



The Continuing Legal Education Society of Nova Scotia

Consolidated Master Agreement

Charles Johnstone, Robichaud, Godin, Williamson, Theriault & Johnstone

CONSOLIDATED MASTER AGREEMENT

MEMORANDUM OF AGREEMENT made the 9th day of November, 1999.

B E T W E E N:

LAW SOCIETY OF NEW BRUNSWICK, a body corporate under and by virtue of the laws of the Province of New Brunswick having its head office at the City of Fredericton, in the Province of New Brunswick, (hereinafter referred to as the "Law Society"),

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 was constituted for the purpose, *inter alia*, "of advancing and maintaining the standard of legal practice in the Province of New Brunswick as well as governing and regulating the legal profession in New Brunswick";
- (b) in March of 1989, the Province of New Brunswick adopted a Land Information Policy in which one of the stated objectives was: "to improve available information services to the public (modernization of land information systems - land registry, parcel index, land titles)";
- (c) the Corporation recognized as a goal and priority in its Business Plan 1996-2001, the requirement to implement a fully automated, integrated, land information management system, with a paperless registry office providing electronic registration as a key component;

- (d) the Province of New Brunswick and its citizens will benefit greatly from the cost effectiveness and economic benefits which will flow from the rapid conversion of title from the present grantor/grantee registry to a Land Titles System;
- (e) to that end, the *Land Titles Act*, Acts of New Brunswick, 1981, C.L-1.1, has been amended to permit its application to all areas of the Province of New Brunswick;
- (f) subsection 11(2) of the *Land Titles Act* has been amended to require an application to be accompanied by a certificate of title in the prescribed form certified by a member of the Law Society authorized to practise law;
- (g) the Law Society and the Corporation wish to enter into this Agreement to facilitate the project for conversion to a province-wide land titles system and, pursuant to section 76.01 of the *Land Titles Act*, in order to govern claims against members of the Law Society insured by the Law Society;

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) "Advance Ruling" means a determination made by an adjudicator in accordance with the terms and conditions of the Subscription Agreement and the Rules and Guidelines for Adjudication referred to in clause 4.1;
- (b) "Agreement" means this Agreement and any agreement that is supplementary to or in amendment or confirmation of this Agreement;
- (c) "Certificate of Title" means a certificate of title issued under paragraph 11(2)(b) of the *Land Titles Act*;
- (d) "Effective Date" means the Effective Date referred to in clause 14.1;
- (e) "eligibility" means the status of an eligible member;

- (f) "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;
- (g) "Implementation Committee" means the committee referred to in article 7;
- (h) "member" means a member of the Law Society;
- (i) "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; and
- (j) "Subscription Agreement" means an agreement made between the Corporation and an eligible member in the form annexed hereto as Schedule A.

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 imparting the masculine gender include the feminine and neuter genders.

2. Exchange of Information

2.1 On the Effective Date, the Law Society shall provide to the Corporation a list of all eligible

members, assigning a unique identification number to each eligible member. The Law Society shall thereafter notify the Corporation of each person who subsequently becomes an eligible member.

2.2 Following the Effective Date, the Law Society shall promptly notify the Corporation in writing of the following:

- (a) any change in the eligibility of members on the list of eligible members by virtue of suspension, disbarment, cessation of insurance or practice restriction;
- (b) any change in the Standards;
- (c) any change in the Law Society practices regarding audit and enforcement of the Standards;
- (d) any change in the mandatory insurance coverage that affects insurance coverage for negligence in issuing Certificates of Title; and
- (e) any change in the compensation fund policy that affects reimbursement of victims of dishonesty or fraud on the part of eligible members in the issuance of Certificates of Title.

2.3 On the Effective Date, the Corporation shall provide the Law Society with a list of the members who have signed Subscription Agreements with the Corporation.

2.4 Following the Effective Date, the Corporation shall promptly notify the Law Society in writing of the following:

- (a) termination of any Subscription Agreement;
- (b) the names of any members who have signed Subscription Agreements subsequent to the date of this Agreement; and
- (c) any claim or potential claim against a member who has signed a Subscription Agreement when such claim or potential claim comes to the attention of the Corporation.

