

Access License and Terms of Use

Gardiner Miller Arnold LLP (“**GMA**”) hosts and maintains a website at www.gmalaw.ca (the “**Site**”). By using the Site, you (referred to herein as the “**User**”) are agreeing to comply with and be bound by the following Access License and Terms of Use. If you proceed into the Site you are deemed to accept all of the terms herein as a valid and binding agreement in full force and effect between GMA and you as the User (the “**Agreement**”). If you do not want to accept these terms, you should not access the Site, review any information on it, or upload/download any contents or documents to or from it.

PLEASE REVIEW THE FOLLOWING TERMS AND CONDITIONS CAREFULLY

1. Ownership and Copyright of Site

- 1.1. **Ownership** - Save and except for the access license granted pursuant to Article 2 (**Access License**), the content of the Site and the expression, organization, gathering, compilation, magnetic translation, digital conversion, electronic transmission thereof are protected under applicable law relating to copyrights, trademarks and other proprietary rights (including but not limited to intellectual property) and are strictly reserved in favour of GMA. Except as permitted by Section 1.3 below, the User does not acquire ownership rights to any content or document obtained through the Site
- 1.2. **No Copying etc.** - The copying, redistribution, use or publication by a User of any content or other part of the Site, except as allowed by Article 2 (**Access License**), is strictly prohibited.
- 1.3. **User Content** – Notwithstanding this Article 1, GMA will not acquire any ownership, or proprietary rights in any form (including copyright, trademark or other intellectual property right), to any comments, posts or documents uploaded to the Site by the User in accordance with the license contemplated in Article 2 (“**User Content**”). By allowing a User to provide User Content or use the Site’s requesting and/or messaging capability (if available), GMA in no way waives any of its proprietary rights to the Site information and materials as contemplated in this Article 1.1 and 1.2 above.
- 1.4. **License in User Content** - The User is deemed to grant GMA a free, perpetual, non-exclusive, unrestricted, worldwide licence to:
 - (a) use, copy, adapt, publicly transmit, perform or display any such User Content,
 - (b) sub-licence any or all of these rights to third parties; and
 - (c) exploit any proprietary rights that the User may have in such User Content for its own use so that any right, title or interest in any new content based on User Content shall vest in GMA including (without restriction) any patent, trademark or copyright in any jurisdiction.

2. Access License

The User is hereby granted a non-exclusive non-transferable royalty-free license to access the Site for the purpose of:

- (a) reading, copying and using the publicly-available information on the Site to educate oneself and others about the legal services offered by GMA in condominium law, real estate, business law, wills and estates, litigation and dispute resolution and GMA's other practice areas as indicated on the Site;
- (b) providing information to GMA via web-based, PDF or MS-Word forms to enable GMA to provide its clients with advice and legal services; and
- (c) purchasing any pre-packaged flat-fee services or other products made available on the Site by GMA provided that the User complies with the terms in this Agreement and any additional contractual terms of purchase set out at the Site at the time of sale.

The User may not use the Site for any other purpose.

3. General License Limitations

- 3.1. **Educational Use** – In the event that the User copies information from the Site, quotes the Site or otherwise makes any use of any material on the Site for his or her own purposes, the User shall identify GMA and the Site as the source of the material. Such information shall only be used for personal and educational purposes. No one shall make commercial use of such information without GMA's express written consent.
- 3.2. **License Revocation** – In addition to any other rights hereby reserved, where a User violates the terms of this Agreement GMA reserves the right to deny such User access to the Site, and revoke such User's license by cancelling that User's access account at any time.

4. Deadlines

In addition to any other disclaimer provided herein, GMA in no way represents, warrants or guarantees that the Site will be available within any deadline or time period. Furthermore, for greater clarity, GMA in no way assumes any obligation on the part of any User to provide access to the Site within any prescribed deadline, and hereby disclaims any liability for any User who fails to act for any reason because such User relied solely on the Site. IF THE SITE IS UNAVAILABLE IT IS THE USER'S SOLE RESPONSIBILITY TO ACCESS THE INFORMATION CONTAINED THEREIN BY SOME OTHER MEANS.

