



## GARDINER MILLER ARNOLD LLP GENERAL RETAINER AGREEMENT

We (the “**Client**” or “**Clients**” if more than one) hereby retain Gardiner Miller Arnold LLP (“**GMA**”) as our lawyers for legal advice and representation on the following “**Retainer**” (*please fill in the services you would like*):

Subject to our written instructions, we request that GMA take any actions that GMA deems necessary and appropriate to assist us on completing the Retainer.

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**Legal Fees and Disbursements:** In exchange for completing the Retainer, the Client agrees to pay GMA legal fees calculated based on billable hours required to complete the matter multiplied by the applicable hourly rates in the attached Schedule of Hourly Rates. In addition to legal fees, the Client will pay any disbursements plus applicable harmonized sales tax.

**Invoicing and Unpaid Accounts:** GMA will invoice the Client for legal fees, disbursements and applicable taxes. In the event that accounts remain unpaid for more than 30 days, GMA may (in its discretion) charge the Client interest at rates permitted under the *Solicitor’s Act (Ontario)*.

**Prepaid Fees:** GMA may request that the Client provide an initial financial retainer as a prepayment of legal fees, disbursements and taxes. The prepayment may be provided by cheque, wire transfer, bank draft or other payment method acceptable to GMA. However, GMA will not accept cash in excess of \$1,000.00. The Client authorizes and directs GMA to hold the prepayment cheque amount in its non-interest bearing general trust account. Upon written request from GMA, the Client agrees to replenish this financial retainer within 3 business days.

**Agreement Components** – The Client and GMA agree that this General Retainer Agreement (the “**Agreement**”) consists of:

- a) This General Retainer Agreement cover page;
  - b) GMA’s Standard Terms and Conditions;
  - c) GMA’s Schedule of Hourly Rates;
  - d) Any other schedules added to this Agreement and initialed by the parties hereto; and
  - e) Signing Pages for GMA and the Client(s).
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**GARDINER MILLER ARNOLD LLP**  
BARRISTERS & SOLICITORS

# GMA'S STANDARD TERMS AND CONDITIONS

## ATTACHED TO GMA'S GENERAL RETAINER AGREEMENT

### 1. START

The parties intend that this Agreement not be for a set term. Instead, this Agreement starts on the day it is signed by each Client and by GMA, and will continue until any party notifies in writing the other party or parties of his, her or its intention to terminate. The following will apply:

- a) Where there is only one Client, a notice from the Client will terminate this Agreement immediately;
- b) Where there is more than one Client and one Client provides the notice, that Client will be released from this Agreement. The remainder of the parties will remain bound and this Agreement will continue in force until each and every Client provides such a notice. Once all the Clients provide notice, this Agreement will terminate immediately; and
- c) This Agreement will be deemed expired and cease to be of further force once GMA confirms to the Client in writing that all the legal work on the Retainer is done.

Termination or expiry of this Agreement will be subject to Article 10 (End of Retainer).

### 2. EXPECTATION OF CLIENT INTEGRITY

The Client understands that the solicitor/client relationship contemplated in this Agreement is one based on utmost trust, confidence and respect. GMA expects the highest degree of integrity and ethical conduct from the Client. GMA also expects the Client to provide honest, accurate and complete answers to all questions from GMA lawyers concerning the Retainer, and provide GMA complete and accurate copies of documents and other items. To that end, the Client will:

- a) Accurately complete any standard Know-Your-Client Information forms and other forms that GMA lawyers require throughout the retainer;
- b) Provide accurate copies of any government-issued identification or corporate documents that GMA needs to properly identify the Client;
- c) Provide complete and accurate copies of legal documents pertinent to the Retainer such as previous wills, corporate minute books, contracts, real estate deeds and court documents;
- d) Refrain from sharing any GMA e-mails, letters or other solicitor/client privileged items with anyone except professional advisors or other individuals having a need-to-know such information.

GMA will consider it a failure to meet the standards of integrity and ethical conduct set out in this paragraph where the Client **misleads** GMA during the Retainer, knowingly provides GMA with **any false information** or intentional **withholds from GMA relevant information** concerning the Retainer.

