Engagement Letter for Legal Professionals

[26May21]

[Name of Firm

 address of firm]

By email: [ ]

Attention: [name of solicitor]

Re: Terms of Engagement for Acting as Legal Professional on Behalf of
First West Credit Union (the “Credit Union”),

I am pleased to confirm your appointment to prepare mortgages for, and otherwise act on behalf of, the Credit Union, pursuant to the scope and terms set out in this letter. If these terms are acceptable to you, please have one copy of this letter signed as approved and returned to us.

The Credit Union’s terms of engagement of you shall apply to you and all lawyers and staff in your firm. We expect you to become reasonably familiar with the Credit Union’s general policies and procedures applicable to legal services performed by your firm for us and encourage you to contact the Credit Union for guidance on such policies and procedures if you are not yet familiar with them.

## Extent of Appointment

You are appointed to prepare commercial mortgages for all branches and all Regions of the Credit Union [to a maximum of $ \_\_\_\_\_\_\_\_\_\_ per mortgage], and such ancillary services as described herein.

The appointment applies to you personally and we confirm that you will personally ensure that all legal professionals and staff members in your firm will abide by the terms of this engagement. To the extent that these policies and procedures differ in any respect from past practice, the policies and procedures set forth in this letter shall govern our ongoing relationship with your firm, including matters which your firm may be currently handling.

There may be situations where certain of these policies seem inappropriate or where you have proposals for improvement of our policies. We encourage you to raise these concerns directly with the Credit Union.

1. Scope of Services

Mortgages:
You are to:

* prepare, register, and issue funds upon the security of mortgages upon interests in real estate by members of the Credit Union in accordance with the General Mortgage Instructions and the specific instructions of the Credit Union
* prepare and register discharges of mortgages in accordance with the specific instructions of the Credit Union
* Notarize or witness the execution of documents executed by employees of the Credit Union.

Other Services:
From time to time you may receive requests for provision of services beyond the scope of services as set forth above. Before agreeing to a request for services from Credit Union staff, it is your obligation to notify the Vice President Credit. It shall be your responsibility to provide guidance on such proposed engagement, the kinds of issues and other matters you will be expected to bring to the Credit Union’s attention.

Duty for All Services:

During the course of any engagement we expect that you will keep the Credit Union fully informed of all facts, circumstances, requirements, developments and/or issues that may have significant consequences to the Credit Union, including, but not limited to:

1. any significant or unusual legal, reputational or regulatory risk;
2. any recent or proposed change in law, rule, regulation or legal/regulatory matter that may impact the Credit Union’s activities;
3. any indemnity or guarantee requested of the Credit Union;
4. any actual or potential violation of law, rule or regulation, or any internal Credit Union policy or procedure arising from or as relates to your engagement;
5. any activity exceeding the scope of authorized internal approvals, to the extent such becomes known to you; and
6. any fact or matter that comes to your attention that causes you concern as to the honesty or integrity of any Credit Union employee or any Member with whom the Credit Union is transacting; and
7. Any matter that is likely to create or give rise to adverse reputational harm to the Credit Union.

Unless otherwise agreed, the Credit Union must be provided with all written legal opinions and significant work product prepared on behalf of the Credit Union. The Credit Union must be provided with drafts of legal opinions in advance of any transaction as requires or relies upon your opinions. You should highlight significant proposed assumptions, qualifications, reservations, and similar issues to the Credit Union.

## No Assignment of Appointment

You will remain responsible for all services performed or requested during the period of the appointment, even if the appointment is later brought to an end. This appointment is of you, personally and it cannot be assigned. Unless expressly authorized by the Credit Union in writing, you must not delegate your responsibilities to any person other than your employees working under your actual and continuous supervision and land title agents and couriers of your choice. You will remain responsible for all persons operating under this appointment to you.

## Instructions by Authorized Officers

All instructions of the Credit Union will be provided to you either by Digital Format or by email. It is your responsibility to prepare and obtain confirmation in writing of any oral or informal instructions given to you by the Credit Union. The Credit Union will not be bound by any such instructions not so recorded or authorized. In addition, if you receive instructions that you consider to be ambiguous or imperfect, it will be your responsibility to have those instructions clarified immediately before acting upon them.

All reports, advice, and information from you to the Credit Union will be provided or confirmed in writing by you, but you will nevertheless be bound by any statement, oral or in writing, by you or any of your employees, notwithstanding any limitation of authority sought to be imposed by you.

## Standard Forms

You will use the Credit Union’s standard documents without any additions, deletions, or amendments so far as may be practicable.