5. Disclaimer and Limitation of Liability

- 5.1. **Disclaimer** – The forms, documents, message boards and other Site content are made available on an "as is" "where is" basis. All representations warranties, express or implied, are disclaimed and without limiting the foregoing the User expressly acknowledges each of the following:
 - (a) the information made available on the Site relating to any legal issues are available for information and educational purposes only and **DO NOT QUALIFY AS LEGAL ADVICE**. If a User requires legal advice, they need to retain GMA as their lawyers by providing a financial retainer and completing GMA's standard [Retainer Agreement](#);
 - (b) the information on the Site is subject to change, based on new information, developments in the law and modifications to GMA's practice areas;

- (c) opinions and recommendations contained in this Site from a named author are not attributable to GMA;
- (d) Content from anyone other than GMA is for personal use only. Permission to otherwise reprint or electronically reproduce such content in whole or in part is expressly prohibited, unless prior written consent is obtained from the owner;
- (e) there is no guarantee of privacy for personal information (including medical/health information) uploaded to the Site by the User about themselves. Such information may be included in a User's personal profile. Users should not upload private information or participate in any Site services or features if they are concerned about their personal privacy; and
- (f) in the absence of a signed [Retainer Agreement](#) and consultation with a GMA lawyer, with respect of any product or service included on the Site, GMA makes no representation or warranty of merchantability and fitness for a particular purpose.

The User assumes all responsibilities and obligations with respect to any decision to upload or download content from the Site, or when deciding to select and/or rely on any other document or any other Site material, to achieve the User's intended result.

- 5.2. **No Lawyer-Client Relationship:** GMA makes the Site available for your use and access, but this does not, in any way, create a lawyer-client relationship. You may use the Site to facilitate access to or communications with members of GMA by way of e-mail transmissions or otherwise via the Site. Receipt of any such communications or transmissions by any member of GMA does not create a lawyer-client relationship.
- 5.3. **Particular Situations** – The information within the Site, or available through the Site, may not be appropriate under the circumstances for any particular situation and does not substitute for appropriate professional advice. The specifics of a given situation may require provisions not contemplated in the documents or content of the Site. No representations, warranties or guarantees whatsoever are made as to the accuracy, currency, completeness, adequacy, reliability, suitability, quality or applicability of any information contained herein, including any information uploaded by a User for use in a particular situation.
- 5.4. **Site Accessibility and Viruses** – The Site may be unavailable or inaccessible from time to time, at any time, due to routine maintenance, errors, problems or other unforeseeable causes. Moreover, the information on the Site may contain bugs, errors, problems or other limitations. All responsibility or liability for any damages caused by viruses contained within the electronic file containing the form or document is hereby disclaimed.
- 5.5. **Servers in Foreign Jurisdictions** – The User hereby acknowledges that GMA may host the Site but, in so doing, may utilize servers and hosting services based outside of Ontario or Canada. Any documents or materials uploaded to, or downloaded from, the Site may be stored in servers located in, and subject to, the laws of a foreign jurisdiction. Such laws can include (without limiting the generality of foregoing) criminal and administrative legal requirements relating to investigation, search and seizure. Additionally, any information stored on servers located in the United States of America may be subject to search and seizure by United States Federal authorities under the U.S.A *Patriot Act* and other laws of

the United States relating to national security. GMA hereby disclaims any and all liability with respect to the enforcement of foreign laws, including the *Patriot Act*.

