

Schedule "A"

SUBSCRIPTION AGREEMENT

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

BETWEEN:

_____, a member of the Law Society of New Brunswick, carrying on the practice of law at [Address] in the Province of New Brunswick, (hereinafter referred to as 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, (hereinafter referred to as the "Corporation"),

OF THE SECOND PART.

WHEREAS:

- (a) the Law Society of New Brunswick (the "Law Society") and the Corporation have entered into an Amended Master Agreement dated April 27, 2018, (the "Master Agreement") regarding the participation of the Law Society and its practising insured members in the implementation of a land titles system in the Province of New Brunswick under the *Land Titles Act*;
- (b) the Master Agreement contemplates that eligible members of the Law Society will enter into subscription 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 submit to the Corporation applications and certificates under the *Land Titles Act*;
- (c) the Subscriber and the Corporation agree that the terms and conditions hereinafter set forth shall govern applications, procedures and the issuance of certificates 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) "Act" means the *Land Titles Act*, c.L-1.1 of the Revised Statutes of New Brunswick, as amended;
- (b) "Agreement" means this Agreement and any agreement that is supplementary to or in amendment or confirmation of this Agreement;
- (c) "Apparent PID" means the PID which an eligible member believes identifies the parcel of land affected by an instrument or application;
- (d) "Certificate of Legal Effect" means a statement to be provided by a subscriber with the registration of every instrument under the Act certifying the effect of the instrument on the existing Certificate of Registered Ownership;
- (e) "Certificate of Title" means a certificate of title issued under paragraph 11(2)(b) of the Act;
- (f) "Digital Property Map" means the graphical depiction of parcels of land as compiled by the Corporation on a continuing basis according to the New Brunswick Property Mapping Standards, contained in chapter 6 of the New Brunswick Land & Water Information Standards;
- (g) "eligibility" means the status of an eligible member,
- (h) "eligible member" means a practising member
 - (i) who is not suspended,
 - (ii) who has not been disbarred,
 - (iii) who is not in arrears respecting the payment of money to the Law Society,
 - (iv) who has paid the requisite fee for mandatory liability insurance coverage under section 83 of the *General Rules under the Law Society Act, 1996*, and
 - (v) whose practice has not been made subject to any restriction or condition imposed by the Law Society or one of its committees under Part 10 (Discipline and Competence) of the *Law Society Act, 1996* that precludes the member from practising property law;
- (i) " member" means a member of the Law Society;
- (j) "Parcel Attribute Database" means a database containing parcel location information, interest holder names, instrument information and other related data for a PID;

- (k) "PID" means a parcel identifier which identifies a parcel of land on a Digital Property Map or in the Parcel Attribute Database;
- (l) "property law" means the law relating to real property;
- (m) "Standards" means the standards, rules and practices and policies established and published by the Law Society and from time to time in force that are applicable to the practice of property law by members;
- (n) "Statement of Appropriateness" means a statement on an application under subsection 10.1(2) of the Act by a Subscriber to associate a description of a parcel of land with its parcel identifier, indicating that the Subscriber has examined the current Digital Property Map for the parcel and is satisfied that the Digital Property Map appears to depict appropriately the description of the parcel of land in the application;
- (o) "Subscriber" means an eligible member who has entered into a Subscription Agreement;
- (p) "Subscription Agreement" means an agreement between a Subscriber and the Corporation substantially similar to this Agreement; and
- (q) "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 All amounts or sums of money referred to in this Agreement are stated in Canadian dollars.

1.4 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 that he or she will maintain his or her eligibility;
- (b) is familiar with and that he or she will comply with the Standards; and
- (c) will maintain excess professional liability insurance in an amount sufficient to meet the amount of any claims that the Corporation can make against the Subscriber, up to the maximum specified in paragraph 3.1(b) of the Master Agreement.

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

Agreement and the Rules and Guidelines for Adjudication contemplated under clause 4.1 of the Master 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 acceptance by the Corporation of Certificates of Legal Effect and the right to submit Web-based documentation such as Applications for PID Approval under section 10.2 of the Act, and Applications for First Registration under subsection 11(1) of the Act; and
- (b) form the basis of a complaint by the Corporation against the Subscriber to the Registrar of Complaints under section 41 of the *Law Society Act 1996*.

3. Web-based Documentation

3.1 Applications for PID Approval under subsection 10.1(2) of the Act and Applications for First Registration under subsection 11(1) of the Act shall be submitted by the Subscriber as Web-based documentation.

3.2 Web-based documentation submitted by a Subscriber shall contain a declaration that the Subscriber has obtained all affidavits and other documents required under the Act, the *Registry Act* or the Regulations thereunder. Said declaration 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.

