

Schedule "A"

SUBSCRIPTION AGREEMENT

MEMORANDUM OF AGREEMENT signed the _____, 20__.

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 a Master Agreement dated _____, (the "Master Agreement") regarding the participation of the Association 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 Association would enter into Subscription Agreements with the Corporation setting out the terms on which eligible members would provide services to the Corporation.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT for and in consideration of the premises and the mutual covenants and agreements herein contained, the parties agree as follows:

1. **Interpretation**

1.1 In this Agreement

- (a) "Act" means the Land Titles Act as amended from time to time;
- (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) "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;
- (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 - (ii) whose right to practice land surveying has not been revoked or restricted; and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-Law #12, Liability Insurance;
- (f) "Parcel Attribute Database" means a database containing parcel location information, interest holder names, instrument information and other related data for a PID;
- (g) "PID" means a parcel identifier which identifies a parcel of land on a Digital Property Map or in the Parcel Attribute Database;
- (h) "Standards" means the standards of practice established by the Association from time to time that are applicable to this agreement;

- (i) "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; and
- (j) "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 will maintain eligibility for the duration of this Agreement; and
- (b) is familiar with and will comply with the Standards.

2.2 The Subscriber acknowledges that failure to comply with the terms and conditions of this Agreement, including the Rules and Guidelines for Adjudication contemplated under clause 4.1 of the Master Agreement, may 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 any services performed by the Subscriber under this Agreement, including the right to submit Web-based documentation such as Applications for PID Approval under section 10.1(2) of the Act.

3. **Web-based Documentation**

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

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. **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 or an Advance Ruling has been obtained under clause 4 of the Master Agreement.

4.3 Subject to section 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. **Acceptance**

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

6. **Procedures**

6.1 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.

7. **Release of Subscriber 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 hereby authorizes and directs the Corporation to promptly notify the Association in writing of any claim or potential claim against the Subscriber in respect of work carried out under this Agreement as provided in section 3.4 of the Master Agreement.

7.3 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 PID Approval/Statements of Appropriateness issued by the Subscriber after the signing of this Agreement.

8. **Limitation of Liability of Subscribers**

8.1 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, a parcel description or a Statement of Appropriateness submitted by a Subscriber, shall be limited as set out in section 3 of the Master Agreement.

8.2 Where the eligibility of the Subscriber has terminated, only those claims made by the Corporation against the Subscriber in respect to any services performed by the Subscriber under this Agreement or accepted by the Corporation from the Subscriber before the Association had given notice to the Corporation of the termination of the Subscriber's eligibility are governed by this Agreement.

9. **Arbitration**

9.1 Subject to clause 7 of the Master Agreement, 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.

9.2 For greater certainty, the liability of the Subscriber to the Corporation in respect of a claim by the Corporation under article 8 is not a dispute contemplated for resolution by the arbitration provisions of section 9.1.

9.3 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.

10. **Changes to the Agreement**

10.1 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.

11. **Termination of Agreement**

11.1 This Agreement shall terminate immediately upon the occurrence of the first of the following:

- (a) termination of the Master Agreement; or
- (b) termination of the Subscriber's eligibility; or
- (c) upon 30 days written notice by the Subscriber to Service New Brunswick.

11.2 Where this Agreement has terminated under paragraph 11.1(b), this Agreement shall, at the option of the Subscriber, be revived upon the Subscriber re-establishing eligibility.

11.3 Notwithstanding termination of this Agreement, the limitations on liability set out in section 8 of this Agreement shall survive such termination.

12. **Notice**

12.1 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, NB
E3B 5G4
Attention: Registrar General 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 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.

12.2 Notwithstanding the provisions of section 12.1 permitting notice to be given by facsimile or electronic transmission, any notice to be given pursuant to section 8.2 shall not be effective unless personally served in accordance with section 12.1.

13. **Time**

13.1 Time is of the essence of this Agreement.

14. **Assignment**

14.1 Neither party may assign this Agreement.

15. **No Agency or Partnership**

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

16. **Governing Law**

16.1 This Agreement shall be governed in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein and, subject to an Advance Ruling and section 9, 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.

17. **Entire Agreement**

17.1 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

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Witness

[Subscriber]

SERVICE NEW BRUNSWICK