2.5 Upon request by the Law Society, or, if a mutually acceptable schedule has been agreed upon between the parties, then in accordance with that schedule, the Corporation agrees to provide to the Law Society details of Certificates of Title issued by members.

2.6 For the purpose of paragraph 2.2 (a), the Corporation shall establish an electronic register of the names of members and shall grant to the Law Society exclusive access to that register in which the Law Society shall electronically record any alteration in a member's eligibility, whether commencement, cessation or reinstatement of eligibility.

3. Limitation of Liability of Members

3.1 The Corporation acknowledges and agrees that any claim against an eligible member, whether under section 76 of the *Land Titles Act* or otherwise, in respect of a Certificate of Title issued by the member to the Corporation pursuant to the terms of the Subscription Agreement signed by that member shall be limited as follows:

- (a) no claim shall be made in any of the following three cases:
 - (i) after the date that is ten (10) years after the date of the Certificate of Title;
 - (ii) where the member has certified title in accordance with the Standards and was not negligent;
 - (iii) where, pursuant to the Rules and Guidelines for Adjudication, an Adjudicator has made an Advance Ruling authorizing the member to certify, or proceed, notwithstanding the issue giving rise to the claim.
- (b) no claim shall exceed the least of the following amounts:
 - (i) \$5.0 million;
 - (ii) the fair market value of the parcel of land and all improvements at the date of the claim determined as if the negligence giving rise to the claim had not occurred; and
 - (iii) the amount paid as compensation by the Corporation in respect of the deficient Certificate of Title.
- (c) in the case of claims for recovery of an amount of \$250,000 or less, the liability of the member shall not exceed the amount determined by the panel of Adjudicators under clause 4.3.

3.2 The Corporation agrees that if the claim arises out of the dishonesty, fraud or criminal conduct of an eligible member in the issuance of a Certificate of Title and is not covered by the member's professional liability insurance, the claim shall be limited as follows:

- (a) a maximum of \$100,000 per claim;
- (b) a maximum of \$250,000 for all eligible members as a group per fiscal year and shall be non-cumulative; and for this purpose, the fiscal year will be from May 1 to April 30th and the date of a claim shall be the date that the claim, in writing, is received by the Corporation.

3.3 Where the eligibility of a member who has entered into a Subscription Agreement has terminated, only those claims made by the Corporation against that member in respect of Certificates of Title that were accepted by the Corporation from the member before the Law Society had given notice to the Corporation of the termination of the member's eligibility are governed by this Agreement.

4. Adjudicators

4.1 In consultation with the Law Society, the Corporation shall appoint eligible members to serve as Adjudicators in each Judicial District of the Province and promulgate rules and guidelines for the term of their appointment, the allocation of work among them, the procedure for their decision-making, reimbursement of their expenses, remuneration (if any), indemnification, removal and such other matters as the parties consider necessary. All such rules and guidelines shall be considered a part of this agreement upon acceptance by the parties (Schedule "B" added November 9, 1999).

4.2 An eligible member who has entered into a Subscription Agreement shall be entitled to the benefit of adjudication as set out in the Subscription Agreement and the Rules and Guidelines for Adjudication.

Where the claim by the Corporation against an eligible member in respect of a Certificate of Title is for recovery of an amount not exceeding \$250,000, liability of the eligible member or of the Corporation shall be determined by a panel of three (3) Adjudicators selected at random from the Adjudicators appointed under clause 4.1 and the decision of the majority of the panel shall be binding on both the Corporation and the Law Society. For this purpose, the panel may apportion liability if the parties consent in advance. The Corporation shall give the Law Society reasonable advance written notice of the hearing to determine liability of the eligible member or the Corporation under this clause.

5. Compensation Fund

5.1 The Law Society, together with eligible members, shall co-operate with the Corporation in the establishment and administration of a compensation fund to compensate the Corporation (subject to the limits set out in clause 3.2) for losses incurred by the Corporation as a result of dishonesty, fraud or criminal acts in the issuance of Certificates of Title by eligible members who have signed Subscription Agreements.

6. Co-operation

6.1 The parties agree to co-operate with one another in facilitating the implementation and operation of the *Land Titles Act* and in enabling the Corporation to achieve a fully paperless system.