3.3 The parties hereto agree that PKI (encrypted signatures) or similar technology may be used by the Corporation as part of Web-based documentation.

4. Parcel Descriptions and Parcel Identifiers

4.1 By submitting an Application for PID Approval in respect of a parcel of land under subsection 10.1(2) of the Act, the Subscriber certifies:

- (a) that the description of the parcel meets the prescribed standards for descriptions under the Act; and
- (b) that a transfer of the entirety of the parcel would not contravene the *Community Planning Act*.

4.2 If the Subscriber cannot certify in accordance with paragraph 4.1(a) or (b), the Subscriber shall not submit an Application for PID Approval under subsection 10.1(2) of the Act until such time as any deficiencies have been resolved.

4.3 Subject to clause 4.4, a Statement of Appropriateness shall form part of the Web-based submission for each application by a Subscriber under subsection 10.1(2) of the Act and shall be worded as follows:

"I have examined the current Digital Property Map for the parcel associated with this application and I am satisfied that the Digital Property Map appears to depict appropriately the description of the parcel of land in the application."

4.4 A Statement of Appropriateness is not required for an Application for PID Approval with respect to a condominium parcel or an air space parcel.

5. Certificate of Legal Effect

5.1 Each instrument or a set of instruments affecting the same PID presented for registration under the Act by the Subscriber shall be accompanied by a Certificate of Legal Effect certifying the legal effect of the instrument or set of instruments on the existing Certificate of Registered Ownership.

5.2 The Certificate of Legal Effect may take the form of a draft of the Certificate of Registered Ownership to be issued immediately following the registration of an instrument or set of instruments.

5.3 The new Certificate of Registered Ownership resulting from the registration of an instrument or set of instruments shall be based on the Certificate of Legal Effect submitted by the Subscriber.

5.4 Notwithstanding clause 5.3, the Registrar General may issue a Stop Order under section 36 of the Act.

6. Proof of Execution for Registration Purposes

6.1 The parties to this Agreement recognize the historical value of the role of the Notary Public in proving execution of documents to be registered in the Registry Office, and the parties acknowledge:

- (a) the necessity of maintaining the integrity of the registry systems;
- (b) the expanding role of the Notary Public in the registration process, including, inter alia, attesting to the appropriateness of property descriptions, proving due execution of instruments in compliance with prescribed naming conventions, and certifying the legal effect of instruments to be registered and archiving registered instruments; and
- (c) the benefit to the public of legal advice being provided at the time of execution.

Therefore, notwithstanding subsection 55(2) of the Act allowing proof of execution by an individual to be made by an Affidavit of Execution or a Certificate of Execution, the Subscriber, when preparing and when proving instruments intended for registration, shall utilize a Certificate of Execution in the prescribed form rather than an Affidavit of Execution, except in occasional circumstances, the reasons for which shall be documented.

6.2 The Subscriber shall not present for registration any instrument that is not accompanied by a Certificate of Execution in the prescribed form, except in occasional circumstances, the reasons for which shall be documented.

6.3 Clause 6.1 and clause 6.2 apply only to instruments identified in section 3 of the *General Regulation - Land Titles Act* as a trigger for conversion to land titles, or instruments that would have triggered a conversion if the subject land were not already registered land, and do not apply to instruments executed by a corporation or an attorney acting under a power of attorney.

7. Acceptance

7.1 Subject to the terms and conditions of this Agreement and the Master Agreement, the Corporation shall accept Statements of Appropriateness, Certificates of Legal Effect and Certificates of Title issued by the Subscriber in conformity with the Act.

8. Procedures

8.1 The Subscriber acknowledges that the Mechanics' Lien Index, Employees' Lien Index and the Condominium Corporations Index shall be located in the registration index.

8.2 The Subscriber shall include, either as part of the heading or the legal description, the Apparent PID of each parcel being affected by the registration of an instrument intended to be registered under the *Registry Act*.

8.3 Notwithstanding subsection 2(4) of the Act, the Subscriber agrees not to present for registration under the *Registry Act* any instrument identified in section 3 of the *General Regulation - Land Titles Act* as a trigger for conversion to land titles.

8.4 For each transfer of a parcel to which a residential tax credit is applicable, the Subscriber shall annex a completed Application for Residential Tax Credit to the Affidavit of Value (Affidavit of Transfer).

8.5 The Subscriber confirms that the Web-based documentation submitted to and relied on by the Corporation shall be conclusive and will have the same force and effect as if made under the *Evidence Act*, R.S.N.B. 1973, c. E-11.

