms and conditions hereinafter set forth shall govern applications, procedures, duties, obligations and liabilities in the authentication and submission of a digitally scanned image of a plan under the *Land Titles Act* and the *Registry Act* as contemplated in the Master Agreement and herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT for and in consideration of the premises and the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto covenant and agree as follows:

1. Interpretation

1.1 In this Agreement

- a) "Agreement" means this Agreement and any agreement that is supplementary to or in amendment or confirmation of this Agreement;
- b) "Authentication" means the certification and the provision of information by the subscriber in accordance with sections 17.2 and 17.3 of the *Land Titles Act* and section 19.02 of the *Registry Act*;
- c) "digitally scanned image" means a digitally scanned image of a plan of survey or a subdivision plan in a format that has been approved by the Registrar General of Land Titles or the Chief Registrar of Deeds;
- d) "eligibility" means the status of an eligible member;
- e) "eligible member" means a Land Surveyor registered to practice land surveying under the *New Brunswick Land Surveyors Act, 1986*:
 - (i) who is not suspended;
 - (ii) whose right to practice land surveying has not been revoked or restricted; and
 - (iii) who is covered by mandatory liability insurance in compliance with the Association's By-Laws;
- e) "E-submission Agreement" means an agreement between a Subscriber and the Corporation substantially similar to this Agreement;
- f) "member" means a member of the Association
- g) "Standards" means the standards, rules and practices and policies established and published by the Association and from time to time that are applicable to this Agreement;
- h) "Subscriber" means an eligible member who has entered into an E-submission Agreement; and
- i) "Web-based" means electronically communicated via the Internet.

1.2 Headings are inserted in this Agreement solely for the convenience of the parties and are not intended to be used as an aid in the interpretation of this Agreement.

1.3 Where the context requires, words in the singular include the plural, and words in the plural include the singular, and words importing the masculine gender include the feminine and neuter genders.

2. Representations of the Subscriber

2.1 The Subscriber covenants, warrants and represents to the Corporation that the Subscriber:

- a) is an eligible member and will maintain eligibility for the duration of this Agreement: and
- b) is familiar with and will comply with the Standards and requirements for submitting a digitally scanned image of a plan under the *Land Titles Act* and the *Registry Act*;

2.2 The Subscriber acknowledges that failure to comply with the terms and conditions of this Agreement may

- a) disentitle the Subscriber to some or all of the protection and benefits of the Master Agreement, including but not limited to the right to submit a digitally scanned image of a plan under the *Land Titles Act* and the *Registry Act*;
- b) form the basis of a complaint by the Corporation against the Subscriber to the Complaints Committee under the *New Brunswick Land Surveyors, (1986)* or
- c) result in the rejection of any digitally scanned image of a plan submitted for filing or registration.

3. Obtaining Access

3.1 Access to the technology put in place by the Corporation for the authentication and submission of a digitally scanned image of a plan for filing or registration will be granted to the subscriber upon:

- a) the Subscriber depositing a duly executed version of this agreement;
- b) the Association certifying to the Corporation the Subscriber's eligibility;

- c) the Subscriber providing an e-mail address for any communication or notices required to be sent to the subscriber and
- d) the Subscriber having established an account with the Corporation for electronic funds transfers for the payment of fees in respect of the filing or registration of a digitally scanned image of a plan and any other fees required to maintain an account with the Corporation.

4. Authentication of a digitally scanned image of a plan

4.1 The Subscriber shall not submit a digitally scanned image of a plan for filing or registration unless it has been authenticated using the Web-based technology put in place by the Corporation.

4.2 Web based authentication by a Subscriber for the submission of a digitally scanned image of a plan, shall contain a certification that the Subscriber was in possession of the original plan in paper format that, to the best of his/her knowledge and belief, has been duly executed and witnessed, if required, and that the digitally scanned image is an exact and complete scan of the entire plan.