- 5.6. **Limitation of Liability** - GMA and its, shareholders, directors, officers, employees and affiliates have no liability whatsoever for a User's reliance on the Site or use of any information contained on the Site. In particular, but not as a limitation thereof, GMA and its affiliates are not liable for any INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LITIGATION OR THE LIKE), WHETHER BASED ON BREACH OF CONTRACT (INCLUDING BREACH OF WARRANTY), TORT (INCLUDING NEGLIGENCE ARISING FROM PRODUCT LIABILITY AND NEGLIGENT MISREPRESENTATION), ANY LEGAL COSTS ARISING THEREFROM, OR ANY OTHER COSTS OR EXPENSES ARISING OTHERWISE. Even if advised of the possibility of such damages, the disclaimer of liability for damages set forth above is a fundamental element of this Agreement for the use of the Site. This Site and the information contained herein would not be provided without such limitations. The User's sole remedies in respect of any damages suffered as a result of their use of the Site shall be to immediately discontinue his or her use of it.

6. Payment of Access Fees

If applicable, the User shall pay any fees required by GMA for access to the Site as GMA may post on the Site from time to time, including any fees charged on a "per download", "per upload" or "per access" basis depending on the nature of the services offered by GMA on the Site. GMA may require that such fees are to be paid by credit card, PayPal or other electronic payment mechanism prior to the User accessing or using the Site. Alternatively, GMA may allow the User to access the Site and send him/her/it an invoice at a later date. Any such invoice shall be paid strictly in accordance with the payments terms therein. If no payment terms are contained in said invoice, then the User shall pay within thirty (30) days of receipt, and interest shall accrue on any unpaid invoices at a rate of 10% per annum, calculated daily without deduction or set-off.

7. Indemnification

User agrees to indemnify, save and hold GMA and its directors, officers, employees, partners, and affiliates harmless from any liability for expenses, losses, costs (including any legal fees on a substantial indemnity basis) as a result of any damages arising out of any demand, claim, action, cause of action, mediation, arbitration or other legal proceeding against GMA that occurs as a result of accessing or using the Site and/or the User violating this Agreement.

8. Uploaded Documents

- 8.1. **Prohibited Material** – In uploading any materials or content or sending any requests with the Site, the User shall not, under any circumstances, supply, upload or send content that,
- (a) are unlawful, harmful, threatening, abusive, harassing, defamatory (either libellous or slanderous), invasive of another's privacy, pornographic, or is harmful to minors in any way;
 - (b) is false, deceptive or misleading;

- (c) infringes any patent, trademark, copyright, industrial design, or other form of intellectual property right of GMA or any other person;
- (d) contains personal information except as permitted by the *Personal Information and Electronics Documents Act (Canada)*;
- (e) constitutes unsolicited e-mail, junk mail, spam, or any form of advertising or solicitation for commercial purposes;
- (f) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- (g) is designed to disrupt the ability of other Users to use the Site or makes disproportionately high use of network resources or infrastructure, or otherwise negatively affect the ability of others to use the Site;
- (h) is in violation of any Canadian or Ontario law, including any statute, regulation, or common law requirement (including such requirements in law and equity); and
- (i) constitutes content or material that is deemed prohibited by GMA in its sole and absolute discretion that may be exercised unreasonably at any time.

8.2. **Moving, Deleting or Editing Documents** – The User acknowledges that GMA shall have the right (but not the obligation), in its sole and absolute discretion, to edit, delete or move any documents uploaded to the Site, or other content, at any time. The User understand that all data or documents transmitted through the Site are the sole responsibility of the person from whom such data or documents originated, and GMA shall not be liable for any damages arising from such documents as contemplated by Article 5 (**Disclaimer and Limitation of Liability**).

9. Prohibited Activity

9.1. **Hacking, etc.** – Users shall not attempt to gain unauthorized access to any portion or feature of the Site, or any other systems or networks connected to the Site or to any GMA server, or to any of the services offered on or through the Site, by hacking, password “mining” or any other illegitimate means.