### 3. CONFLICTS OF INTEREST

3.1. **No Conflicts:** It is of utmost importance that the Retainer in no way place GMA in a conflict of interest as defined under the Rules of Professional Conduct from the Law Society of Upper Canada ("**RPC**" or "**Rules of Professional Conduct**"). The Client acknowledges that GMA may have to disqualify itself from the Retainer if GMA finds itself in such a conflict. Should a conflict arise, whether before or during the Retainer, GMA will only act if permitted to do so under the Rules of Professional Conduct.

3.2. **Joint Retainer:** Where more than one Client has retained GMA to act on the Retainer, each Client acknowledges that:

- a) Each Client has asked GMA to act for all of them and each Client will be jointly and several liable for all obligations of the Client under this Agreement;
- b) No information received in connection with the Retainer from one Client can be treated as confidential so far as any other Client is concerned;
- c) If a conflict develops that cannot be resolved, GMA cannot continue to act for each Client jointly and may have to withdraw from the Retainer completely;

- d) Where GMA has a continuing relationship with one Client, it has disclosed that relationship to each of the other Clients and advised those Clients to obtain independent legal advice. Each Client hereby consents to GMA acting on the Retainer on a joint retainer basis.

The joint retainer contemplated above is subject to Rules of Professional Conduct from the Law Society of Upper Canada. Where those Rules so permit GMA may in writing waive compliance with any one or more of items (a) to (d) of this paragraph 3.2.

- 3.3. **Business Entity:** Where the parties to this Agreement include a corporation, partnership, trust or other entity that operates a business (“**Business**”), along with the shareholders, partners or other individuals controlling the Business (“**Directing Minds**”), the following shall apply. GMA may, by indicating so on the cover page, structure the Retainer so that GMA’s sole client is the Business. In such circumstances, the Retainer shall not be a joint retainer as per Section 3.2. Instead, the Directing Minds will be parties to this Agreement as guarantors. The Directing Minds will jointly and severally personally guarantee the obligations of the Business to GMA under this Agreement. The Directing Minds will not be clients of GMA and GMA will have no solicitor/client obligations to them.
- 3.4. **Joint Wills:** Where GMA receives instructions from spouses in connection with a Retainer involving Wills, Powers of Attorney, trusts, estate planning or like matters, the Retainer shall be deemed a joint retainer as contemplated in Section 3.2 above. It shall be considered a conflict requiring GMA to withdraw from the Retainer where one spouse provides instructions that contradict that of the other spouse. GMA will only act if both spouses provide consistent mutual instructions.

#### 4. SERVICE STANDARDS

- 4.1. **Standard of Care:** When completing the Retainer, GMA will provide a competent lawyer and competent legal staff to faithfully and diligently provide legal work required to complete the Retainer to a standard that meets or exceeds the applicable standards required of a lawyer in Ontario, Canada. This includes:
  - a) Keeping all information from the Client confidential as required by the Rules of Professional Conduct;
  - b) Using professional judgement to apply the law to the Client’s circumstances;
  - c) Providing an honest opinion on the Client’s legal position and candid advice on complying with the law;
  - d) Effectively and zealously representing the Client’s interest in during the Retainer;
  - e) Rendering the services under the Retainer in accordance with any applicable rules and practice guidelines established by the Law Society of Upper Canada; and
  - f) At all times behaving honestly and ethically with due regard for the safety, health and well-being of those individuals around during the Retainer.
- 4.2. **Advice Based on Canadian Law:** All legal advice on the Retainer will be based on **Ontario** law and the laws of **Canada** as applicable. GMA may elect to provide advice on the law of another Canadian province or territory in connection with the National Mobility Agreement, Territorial Mobility Agreement or Quebec Mobility Agreement from the Federation of Law Societies of Canada as those agreements are amended from time to time.
- 4.3. **Foreign Law:** Where the Retainer is affected by the laws of a foreign jurisdiction (including the United States of America), each Client acknowledges that, unless otherwise indicated in writing, GMA is neither competent nor insured to provide advice on foreign law. The Client may elect to retain a foreign lawyer qualified in the relevant jurisdiction for legal advice and services on any foreign law aspects of the Retainer.

