
WATER SUPPLY AGREEMENT

THE HARVESTERS PRIDE LIMITED

and

Two Thousand and

1. **THE HARVESTERS PRIDE LIMITED** a Limited Liability Company incorporated under the Laws of Kenya whose postal address is care of Post Office Box Number 394-00206, Kiserian, in the Republic of Kenya (hereinafter referred to as the **"Service Provider"** which expression shall, where the context so admits, include its personal representatives and assigns) of the one part; and
2. **[]** of Post Office Box **[]**, in the Republic aforesaid (hereinafter referred to as the **"Client"** which expression shall, where the context so admits, include their and each of their personal representatives and assigns) of the other part.

WHEREAS:

- A. The Service Provider has drilled a borehole for the supply of water in the area known as Kwampoyo Estate (the “**Borehole**”).
- B. The Water supplied by the Service Provider shall be for domestic purposes only.
- C. The Parties have agreed that the Service Provider shall supply water to the Client from the Borehole subject to the terms and conditions of this Agreement.

1. Rehabilitation of Borehole and Installation of Pipes.

- 1.1 The Service Provider shall be responsible for the Borehole Rehabilitation to ensure functionality of the Borehole and ensure steady supply of water to the Client.
- 1.2 Rehabilitation of the Borehole (the "**Borehole Rehabilitation**") shall comprise of *inter alia*:
 - (a) hiring professionals to inspect the Borehole and recommend steps to be taken in rehabilitation of the Borehole;
 - (b) application for any approvals and permits required prior to commencement of rehabilitation works;

- (c) payment of any construction costs with regard to drilling and installation (or re-installation) of water pumps to enhance steady supply of water from the Borehole;
- (d) installation of pipes along, over and under such area of the Land (the "**Pipeline**") as agreed between the Parties to enable the free and uninterrupted passage and running of water from the Borehole;
- (e) fencing off the Borehole and surrounding area and installation of a gate for security purpose; and
- (f) installation of pumps and storage tank(s)/ Reservoirs for the storage of water;

2. Agreement for Water Supply

- 2.1 In consideration of the Client making payment of the costs in connection with the water supply, the Service Provider shall supply the Client with water from the Borehole through such pipes as may be but the Service Provider's obligation to furnish such supply shall not be enforceable in the event of any deficiency of water in the Borehole by reason of **drought or Force Majeure** provided that the Parties have complied with their obligations under this Agreement.
- 2.2 The Service Provider shall at his own cost install a water meter within the Client's compound and/or household to meter the water supplied from the Borehole and consumed by the Client; and
- 2.3 The Water Meter shall be installed at such a place within the Client's household as it will be convenient for the Service Provider's billing.
- 2.4 The Service Provider will secure the installed meter at the Clients' premises with metallic built fastener. The Client shall ensure that the installed meter is free of interference of any manner whatsoever.

3. Maintenance

- 3.1 The Service Provider shall be responsible for the repair and maintenance of the Borehole, the Pipeline, the Plant, Equipment and Materials and any other installations in connection with the water supply within the main pipeline.
- 3.2 Such maintenance of the part of the pipeline into the Client's compound and/or household shall be the responsibility of the Client; and
- 3.3 The Client shall ensure no leakages and/or breakages on the pipes within their Compound to avoid and/or minimize wastage.

4. Costs and Charges

- 4.1 The Client will be responsible for payment of the following:

- 4.1.1 A non-refundable connection fee of Kenya Shillings **Twenty-Five Thousand (Kshs. 25,000/-)** inclusive of the cost of the Water Meter and its installation in the Client's household;
- 4.1.2 The water supplied to the Client will be charged at the rate of Kenya Shillings One Hundred (Kshs.100) per cubic unit which rate is subject to review upon issuance of a one-month notice to the Client;
- 4.1.3 The Client shall make payments to the Service Provider for the water consumed on or before the **fifth day** of every month in which the water bill is due;
- 4.1.4 Any late payments by the Client under Clause 4.1.3 above will lead to the disconnection of the water supply by the **tenth day of the month** and attract a non-refundable reconnection fee of Kenya Shillings One Thousand (**Kshs. 1,000/-**); and
- 4.1.5 The Service Provider will carry out a billing of the water consumed by the Client on or by the second day of every month to facilitate smooth and timely payments by the Client.
- 4.2 The Client will make the payments referred to in Clause 4.1 into an account to be provided by the Service Provider.
- 4.3 Each Party shall pay its own costs and expenses incurred in connection with the preparation, negotiation and completion or rescission of this Agreement.
- 5. Reservations and Restrictions**
- 5.1 The water supplied by the Service Provider to the Client from the Borehole shall be used for domestic purposes for residential purposes only and not for commercial purposes.
- 5.2 In cases where the Client is a Tenant at a rented premise, the Service Provider shall directly deal and contract with the Landlord for the supply of water.
- 5.3 The Client is prohibited from **interfering with and/or tampering** with the water connection equipment including the pipes without the Service Provider's express consent. Failure to observe this condition will attract a fine of not less than Kenya Shillings Ten Thousand (Kshs. 10,000/-) and result in **automatic disconnection**.
- 5.4 In the event of a deficiency or threat of deficiency of water available for distribution from the Borehole the Parties shall, in good faith, agree to impose restrictions on the use of the water supplied to the Parties.