6.2 The parties agree to co-operate in the establishment of a procedure by which, after the creation of a fully paperless land titles system, eligible members will be the only persons, other than the Crown in right of the Province of New Brunswick and surveyors who are members in good standing of the New Brunswick Association of Land Surveyors, permitted to:

- (a) register instruments electronically;

and eligible members will be the only persons, other than the Crown in right of the Province of New Brunswick, permitted to:

- (b) adjudicate upon and archive data under the *Land Titles Act*; and
- (c) issue certificates of registered ownership under the *Land Titles Act*.

7. Implementation Committee

7.1 Each party to this Agreement shall appoint an equal number of members to a committee (the "Implementation Committee"), the meetings of which shall be chaired alternately by a representative of the Law Society and the Corporation.

7.2 The Implementation Committee shall meet as required and shall act as a forum for discussion and communication to ensure that each party is well informed of the requirements of the other, to identify issues common to the parties with respect to the implementation of this Agreement and the *Land Titles Act* and to work toward the resolution thereof.

7.3 Each party shall submit the minutes of each meeting of the Implementation Committee to its governing board (the board of directors, in the case of the Corporation; the Council and its Insurance Management Committee, in the case of the Law Society) for consideration at the meeting of that governing body next following the distribution of the minutes by the Implementation Committee.

8. Arbitration

8.1 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.

8.2 For greater certainty, the liability of a member to the Corporation in respect of a Certificate of Title issued by the member is not a dispute contemplated for resolution by the arbitration provisions of clause 8.1.

8.3 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.

9. Agreement to Benefit Eligible Members

9.1 Eligible members who have entered into a Subscription Agreement shall be the only members

- a) entitled to the benefit of this agreement, or
- b) who may rely on it.

10. Complaint

10.1 The parties acknowledge that the Corporation may, if it is of the opinion that

- a) an eligible member who has entered into a Subscription Agreement has failed to comply with the terms and conditions of that agreement; or
- b) the continued practice of the eligible member as provided for in a Subscription Agreement may be harmful to the Corporation, to the public or to the registry system,

file a complaint with the Registrar of Complaints under section 41 of the *Law Society Act, 1996*.

11. Governing Law

11.1 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.

12. Changes to the Agreement

12.1 Any modifications to this Agreement shall be in writing and signed by the duly appointed officers of both parties.

13. Termination

13.1 This Agreement shall terminate on the earliest of the following dates:

- (a) January 1, 2020; or
- (b) the date that is ten (10) years following the date of the full conversion of all parcels of land to the Land Titles System; or
- (c) the date that is specified in a notice of termination given by either party to the other, provided that the date specified in any such notice of termination shall not be less than 180 days after giving of the notice of termination to the party to whom it was

directed; or

- (d) the date that is thirty (30) days following the giving of notice by the Corporation to the Law Society that in the opinion of the Corporation the Standards or then current audit and enforcement practices of the Law Society materially diminish the reliability of Certificates of Title.

13.2 Upon termination of this Agreement, neither party shall be entitled to make upon the other any claim or demand whatsoever for damages, costs or losses suffered or incurred, or to be suffered or incurred, whether direct or consequential, arising out of, or in any manner related to, the termination of this Agreement.

13.3 Notwithstanding termination of this Agreement, the limitations on liability set out in article 3 of this Agreement shall survive such termination with respect to Certificates of Title issued before such termination.

14. Notice

14.1 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 electronic mail, to such party addressed as follows:

in the case of the Law Society to:

Law Society of New Brunswick
1133 Regent Street, Suite 206
Fredericton, New Brunswick
E3B 3Z2
Attention: Executive Director
Fax no. 506-451-1421
E-mail: mcarrier@lawsociety.nb.ca

with a copy to the Insurance Management Committee:

Insurance Management Committee
Law Society of New Brunswick
1133 Regent Street, Suite 206
Fredericton, New Brunswick E3B 3Z2
Attention: Claims Manager
Fax no. 506-451-1421
E-mail: jlee-white@lawsociety.nb.ca

in the case of the Corporation to:

Service New Brunswick
P.O. Box 1998
985 College Hill Road
Fredericton, New Brunswick
E3B 5G4
Attention: Vice President, Legal
Fax no. 506-453-3898
E-mail: roderick.mackenzie@snb.gov.nb.ca

and a notice so served personally shall be deemed given at the time of delivery 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.

