

Schedule "C"

E-SUBMISSION 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 members in the implementation of a land titles system in the Province of New Brunswick and for the authentication and submission of electronic instruments under the *Land Titles Act* and the *Registry Act*;
- (b) the Master Agreement contemplates that eligible members of the Law Society will 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 submit to the Corporation applications and certificates, and authenticate and submit electronic instruments 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 electronic instruments 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- (a) *Repealed*
- (b) "Agreement" means this Agreement and any agreement that is supplementary to or in amendment or confirmation of this Agreement;
- (c) "digitally scanned image" means a digitally scanned image of an instrument in a format that has been approved by the Registrar General of Land Titles or the Chief Registrar of Deeds;
- (d) "electronic format" means a computerized format of an instrument that has been approved by the Registrar General of Land Titles, but does not include a digitally scanned image of an instrument;
- (e) "electronic instrument" means an instrument in electronic format or a digitally scanned image of an instrument, including a subdivision plan or survey plan;
- (f) "eligibility" means the status of an eligible member;
- (g) "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;
- (h) "member" means a member of the Law Society

- (i) "property law" means the law relating to real property;
- (j) "regulations" means regulations under the *Land Titles Act* as amended;
- (k) "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;
- (l) "Subscriber" means the Subscriber who signed this Agreement or any eligible member who has entered into an E-submission Agreement, including the Subscriber who signed a former version of this Agreement, as the context may require; and
- (m) "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 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 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 electronic instruments under the *Land Titles Act* and the *Registry Act*;

- (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*, or
- (c) result in the rejection of any electronic instrument 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 electronic instruments for filing or registration will be granted to the Subscriber upon:

- (a) the Subscriber depositing a duly executed version of this agreement;
- (b) the Law Society 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 or taxes in respect of the filing or registration of an electronic instrument and any other fees required to maintain an account with the Corporation.

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

4. Authentication of electronic instruments

4.1 The Subscriber shall not submit an electronic instrument 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 an electronic instrument in an electronic format

- (a) shall contain a certification that the Subscriber is in possession of an original instrument designated for electronic submission by regulation under the *Land Titles Act*, in prescribed form and in paper format that, to the best of his/her knowledge and belief, has been duly executed and witnessed, accompanied by the appropriate proof of execution and that this electronic instrument contains every material provision and particular contained in the said original paper instrument,

- (b) shall contain information as to the existence of an affidavit of marital status and whether the subject property was or was not a marital home,
- (c) is a certification, when an affidavit of marital status is required under the *Land Titles Act*, that the Subscriber is in possession of an original affidavit of marital status in prescribed form and in paper format, and that, to the best of his/her knowledge and belief, the affidavit has been duly executed and sworn.

4.2.1 Web based authentication by a Subscriber for the submission of an electronic instrument

- (a) that is a digitally scanned image, except for a digitally scanned image of a subdivision plan or a survey plan that was not scanned under the supervision of the Subscriber, shall contain a certification that the Subscriber is in possession of the original instrument 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 instrument;
- (b) that is a digitally scanned image of a subdivision plan or a survey plan that was not scanned under the supervision of the Subscriber, shall contain a certification by the Subscriber, that the Subscriber reasonably believes, that the scanned image was received from a surveyor authorized to practise land surveying in the Province of New Brunswick or from someone on that surveyor's behalf.

4.3 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. **Electronic submission of instruments**

5.1 Notwithstanding that subsection 17.1(6) of the *Land Titles Act* permits designated instruments to be registered in paper format under certain circumstances, (i.e. when the registered owner personally presents the instrument for registration), the Subscriber shall submit those instruments designated by regulation to a Land Titles office for filing or registration in electronic format only, except in occasional circumstances, the reason for which shall be documented by the Subscriber.

5.2 The submission of an electronic instrument for filing or registration by a Subscriber is a certification by the Subscriber that he or she has complied with the requirements of the *Land Titles Act* or the *Registry Act*, as applicable.

5.3 The electronic submission of a Transfer by a Subscriber, in electronic format,

- (a) shall include a declaration of all the material facts that would have been contained in an affidavit of value if the transfer had been submitted for registration in paper format and
- (b) is a certification that the Subscriber is in possession of the affidavit of value in prescribed form and in paper format required under the Act, and that, to the best of his/her knowledge and belief, the affidavit has been duly executed and sworn.

5.4 The Subscriber who makes a declaration referred to in paragraph 5.3(a) is entitled to rely on the information contained in the affidavit of value in paper format unless the Subscriber has reason to believe that the information therein contained is inaccurate.

6. Retention and production of documents

6.1 A Subscriber who authenticates an electronic instrument in electronic format shall retain the original duly executed and witnessed paper form counterpart of the instrument with all original affidavits, certificates or statutory declarations required by the *Land Titles Act*, that accompany the instrument, for a period of 10 years following the date of authentication.

6.2 Upon request from the Registrar General, the Subscriber or a former Subscriber shall promptly produce for inspection the original duly executed and sworn counterpart instrument in paper format with all original affidavits, certificates or statutory declarations required by the *Land Titles Act*, including all original duly executed and sworn affidavit of value.

6.3 Clause 6.1 and clause 6.2 shall not apply for the submission of a digitally scanned image of an instrument.

7. Conflict of interest

7.1 The Subscriber acknowledges that the chapter on Conflict of Interest Between Clients of the Society's Code of Professional Conduct, or any other similar enabling provision, may be amended by the Law Society to either prevent a member from acting for both the vendor and the purchaser in a real property transaction, or to limit the authorization of a member to act for both the vendor and the purchaser in a real property transaction, where the value of the total consideration, or where the aggregate of assessed values by the Province of New Brunswick for all the properties involved in the transaction, is in excess of a stated amount.

7.2 In the event of such amendments, the Subscriber acknowledges that the Corporation will implement functionality to the technology put in place by the Corporation that allows the submission of electronic instruments in Land Titles to enforce the amendments and will comply with the same.

7.3 Clause 7.1 and clause 7.2 shall not apply for the submission of a digitally scanned image of an instrument.

8. Acceptance

8.1 Subject to the terms and conditions of this Agreement and the Master Agreement, the Corporation shall accept the submission of electronic instruments by the Subscriber made in conformity with the *Land Titles Act* or the *Registry Act*.

9. Compensation Fund

9.1 The Subscriber acknowledges that if a claim arises out of the dishonesty, fraud or criminal conduct of an eligible member in the authentication or in the submission of an electronic instrument for filing or registration and is not covered by the Lawyer's Professional Liability Insurance Group Policy with respect to Mandatory coverage under PART A and with respect to Excess coverage under PART B, if applicable, the claim by the Corporation against the Subscriber shall be governed by Part 13 (Compensation Fund) of the *Law Society Act, 1996*.

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 electronic submissions 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 E-submission 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 authentication or an electronic submission by a Subscriber, shall be limited in the same spirit and manner as set out in article 3 of the Master Agreement and shall be dealt with as set out in 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 authentications or electronic submissions 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") 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 the 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 which are 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 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, NB
E3B 5G4
Attention: Registrar General of Land Titles
E-mail (Registrar General's e-mail address)

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.

15.2 Notwithstanding the provisions of clause 15.1 permitting notice to be given by 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 2.7 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 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

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_____)

[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 _____