#### 5. CONTROL OF RETAINER

So long as GMA complies with this Agreement, each Client acknowledges that GMA may complete the Retainer in such manner as GMA sees fit without interference or control by the Client. This includes:

- a) Determining what documents and items GMA will require, and other items it needs to review in order to effectively complete the matter. This includes contracts, minute books, e-mails, letter, computer data, videos and any other item GMA deems relevant to the retainer;
- b) Monitoring changes in the law and changes in the circumstances. This also includes determining, in GMA's professional judgement, if those changes affect the Retainer and should be communicated to the Client;
- c) The frequency and method (such as by telephone or e-mail) of communications with the Client on the status of the Retainer. Additionally, the Client consents to the use of e-mail and electronic communication throughout the Retainer with full understanding that electronic communication is inherently insecure. The Clients will notify GMA in writing if they do not wish to communicate electronically;
- d) Internally delegating any aspect of the matter to secretaries, clerks or other lawyers within GMA; and
- e) Determining how much time will be required to complete the matter for the purpose of calculating the applicable amount of billable hours to be applied to the Retainer.

## 6. OUTSIDE SERVICES

Throughout the course of the Retainer, GMA may engage third party service providers, including printers, couriers and process servers, to prepare, print, copy, deliver, file or otherwise handle documents and material relevant for legal services rendered. *The Client hereby consents to use of such third party services when GMA deems it appropriate to do so.* GMA will, on a best efforts basis, ensure that it only shares Client information with the third parties as necessary to complete the services. Any third party service charges will be added to the Client's invoice as a disbursement.

## 7. NEWSLETTERS AND BLOGS

From time to time, GMA may produce newsletters, blogs and other information items describing changes in the law of general interest. GMA will only send these items to the Client on consent, and the Client may provide that consent by e-mail, or by subscribing to the relevant information service. It is the Client's responsibility to review these items and advise GMA to initiate any analysis as to whether such items will affect the Retainer.

## 8. PAYMENT

- 8.1. **Estimates:** Upon request, GMA may provide an estimate of the potential legal fees and disbursements to the Retainer. The Client acknowledges that such estimates are GMA's best guess as to the potential costs. The estimates are, by nature inexact, as GMA cannot predict in advance how the Retainer will unfold and exactly what legal services will be required. The estimate, under no circumstances, qualifies as a flat fee or upper limit to potential fees. Clients rely on such estimates at their own risk.
- 8.2. **Disbursements:** In addition to legal fees, the Client agrees to reimburse GMA for all disbursements incurred in the course of completing the Retainer. Disbursements are costs incurred by GMA on the Client's behalf to complete the Retainer. These include items like printing costs, photocopy expenses, government filing fees and third party search costs. Disbursements can also include any travel costs incurred by any lawyer who is completing work on the Retainer.
- 8.3. **Flat Fee Services:** From time to time, GMA may offer to provide certain services under the Retainer at a flat fee. In those cases, GMA will ask the Client to fill out a separate information form that includes specific details about the flat-fee service and the cost. All such services will be subject to this Agreement.
- 8.4. **Invoicing:** All legal fees, disbursements and taxes will set out on an invoice and sent to the Client by GMA. Client is jointly and severally liable for such payments immediately upon receipt. Each invoice will be considered final and binding unless each Client specifically notifies GMA in writing of any dispute with respect to an invoice within 60 days after it is rendered.
- 8.5. **Court Costs:** Where the Retainer involves litigation, the court may award the Client costs as part

of the claim. Unless GMA advises the Client to contrary, the Client should not assume that any costs may be awarded by the court or paid pursuant to settlement will be in an amount sufficient to cover GMA's fees. If collected by GMA, these costs will be credited towards the Client's account, but the Client will still be obligated to pay for services actually rendered and billed by GMA.