9.2. **Monitoring and Circumventing Site** – Users shall not use any “deep-link”, “page-scrape”, “robot”, “spider”, “agent” or other automatic device, program, algorithm or methodology, or any similar or equivalent manual process, to access, acquire, copy or monitor any portion of the Site or any content, or in any way reproduce or circumvent the navigational structure or presentation of the Site or any content, to obtain or attempt to obtain any materials, documents or information through any means not purposely made available through the Site. GMA reserves the right to bar any such activity.

9.3. **Probing, etc.** – Users shall not probe, scan or test the vulnerability of the Site or any network connected to the Site, nor breach the security or authentication measures on the Site or any network connected to the Site. Users will not reverse look-up, trace or seek to trace to its source any information on any other user of or visitor to the Site, or any client of GMA, or exploit the Site or any service or information made available or offered by or through the Site, in any way where the purpose is to reveal any information, including but not limited to personal identification or information, other than the User’s own information, as provided for by the Site.

- 9.4. **Overloading Site** – The User will not take any action that imposes an unreasonable or disproportionately large load on the infrastructure (including the bandwidth capacity) of the Site or GMA’s systems or networks, or any systems or networks connected to the Site or to GMA.
- 9.5. **Interference** – Users shall not to use any device, software or routine to interfere or attempt to interfere with the proper working of the Site or any transaction being conducted on the Site, or with any other person’s use of the Site.
- 9.6. **Harassing and Stalking** – User also hereby agrees that they shall not use the Site to,
- (a) contact anyone against their will or “stalk” or otherwise harass anyone in any manner; and
 - (b) collect personal data about anyone for commercial purposes unrelated to the purpose set out in Article 2 (**Access License**) if any, or for unlawful purposes.
- 9.7. **Disguising Messages and Identity** – Users shall not forge headers or otherwise manipulate identifiers in order to disguise the origin of any message or transmittal the User sends to GMA or another User on or through the Site, or disguise the origin of any service offered on or through the Site. No User may impersonate any other individual or entity, and no User may fraudulently hold him/herself out as representing another person or entity.
- 9.8. **Unlawful Activity** – Users shall not use the Site or any content or other document therein for any purpose that is contrary any statute, regulation, by-law, rule, common law principal (whether in law or equity) or other requirement of Ontario law or the laws of Canada, or any purpose prohibited by this Agreement, or to solicit the performance of any such illegal activity or other activity which infringes the rights of GMA or others.

10. Personal Information in User Content

In connection with any personal information contained in any other document uploaded by the User or any other User Content, the User hereby acknowledges that GMA constitutes a third-party to whom personal information has been transferred for processing (and for no other purpose) as contemplated in Principle 4.1.3 of Schedule 1 of the *Personal Information Protection and Electronic Documents Act (Canada)* (“**PIPEDA**”). Except as otherwise expressly set out in the Privacy Policy on the Site, the parties hereto acknowledge that GMA is not collecting, using or disclosing any such personal information for its own purposes or using any of it in the ordinary course of its business.

11. Links to Other Sites

- 11.1. **Links to Merchant Sites** – GMA may provide links on the Site, or other websites developed and hosted by GMA, that allow access to third party merchant (“**Merchants**”) sites from which the User may obtain information and possibly purchase certain goods or services. The User understands that,
- (a) neither GMA nor its affiliates operates or control the products or services offered by Merchants, and such Merchants are responsible for all aspects of order processing, fulfillment, billing and customer service;