4.3 The forwarding of a digitally scanned image of a plan to a practicing lawyer of the Law Society of New Brunswick with the object that the lawyer submits the digitally scanned image for filing or registration in a New Brunswick land registry office or land titles office

- a) is the certification that the Subscriber was in possession of the original plan in paper format that, to the best of his/her knowledge and belief, has been duly executed and witnessed, if required, and that the digitally scanned image is an exact and complete scan of the entire plan; and
- b) is the required authentication and certification under section 19.02 of the *Registry Act* or section 17 of the *Land Titles Act* to the same effect as if the Subscriber would have submitted the digitally scanned image for filing or registration directly to the land registry office or land titles office.

4.4 Any certification made, or information provided by a subscriber in a Web-based authentication shall be conclusive and shall have the same force and effect as if made under the *Evidence Act*, R.S.N.B. 1973, c. E-11.

5. Submission of digitally scanned image of instruments

5.1 The submission of a digitally scanned image by a subscriber is a certification by the subscriber that he or she has complied with the requirements of the *Land Titles Act* and the *Registry Act*.

6. Acceptance

6.1 Subject to the terms and conditions of this Agreement and the Master Agreement, the Corporation shall accept the submission of a digitally scanned image by the Subscriber made in conformity with the *Land Titles Act* and *the Registry Act*.

7. Release of Member Information

7.1 The Subscriber hereby authorizes and directs the Association to promptly notify the Corporation of particulars of any change in the Subscriber's eligibility.

7.2 The Subscriber authorizes the Corporation to notify the Association that the Subscriber has entered into this Agreement and to provide the Association with particulars of submissions of a digitally scanned image by the Subscriber after the signing of this Agreement.

8. Changes to the Agreement

8.1 No modification to this Agreement shall be effective unless it is in writing and

- a) signed by the parties; or
- b) has been proposed by the Corporation and approved by the Association after not less than 30 days' notice has been given to the Subscriber.

9. Termination of the Agreement

9.1 This Agreement shall terminate immediately upon the first to occur of the following:

- a) termination of the Master Agreement; and
- b) termination of the Subscriber's eligibility.

9.2 Where this Agreement has terminated under paragraph 9.1(b), this Agreement shall, at the option of the Subscriber, be revived upon the Subscriber re-establishing his or her eligibility.

10. Notice

10.1 Any notice or document required or permitted to be given by this Agreement to a party hereto shall be in writing and is sufficiently given if served in the manner provided for personal service under the Rules of Court of New Brunswick or if transmitted by facsimile transmission

or by mail, to such party addressed as follows:

in the case of the Subscriber:

Subscriber:
[address]:
Fax no.:

in the case of the Corporation to:

Service New Brunswick
P. O. Box 1998
985 College Hill Road
Fredericton, NB
E3B 5G4
Attention: Registrar General of Land Titles

or to such other address communicated in writing to the other party and a notice so served personally shall be deemed given at the time of service and a notice sent by electronic mail transmission shall be deemed given on the first business day after such transmission provided that a copy of the notice has been sent, within 24 hours of the transmission, by ordinary prepaid mail.

11. Time

11.1 Time is of the essence of this Agreement.

12. Assignment

12.1 Neither party may assign this Agreement.

13. No Agency or Partnership

13.1 Nothing in this Agreement shall be construed to constitute one party as an agent, associate or partner of the other party.

14. Governing Law

14.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein and the parties hereto irrevocably attorn to the jurisdiction of the Courts of the Province of New Brunswick as the final

and proper forum for determination of any dispute hereunder.

15. Entire Agreement

15.1 This Agreement embodies the agreement of the parties hereto with regard to the matters dealt with herein, and no understanding or agreements, oral or otherwise, exist between the parties except as herein expressly set out.

IN WITNESS WHEREOF the party of the first part hereto has caused this Agreement to be executed on the day of 20 .

SIGNED, SEALED & DELIVERED)

in the presence of)

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_____)

Witness

_____)

[Subscriber]

IN WITNESS WHEREOF the party of the second part hereto has caused this Agreement to be executed on the day of 20 .

SERVICE NEW BRUNSWICK

per _____