6. Statutory and other Rights

The supply of water from the Borehole is given subject to any enactments, regulations and by-laws relating to such supply or the supply of water in force in the area where the Land is situated and subject to any rights conferred by statute or common law.

7. Service Provider's Obligations

- 7.1 Subject to the Client paying its portion of the Charges and Expenses, the Service Provider shall ensure the supply of water to the Client throughout the duration of this Agreement unless prevented from so doing due to a maintenance issue or a mechanical breakdown.
- 7.2 Either party shall be liable to the other party for any damage to the Pipeline and other installations caused by wilful act or omission by her/his employees, agents and invitees.
- 7.3 In case of any such repairs or maintenance works to be undertaken by the Service Provider and/or his agents, the Service Provider shall notify the Client of any such disruptions, maintenance or repairs as may be necessary.
- 7.4 The Client is under obligation to grant access to the Service Provider or his agents within reasonable time to undertake any necessary repairs or maintenance.

8. Assignment of this Agreement

- 8.1 The Client shall, with the consent of the Service Provider which consent shall not be unreasonably withheld, be entitled to transfer and or assign their rights under this Agreement to a third party and the Service Provider shall thereby be bound to provide water from the Borehole to such third party in place of the Client subject however to such third party covenanting to comply with all, and not some only, of the Client obligations hereunder.
- 8.2 The Service Provider shall procure that the terms hereof shall be binding on any of his successors in title and any transfer of any of the Service Provider's obligations shall contain a covenant that the transferee therein shall comply with the terms hereof and assume the burden of the Service Provider's obligations herein and the Client consents to such assignment or novation or other transfer of the Service Provider's rights and obligations under this Agreement in respect of the same.

9. Termination

- 9.1 The rights conferred by this Agreement shall only terminate upon cancellation, revocation or non-renewal of the Water Permit by the relevant authorities unless both Parties shall agree otherwise.
- 9.2 Any such termination shall be without prejudice to any pre-existing rights or claims of the Service Provider against the Client hereunder.

10. No Waiver of Rights

- 10.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents the further exercise of the right or remedy or the exercise of another right or remedy.
- 10.2 The rights and remedies provided by this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

11. Force Majeure

The Parties shall be relieved of all responsibility for any failure or delay in the carrying out of her/their respective obligations under this Agreement due to any Acts of God, war, failure of the supply of electric energy, breakdown of machinery, fire, tempest, unavoidable accident or any other circumstances beyond her/their control whether or not the same be *ejusdem generis* with those above but only to the extent and for the period during which any such cause shall so operate.

12. Variation

No variation of this Agreement shall have any effect unless it is in writing and signed by both Parties hereto.

13. Severability

If any of the provisions of this Agreement is found by an arbitrator, court or other competent authority to be void or unenforceable, such provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision so found to be void or unenforceable.

14. Entire Agreement

This Agreement constitutes the entire agreement between the Parties about its subject matter and any previous agreements, undertakings, representations, warranties and negotiations ("**prior representations**") on that subject cease to have any effect. Each party confirms that it has not relied upon any prior representations and waives any rights which it may have in respect of such reliance if it in fact occurred.

15. Notices

Any notice or communication under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by post or fax or email or text message or such other form of communication that is convenient to both parties to the

addresses given above or such other address or phone numbers as the recipient may have notified to the other Parties. In the absence of evidence of earlier receipt, any notice or communication shall be deemed to have been received, if delivered by hand, at the time of delivery or, if sent by post, four days after posting or, if sent by fax, on the completion of transmission.

16. Arbitration

- 16.1 Any dispute arising out of this Agreement between the Parties if not otherwise mutually settled shall be referred to a single arbitrator to be appointed by agreement between the Parties or in default of such agreement within fourteen (14) calendar days of the notification of such dispute, by either party or the other, upon application by either party to be appointed by the Chairman for the time being of the Kenyan Chapter of the Chartered Institute of Arbitrators.
- 16.2 Such arbitration shall take place in Nairobi and every award made under this clause shall be subject to and in accordance with the provisions of the Arbitration Act 1995 (Act No 4 of 1995) or any statutory modification or reenactment thereof or such other Act or Acts for the time being in force in Kenya in relation to arbitration and the Rules of Arbitration of the Chartered Institute of Arbitrators.

17. Governing Law

The validity, construction and performance of this Agreement shall be governed by Kenyan law.

IN WITNESS this Agreement has been duly executed and delivered by the Parties the day and year first hereinabove written.

Signed by

On behalf of The Harvesters Pride Limited
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Signed by

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Drawn by:

Otieno Aluoka & Company
Advocates
Hurlingham Plaza, 2nd Floor, Suite 16,
P.O Box 20364-00100

Nairobi

Email: aluokalegal@gmail.com

Tel: 254-722-964447

I confirm that I am in agreement with the terms and conditions stated above.

Client Name.....

Telephone Number..... Address.....

Signature..... Date.....