9. Repealed

9.1 *Repealed*

10. Release of Member Information

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

10.2 The Subscriber hereby appoints the Corporation attorney for the Subscriber to notify the Law Society of any claim or potential claim against the Subscriber in respect of the practice of property law.

10.3 The Subscriber authorizes the Corporation to notify the Law Society that the Subscriber has entered into this Agreement and to provide the Law Society with particulars of Certificates of Title issued by the Subscriber after the signing of this Agreement.

10.4 The Subscriber authorizes the Corporation to provide, and the Corporation shall provide to the Subscriber a list of the members who have signed Subscription Agreements with the Corporation.

11. Limitation of Liability of Subscribers

11.1 The Corporation acknowledges and agrees that any claim against a Subscriber arising from an Application for PID Approval under subsection 10.1(2) of the Act, an Application for First Registration under subsection 11(1) of the Act, a parcel description, a Statement of Appropriateness, or a Certificate of Legal Effect, submitted by a Subscriber, shall be limited in the same spirit and manner as set out in article 3 of the Master Agreement with respect to a Certificate of Title and shall be dealt with in the same spirit and manner as a claim against a Subscriber in respect of a Certificate of Title under clause 4.3 of the Master Agreement.

11.2 Where the eligibility of the Subscriber has terminated, only those claims made by the Corporation against the Subscriber in respect of Application for PID Approval under subsection 10.1(2) of the Act, an Application for First Registration under subsection 11(1) of the Act, a parcel description, a Statement of Appropriateness, a Certificate of Legal Effect or a Certificate of Title that were accepted by the Corporation from the Subscriber before the Law Society had given notice to the Corporation of the termination of the Subscriber's eligibility are governed by this Agreement.

12. Arbitration

12.1 Either party (the "Complainant's may refer any dispute as to the construction, interpretation or application of this Agreement to arbitration by giving the other party ("Respondent") hereto notice of the dispute and a brief description thereof. Each party shall name an arbitrator within twenty (20) business days of the notice of dispute being given to the Respondent. The Respondent shall respond to the notice of dispute within fifteen (15) business days of receiving it from the Complainant. The two arbitrators shall within fifteen (15) business days of the appointment of the second arbitrator appoint a third arbitrator. The arbitrators shall specify time limits by which acts are to be done in order to have the dispute dealt with expeditiously. The arbitration shall be conducted in accordance with the *Arbitration Act*, Acts of New Brunswick, 1992, c. A-10.1, as amended. Such arbitration shall be held in Fredericton and the decision by a simple majority of the panel of arbitrators shall be final and binding on the parties

and may be enforced in a court of competent jurisdiction. The arbitration shall be conducted in accordance with the Rules of Court of New Brunswick except to the extent the parties otherwise agree. The costs of arbitration shall be borne equally by the parties.

12.2 For greater certainty, the liability of the Subscriber to the Corporation in respect of a claim by the Corporation under article 11 is not a dispute contemplated for resolution by the arbitration provisions of clause 12.1.

12.3 In the event that either party fails to take any action within the time limits specified in this article or any time limits specified by the arbitrators, such party shall be deemed to be in default and the dispute may be decided in favour of the party not in default.

13. Changes to the Agreement

13.1 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 Law Society after not less than 30 days notice has been given to the Subscriber.

14. Termination of Agreement

14.1 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.

14.2 Where this Agreement has terminated under paragraph 14.1(b), this Agreement shall, at the option of the Subscriber, be revived upon the Subscriber re-establishing his or her eligibility.

14.3 Notwithstanding termination of this Agreement, the limitations on liability set out in article 11 of this Agreement shall survive such termination.

15. Notice

15.1 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 or electronic mail transmission, to such party addressed as follows:

in the case of the Subscriber:

Subscriber,
[address]
E-mail:

in the case of the Corporation to:

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

and a notice so served personally shall be deemed given at the time of service and a notice sent by facsimile or 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.

15.2 Notwithstanding the provisions of clause 15.1 permitting notice to be given by facsimile or electronic transmission, any notice to be given pursuant to clause 11.2 shall not be effective unless either personally served in accordance with clause 15.1 or recorded in the manner contemplated by clause 2.6 of the Master Agreement. In the latter case, the notice shall be deemed to be effective at the time the entry is made by the Law Society in the electronic register.

16. Time

16.1 Time is of the essence of this Agreement.

17. Assignment

17.1 Neither party may assign this Agreement.

18. No Agency or Partnership

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

19. Governing Law

19.1 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.

20. Entire Agreement

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

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as of the day and year first above written.

SIGNED, SEALED & DELIVERED

in the presence of

)	
)	
)	
)	
)	
_____)	_____
Witness)	[Subscriber]

SERVICE NEW BRUNSWICK