You are responsible for verifying that the documents are appropriate for the mortgage required having regard to the Credit Union’s prevailing policies on loan repayment terms, interest rates, and prepayment privileges, as you are from time to time informed.

considered by the Credit Union to be fair. You will not, without the approval of the Credit Union, charge higher fees to the Credit Union than those calculated on the approved fee schedule, although you may charge less.

## Acting for the Member and the Credit Union

Provided that such representation is not expressly prohibited by operation of any statute, regulation, or professional society rule applicable in your jurisdiction of practice or in the jurisdiction of the lands subject to the mortgages being prepared by you, the Credit Union hereby consents to your acting for both the Credit Union, as mortgagee, and a member or members of the Credit Union (the “Member(s)”), as purchaser(s) and mortgagor(s), in transactions where the Credit Union is providing the mortgage financing (“Financing Transactions” or individually a “Financing Transaction”).

We confirm that if you choose to act for more than just the Credit Union in any Financing Transaction:

* 1. the Credit Union acknowledges that you have recommended to the Credit Union that each of the Credit Union and the Member(s) have independent representation ;
	2. you will recommend to the Member(s) that each of the Credit Union and the Member(s) have independent legal representation and will both confirm that advice to the Member(s) and obtain their consent for you to so act in writing using a consent letter substantially as appended hereto;
	3. you will raise and explain to the Credit Union and the Member(s) the legal effect of all issues relevant to the particular Financing Transaction which may be of importance to the Credit Union or the Member(s), as the case may be;
	4. if a conflict of interest arises between the Credit Union and the Member(s), you will be unable to continue to act for either the Credit Union or the Member(s) with respect to the Financing Transaction; and
	5. no information received from either the Credit Union or the Member(s) may be treated as confidential so far as the other party is concerned.

However, if you act for both the Credit Union and the Members, in the Financing Transaction, under no circumstances will you act for the Member(s) in any foreclosure proceedings relating to the Financing Transaction.

This Consent will continue until cancelled by notice in writing by the Credit Union.

## General Provisions

* **Inadequate Instructions** – you will advise the Central Lending Operations department if any of the general procedures referred to in this letter or any general or specific instructions, mortgage or otherwise, issued by the Credit Union appear inadequate or inappropriate to any particular transaction, and you will thereafter act in accordance with the specific instructions of the Credit Union
* **Authorized Officers** – mortgage and other instructions will normally be issued by a Central Lending Operations department but you will also:
* act on the instructions of, or
* provide, if requested, full information and copies of relevant documents in respect of your actions for the Credit Union, in general or in respect of any specific matter or matters, to

any Vice-President - Credit of the Credit Union, and, when authorized by one or more of these officers, the corporate lawyers of the Credit Union or any other officer or employee of the Credit Union.

* **Duty of Continuous Disclosure** – you will at all times identify yourself as acting for the Credit Union and will obtain from the Member(s), authority to deliver to the Credit Union all documents and information sufficient to satisfy the Credit Union with respect to the acquisition and disbursement by you of all funds in connection with all Financing Transactions. Without limitation you will inform the Credit Union with respect to all other charges upon a property being mortgaged to the Credit Union, whether in priority to the Credit Union’s security or subsequent thereto, of any indication that a loan is being obtained by a Member for the benefit of any other person, or that a transaction or any collateral or associated transaction is not bona fide and for true and valuable consideration, whether the lawyer became aware of any deficiencies in disclosure of information by the Members to the Credit Union in the loan application process or the adequacy, accuracy, or legitimacy on any document or information provided to you by the Member(s) or as relied upon by the Credit Union in a Financing Transaction.
* **Property/Borrower Identification** – you will be responsible for verifying that property mentioned in a mortgage is the property referred to in the instructions and that the security documents have been fully and properly executed by all necessary parties.
* **Title Review and Confirmation –** you will confirm that the borrower has or will have a good marketable title to the lands and premises mortgaged as described in the instructions you receive from the Credit Union. Any title defects, liens, executions, judgments, encumbrances and easements affecting the subject lands must be approved by the Credit Union before any advance is made, save and except as expressly identified in the transaction instructions from the Credit Union. You will confirm in writing the balance owing under all prior permitted financial charges and verify that such are reflected in the written transaction instructions from the Credit Union, failing which you will report this information to the Credit Union and obtain new transaction instructions before you issue funds.
* **Final Report** – within the earlier of one week of receipt of a State of Title Certificate or 30 days after disbursement, you will deliver to the Central Lending Operations department a mortgage report in the Credit Union’s standard form with copies of all other necessary documents to confirm that you have obtained on behalf of the Credit Union a good, safeholding, and marketable mortgage security and that the funds have been properly and safely advanced thereunder to obtain the requisite priority.