- 8.6. **Security Interest:** The Client hereby grants GMA a security interest in any current or after-acquired money, documents or other property (whether tangible or intangible) that may come under GMA's possession or control. The security interest is for satisfaction of any obligations owing by the Client to GMA, and includes non-payment of legal fees. The security interest given to GMA hereunder shall constitute a purchase-money security interest in accordance with the *Personal Property Security Act (Ontario)*.
- 8.7. **Canadian Funds:** Unless otherwise indicated by GMA in writing, all amounts payable by the Client pursuant to the terms of this Agreement are payable in Canadian funds.

## 9. TRUST ACCOUNTS

- 9.1. **General Trust:** GMA will place into its general trust account any money received from the Client, or on the Client's behalf. The Client acknowledges that any interest earned on money the general trust account is remitted directly to the Law Foundation of Ontario.
- 9.2. **Separate Trust:** From time to time, at any time, GMA may decide to place any money received from the Client into a separate interest-bearing trust account. This usually takes the form of a Guaranteed Investment Certificate held by us for the benefit of the Client. For funds in separate trust, all interest is credited to the Client. However, such accounts are also additional work and may add billable hours to the Retainer. GMA also reserves the right to charge the Client an administrative fee over and above the additional billable hours.
- 9.3. **Use of Trust Funds:** In connection with any funds held in trust for the Client (whether in general or separate interest bearing), when GMA is authorized to release the funds the Client hereby authorizes GMA to apply such monies:
- a) first in payment of any outstanding accounts for fees, disbursements, taxes and interest rendered by GMA;
  - b) second in payment to any other authorized third party who has rendered services on behalf of the Client; and
  - c) the balance shall be remitted to the Client or as the Client may direct.
- 9.4. **Law Society Trust Account Rules:** The Client acknowledges that GMA must administer its trust accounts in strict with the by-laws and rules of the Law Society of Upper Canada.

## 10. END OF RETAINER

- 10.1. **Termination or Expiry:** This Agreement will terminate before the Retainer is complete on notice from the Client in accordance with Article 1 (Start), or from GMA in accordance with Section 10.2. It will expire once GMA completes on legal work on the Retainer as contemplated in Section c).
- 10.2. **Withdrawal of Services:** Where GMA terminates this Agreement, it will provide reasonable advance prior written notice of termination, where the notice length is determined by GMA in its discretion in accordance with the Rules of Professional Conduct. GMA may only terminate this Agreement with Good Cause. In this Agreement term "**Good Cause**" includes:
- a) a conflict of interest that disqualifies GMA from acting;
  - b) a breach by the Client of this Agreement;
  - c) serious loss of confidence between GMA and the Client as determined by GMA in its reasonably exercised discretion; or
  - d) the Client taking action contrary to GMA's advice at least twice during the Retainer.
- 10.3. **Transition to New Counsel:** In event of termination of this Agreement, GMA will send the Client

a final invoice for all services on the Retainer up to the termination date. GMA will also deliver to the Client or at the Client's direction its new lawyers, those documents and files in GMA's possession that are the Client's property. Release of the Client's property will be subject to payment of GMA's invoices.

- 10.4. **File Retention and Destruction:** After this Agreement terminates or expires, GMA will close all files relating to the Retainer in accordance with its File Retention and Destruction policy. The file will be stored off-site for a period of 2 years and then destroyed. In the event that the Client and GMA agree to extract the file from off-site storage and reopen it, the Client will be required to pay an administrative fee over and above any legal fees in connection with the Retainer. This clause will survive the termination of this Agreement indefinitely.

## 11. INDEMNIFICATION

The Client shall indemnify and save GMA, its lawyers and employees harmless from any and all losses, costs, liabilities and expenses (including legal costs) in connection with:

- a) A breach by the Client of this Agreement (including any third party legal proceedings arising out of that breach);
- b) A claim against GMA from a third party arising out of GMA's representation of the Client on the Retainer. Provided, that the indemnity in this subparagraph will not apply if the third party claim is a direct result of a breach of this Agreement by GMA or professional negligence on the part of GMA.

This paragraph will survive the termination or expiry of this Agreement for a period of 2 years.