- (b) neither GMA nor its affiliates is or will be a party to the transactions entered into between Users and Merchants;
 - (c) information about and purchase and use of the products or services offered by the Merchants is at the sole risk of User and is without warranties of any kind by GMA, express, implied or otherwise including warranties of title, fitness for purpose, merchantability or non-infringement;
 - (d) all rules, policies (including privacy policies) and operating procedures of Merchants will apply to Users while on the Merchants' sites. GMA is not responsible for information provided by Users to Merchants. Merchant and GMA are independent contractors and neither party has authority to make any representations or commitments on behalf of the other; and
 - (e) Under no circumstances is GMA or its affiliates liable for any damages arising from the transactions between Users and Merchants or for any information appearing on merchant sites or any other site linked to the d-tech site. As contemplated in Article 5 (**Disclaimer and Limitation of Liability**), GMA will not be liable to Users for any incidental, special or consequential damages of any kind that may result from access to merchant sites or the use of any products or services offered by merchants.
- 11.2. **Links to Other Sites** – This Site may contain links to other websites other than Merchant Sites. GMA is not responsible for the content, accuracy, or opinions expressed in such websites, and such websites are not investigated, monitored or checked for accuracy or completeness by GMA. Inclusion of any linked website does not imply approval or endorsement of the linked website by GMA. If a User decides to leave Site and access these third party sites, he/she does so at his/her own risk.

12. Governing Law and Jurisdictional Issues

- 12.1. **Governing Law and Disputes** – This Agreement shall be treated as though it were executed and performed in Toronto, Ontario, Canada and governed by the laws of Ontario and the laws of Canada as may be applicable herein. All disputes, controversies or claims arising out of in connection with or in relation to this Agreement, including any question regarding its existence or validity shall be submitted to and be subject to the jurisdiction of the courts of the Province of Ontario (including the Supreme Court of Canada), which shall have exclusive jurisdiction in the event of any dispute hereunder. The parties hereby irrevocably submit and attorn to the exclusive jurisdiction of such courts to finally adjudicate or determine any suit, action, or proceedings arising out of or in connection with this Agreement.
- 12.2. **Compliance with Ontario Law** – In using the Site, the User hereby agrees to comply with all legislation, regulations, common law requirements (including such requirements in law and equity) as may be applicable and in force pursuant to the laws of Ontario and Canada. Any monies payable pursuant to the terms hereof (if any) shall be in Canadian currency.
- 12.3. **Actions Subject To Disclaimer** - All actions, applications and other legal proceedings shall be subject to the disclaimers and limitations set forth in Article 5 (Disclaimer and Limitation of Liability).

- 12.4. **Severability and Waiver** - Should any part of this Agreement be held invalid, unenforceable or inconsistent with the law applicable to this Agreement, that portion shall be severed from this Agreement and the remaining portions shall remain in full force and effect. Failure of GMA to enforce any provision of this Agreement shall not be deemed a waiver of such provision nor of the right to enforce such provision.
- 12.5. **Users Outside Ontario** –This site is controlled and operated by GMA from its offices within the Province of Ontario. GMA makes no representation that documents, or other materials from the Site are appropriate or available for use outside of Ontario. Those who choose to access this Site from other locations do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable.

13. Interpretation of Agreement

- 13.1. **Entire Agreement** – This Agreement constitutes the entire and only agreement between GMA and a User, and supersedes all prior or contemporaneous agreements, representations, warranties and understandings with respect to the Site. To the extent that anything in or associated with the Site is in conflict or inconsistent with this Agreement, this Agreement shall take precedence.
- 13.2. **Electronic Form** – The electronic form of this Agreement presented to the User when they access the Site shall be the sole true and correct version. GMA hereby reserves the right to update and amend this Agreement from time to time. GMA will post the latest version of this Agreement on the Site in electronic form.
- 13.3. **Assignment** – GMA may assign its rights and obligations under this Agreement to any person without notice to the User. No part of this Agreement may be assigned by the User without GMA's written consent.
- 13.4. **Independent Contractor** - Each of the parties acknowledge and agree that the relationship created hereby is one of independent contractors and no other, including without limiting the generality of the foregoing, that of partnership or employment. None of the parties shall have the authority to bind the other parties to any contractual or other legal obligations, whether as agent, partner, employee, representative, authorized signing officer or otherwise. None of the parties shall hold themselves out as being an agent, employee or other representative of the other party so as to make said other party vicariously liable for any tort against any other person.

This Access License and Terms of Use are made as of March 25, 2010 at 1:00 PM.