**Confidentiality**: - The confidentiality of the Credit Union’s Members personal information and the Credit Union’s proprietary information is critically important to the Credit Union. If the Credit Union provides you or your firm with confidential or proprietary information, you agree and shall cause your agents and representatives to agree, to maintain the confidentiality of such information and to use such information solely for the purposes of providing services to the Credit Union. Furthermore, if confidential information includes any Member personal information, you shall comply with all federal and provincial laws, rules and regulations for protecting the confidential information and privacy rights of such persons.

## Issue of Funds in Financing Transactions

* **Requisition of Funds** – the funds will be issued to you upon receipt of your written (digital, fax or email) request. Such a request will be deemed to be an undertaking by you that all necessary security documents have been executed, that you have a written Direction signed by all necessary persons for the issue of funds to you, and for the application of those funds by you, and that you have made, or expect to make in the immediate future, arrangements for the registration of all necessary documents and the payment of funds. Funds will be deposited to your trust account in the Credit Union.
* **If Unable to Advance** – if you are unable to obtain the required security for the Credit Union, you will forthwith return the funds to the Credit Union unadvanced. Partial advances may not be made without the specific instructions of the Credit Union. You will be responsible for the full security of all funds advanced to you which have not yet been returned to the Credit Union.
* **Payout Statements** – you may rely upon a written statement of moneys issued by the holder of any charge on real estate. In the case of banks, trust companies, Credit Unions, insurance companies, and finance companies carrying on business in Canada, you may, without being liable for any loss, make payment to them against a statement issued on behalf of any such corporation upon its commitment to deliver an effective assignment or release of its interest.

## Conflict of Interest

* **Advice of Conflicts** – notwithstanding the limited scope of your engagement, you will not in fact, nor in appearance, continue to act in any situation where any conflict of interest exists or arises between your other clients and the Credit Union. Your acceptance of this appointment shall be deemed to be a representation that to your present actual knowledge, no conflict of interest exists in fact as between any of your other clients and the Credit Union. You will promptly advise the Credit Union of any apparent or real conflict of interest which may arise during the term of your appointment or withdrawal from this appointment, and in any event, shall not act against the interests of the Credit Union except if you obtain the express informed and written consent to do so.
* **Confidentiality** – no information relating to the Credit Union or any Member of the Credit Union obtained by you in acting for the Credit Union, whether of specific facts, opinions, or general practices and procedures, shall be or appear to be available for use by you to the detriment of the Credit Union or any Member of the Credit Union.

## Acting Against the Credit Union

You will not, without the prior written consent of the Credit Union, accept instructions to act on behalf of any other client on any matter against the Credit Union.

1. Liability Insurance

You will maintain, at your own expense, insurance against liability for errors or omissions throughout the term of your appointment with a minimum coverage of $[Transaction](#Transaction) for any one transaction, and with a deductible not exceeding $10,000. You will be responsible for the true and faithful performance by your employees, land title agents, and couriers of their duties. Any bonding of such employees, agents, or couriers shall be in your discretion and without cost to the Credit Union. Confirmation of continued liability coverage is to be provided to the offices of the Credit Union by the 28th of February annually.

## Limitation of Authority

You are engaged for the purposes mentioned in Sections 1 and 2 of this letter in connection with specific matters referred to you by written instructions. Without the written authority of the Credit Union or the persons mentioned in Section 8, you will not make any representation to any person on behalf of the Credit Union, nor incur any obligation on its behalf, nor grant any release or indulgence in respect of obligations due to the Credit Union.

## Effective Agreement

The terms of this letter when accepted by you will constitute an agreement between you and the Credit Union.

Save for specific written instructions pursuant to the terms of this Agreement, no modification of this Agreement shall be binding upon the Credit Union unless agreed to in writing by the Credit Union. This Agreement contains or refers to the entire obligations of the Credit Union in respect of your appointment, and there is no representation, term, condition, warranty, or understanding, collateral or not, binding on the Credit Union, not contained in this Agreement.

First West Credit Union

[signature]

Paul Foster, Vice President Credit Process and Automation

I accept my appointment to prepare mortgage documents for the Credit Union upon the terms set out in this letter.

[[Firm](#Firm)]

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Signature of Legal Professional Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Solicitor

Name of Signor

 Notary Public