14.2 Notwithstanding the provisions of clause 14.1 permitting notice to be given by facsimile or electronic transmission, any notice to be given pursuant to clause 3.3 shall not be effective unless either personally served in accordance with clause 14.1 or recorded in the manner contemplated by clause 2.6. In the latter case, the notice shall be deemed to be effective at the time the entry is made in the electronic register.

15. Effective Date

15.1 This Agreement comes into force on the date agreed upon by the parties as the Effective Date.

16. Time

16.1 Time is of the essence of this Agreement.

17. Assignment

17.1 Neither party may assign this Agreement without the prior written consent of the other which consent shall not be unreasonably withheld or delayed.

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. Entire Agreement

19.1 This Agreement, including the Schedules hereto 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 under seal by their respective proper officers in that behalf as of the day and year first above written.

LAW SOCIETY OF NEW BRUNSWICK

(sgd): Julian A.G. Dickson, Q.C.

PRESIDENT

(sgd): Charles H. Johnstone

**TREASURER
CHAIRMAN –
Property Law Advisory Committee**

SERVICE NEW BRUNSWICK

(sgd): R.W. Gamble

PRESIDENT

(sgd): Roderick W. MacKenzie

VICE-PRESIDENT - LEGAL

Schedule "A"

SUBSCRIPTION AGREEMENT

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

B E T W E E N:

[NAME OF LAWYER], 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 agreement dated February 4th, 1999, as amended (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

9.2 In this Agreement

- a) "Act" means the *Land Titles Act*, c.L-1.1 of the Revised Statutes of New Brunswick, as amended by c38 of the Statutes of New Brunswick, 1998;
- 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 for claims by the Corporation against the Subscriber under clause 3.1 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. Compensation Fund

9.1 The Subscriber shall co-operate with the Law Society and the Corporation in the establishment and administration of a compensation fund to compensate the Corporation (subject to the limits set out in clause 3.2 of the Master Agreement) for losses incurred by the Corporation as a result of dishonesty, fraud or criminal acts in the issuance of Certificates of Title by Subscribers.

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") 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: Vice President, Legal
Fax no. 506-453-3898
E-mail: roderick.mackenzie@snb.gov.nb.ca

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)

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Witness

[Subscriber]

SERVICE NEW BRUNSWICK

Schedule "B"

RULES AND GUIDELINES FOR ADJUDICATION

An Adjudicator is expected to exercise "common sense and professional judgment" referred to in the Preface to the Standards for the Practice of Real Property Law dated January 26, 1999.

1. Purpose and Scope

1.1 Unless defined in these Rules and Guidelines for Adjudication, the definitions set out in the Master Agreement and the Subscription Agreement shall apply.

1.2 These Rules and Guidelines for Adjudication shall apply only to Advance Rulings.

1.3 Where a Subscriber is of the opinion that title to a parcel of land is marketable, although strict application of the Standards would not permit the issuance of a Certificate of Title, the Subscriber may submit an application to an Adjudicator for a determination as to its marketability.

1.4 A Subscriber may submit an application to an Adjudicator for a determination of an issue affecting an Application for PID Approval under subsection 10.1(2) of the Act, a Statement of Appropriateness, or a Certificate of Legal Effect.

2. Application

2.1 An application to an Adjudicator shall be in writing and shall include:

- a) the date of the application, the name of the applicant and the PID of the parcel of land;
- b) a concise statement of the issue to be determined;
- c) copies of all documents, plans and other information pertinent to the issue;

and shall be accompanied by the fee provided for in clause 6.1.

3. Determination

3.1 The Adjudicator shall provide to the applicant a written determination of the issue within a reasonable time.

3.2 Upon receiving a determination from an Adjudicator that title to a parcel is marketable notwithstanding a title flaw or an issue raised under clause 1.1, a Subscriber relying on that determination may certify title to the parcel affected by the title flaw or issue, and that Subscriber shall receive the benefit of limited liability pursuant to article 3 of the Master Agreement.