## 12. GMA'S LIABILITY TO CLIENT

GMA acknowledges that it has solicitor/client liabilities to the Client (duty of loyalty and duty of care) arising out of its services on the Retainer as contemplated in Section 22 of the *Solicitor's Act (Ontario)*. The Client acknowledges that GMA is prepared to accept liability of up to \$4,000,000.00 that being the maximum potential insurance claim under its lawyer's errors and omissions insurance.

## 13. GENERAL TERMS

- 13.1. **Interpretation:** Save and except as expressly contemplated herein (such as notices or written instructions), this Agreement constitutes the entire codification of the parties' agreement and it is agreed that there are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein in writing. This Agreement shall enure to the benefit of any heirs, estate trustees, legal personal representatives and successors as applicable. In the event that any one or more term(s) contained herein is declared unenforceable or invalid for any reason, said term(s) shall be severed from the remainder of the Agreement. The failure of any party to insist upon the strict performance of an obligation hereunder shall not be a waiver of such party's right to demand strict performance in the future. All waivers shall be in writing. And any reference to "days" herein shall mean calendar days, and not business days, unless expressly set out to the contrary.
- 13.2. **Amendments:** This Agreement may not be amended or modified except by written agreement signed by all the parties hereto.
- 13.3. **Force Majeure:** Neither party shall be liable for delay or failure in performance resulting from acts beyond the control of that party, including power failures, blizzards and inclement weather, traffic, banking delays and other acts of God. A party's performance in such circumstances will be deferred for the period of delay. Where it is reasonably foreseeable that the delay will be indefinite, then the terms which cannot be performed will be deemed invalid and severed from the balance of the Agreement as contemplated in above section 13.1(Interpretation). The parties will be excused from performing the severed terms on the basis of frustration. Where it is GMA who cannot perform, the term will be expressly excluded from GMA's duty of care to the client and GMA's scope of liability for negligence.

- 13.4. **Assignment:** The Client may not assign this Agreement to any other person without the written consent of GMA.
- 13.5. **Notices:** Notices hereunder shall be in writing and will be sufficiently given if delivered by personal service, courier, facsimile, electronic mail or any other manner providing the sending party with written evidence that the notice was in fact delivered. Such evidence may include (without restricting the generality of the foregoing) a courier tracking receipt, a fax confirmation, an automated e-mail delivery receipt confirmation or a message sent by the receiving party confirming receipt of the notice.



**RETAINER AGREEMENT SIGNING PAGES**  
ATTACHED TO GMA'S GENERAL RETAINER AGREEMENT

**AGREEMENT SIGNING**

This Agreement may be signed in paper form, by facsimile signature or by electronic signature in accordance with section 11 of the *Electronic Commerce Act, 2000 (Ontario)*. It may also be signed in one or more counterparts and, once signed, can be delivered personally, by facsimile or by e-mail of the signing page in Adobe Portable Document Format (PDF®). Each counterpart shall be considered binding on the signatory thereto and when put together shall constitute a single instrument.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**GARDINER MILLER ARNOLD LLP**  
(as GMA)

Per: \_\_\_\_\_  
*Signature*

Lawyer Name: \_\_\_\_\_

[Client Signature Pages to Follow]





**RETAINER AGREEMENT SIGNING PAGES**  
ATTACHED TO GMA'S GENERAL RETAINER AGREEMENT

THE CLIENTS below acknowledge have read this Agreement (including GMA's Standard Terms and Conditions). They understand this Agreement and agree to abide by its terms.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

*For Clients who are corporations or partnerships, please sign here.*

\_\_\_\_\_  
Name (as a Client)

Per: \_\_\_\_\_

Name:

Title:

I have the authority to bind the entity above

*For Clients who are individuals, please sign here.*

**SIGNED, SEALED AND DELIVERED** )  
**In the presence of** )

\_\_\_\_\_  
Witness )

\_\_\_\_\_  
*Print Name* )

\_\_\_\_\_  
*Signature* )

\_\_\_\_\_  
*Print Name* )