3.3 Upon receiving a favourable determination from an Adjudicator on any submitted issue under clause 1.2, a Subscriber relying on that determination may proceed, and the Subscriber shall receive the benefit of limited liability pursuant to article 3 of the Master Agreement.

3.4 Upon receiving an unfavourable determination from an Adjudicator on any submitted issue, the Subscriber shall not certify title, or proceed with an Application for First Registration, an Application for PID Approval, or the issuance of a Statement of Appropriateness or a Certificate of Legal Effect, as the case may be, until such time as any deficiencies have been resolved.

3.5 Where an application is submitted by a Subscriber for the determination of an issue resulting from a requisition made by another Subscriber, the Adjudicator may award to the applicant costs against the requisitioning Subscriber not to exceed the fees provided for in clause 6.1, if in the opinion of the Adjudicator the requisition was frivolous. Costs shall be paid forthwith.

4. Record of Application

4.1 The applicant and the Adjudicator shall keep a Record of Application, consisting of:

- a) the application; and
- b) the written determination of the Adjudicator.

4.2 The Adjudicator shall, forthwith upon making a determination, make available to the Corporation, the Law Society and to other Adjudicators, the Record of Application, including the topic or topics under which it should be indexed.

4.3 An index of the Records of Application, sorted by PID, topic and name of Adjudicator, shall be maintained by the Corporation.

5. Appeals

5.1 Following an unfavourable determination by an Adjudicator, the applicant may appeal to a panel of three other Adjudicators selected by the applicant for a determination of the same issue.

5.2 The appeal application shall consist of the Record of Application and the fee provided for in clause 6.2.

5.3 The decision of the majority of the Adjudicators on the panel shall be provided to the applicant in writing within a reasonable time, and the provisions of clause 3.2, clause 3.3 and clause 3.4 shall apply with respect to the decision.

5.4 Where an appeal application is submitted by a Subscriber for the determination of an issue resulting from a requisition made by another Subscriber, the panel of Adjudicators may award to the applicant costs against the requisitioning Subscriber not to exceed the aggregate of the fees provided for in clauses 6.1 and 6.2, if in the opinion of the majority of the Adjudicators on the panel the requisition was frivolous. Costs shall be paid forthwith.

5.5 The applicant and the Adjudicators shall keep a Record of Appeal, consisting of:

- a) the Record of Application; and
- b) the written decision of the majority of the Adjudicators on the panel.

5.6 The Adjudicators shall, forthwith upon making a determination, make available to the Corporation, the Law Society and to other Adjudicators, the Record of Appeal, including the topic or topics under which it should be indexed.

5.7 An index of the Records of Appeal, sorted by PID, topic and names of Adjudicators, shall be maintained by the Corporation.

6. Fees

6.1 The fees payable by the applicant to an Adjudicator for a determination of issues:

- a) with respect to a Certificate of Title, shall be \$150 + HST; and
- b) with respect to a parcel description, Statement of Appropriateness or Certificate of Legal Effect, shall be \$100 + HST.

6.2 The fees payable by the applicant for an appeal application are the same as under clause 6.1, but are payable to each of the three Adjudicators.

7. Conflict of Interest

7.1 The normal rules regarding conflicts of interest shall apply to the adjudication process.

7.2 Notwithstanding clause 7.1, the fact that an applicant is an Adjudicator shall not be sufficient reason to disqualify the applicant from applying for an Advance Ruling.

8. Indemnification

8.1 Provided an Adjudicator has acted in good faith in the performance of his or her duties, the Adjudicator shall be indemnified by the Corporation for any claims against the Adjudicator for services performed under the Master Agreement dated February 4, 1999, as amended, or any supplementary agreements entered into between the Corporation and the Law Society.

9. Term of Appointment

9.1 The appointment of an adjudicator may be terminated by the Corporation in consultation with the Law Society.

10. Amendment

10.1 These rules and guidelines may be amended at any time by agreement of the Corporation and the Law Society.

LAW SOCIETY OF NEW BRUNSWICK

(sgd): Julian A.G. Dickson, Q.C.

PRESIDENT

(sgd): Charles H. Johnstone

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CHAIRMAN –
Property Law Advisory Committee

SERVICE NEW BRUNSWICK

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Please Note: This Document is also available in French. Please contact CLE if you require a copy.

