

Aluochier Dispute Resolution

Arbitral Institution | Arbitration | Mediation

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Registration No: BN-BGCLBG7

22nd May, 2024

County Government of Migori
P O Box 195-40400
Suna-Migori

Email: procurement@migori.go.ke / migoricountygov@gmail.com

Dear County Government of Migori

REQUEST FOR ARBITRATION

CASE NUMBER 004 OF 2024: LIGWARAS ENTERPRISES LIMITED v COUNTY GOVERNMENT OF MIGORI

Aluochier Dispute Resolution (ADR) is an arbitral institution that administers arbitrations under the Aluochier Dispute Resolution Arbitration Rules, 2024 (ADR Arbitration Rules). Article 1(3)(c) of the Constitution of Kenya, 2010 provides that part of the sovereign power belonging to the people of Kenya, and that is to be exercised only in accordance with the said Constitution, is delegated to the Judiciary and independent tribunals, with the Judiciary and independent tribunals to perform their functions in accordance with the said Constitution. Article 159(1) reiterates that judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under the said Constitution. Article 159(2)(c) provides that in exercising judicial authority, the courts and tribunals shall be guided by principles including the mandatory promotion of alternative forms of dispute resolution including arbitration. Article 50(1) provides that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body. Consequently, independent and impartial arbitral tribunals, just as the courts, have the constitutional mandate derived from the people's sovereign power to exercise judicial authority on their behalf in the resolution of disputes capable of resolution by the application of law. 10 20

Section 2 of the Arbitration Act, 1995 provides that except as provided for in a particular case, the provisions of the said Act shall apply to domestic arbitration and international arbitration. The Arbitration Act is itself subject to the Constitution of Kenya, 2010, as Article 2(1) of the Constitution provides that the said Constitution is the supreme law of Kenya and binds all persons and all State organs. And section 7(1) of the Sixth Schedule of the Constitution provides that all law in force immediately before the effective date of the Constitution – 27th August, 2010 – continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with the said Constitution. The Arbitration Act, an existing law at the time the Constitution became effective, is therefore to be construed to bring it into conformity with the Constitution, including allowing for, pursuant to Article 50(1) of the Constitution, the institution of arbitral proceedings, just as is the case with the institution of court proceedings, by any person without the consent or agreement of any other person, as it is the right of every person to 30

have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

Consequently, in the exercise of its right under Article 50(1) of the Constitution, Ligwaras Enterprises Limited has instituted arbitral proceedings under the administration of ADR against the County Government of Migori.

Pursuant to the ADR Arbitration Rules:

- 1 Rule 5.2.1 – **Claimant's Contact Details: Ligwaras Enterprises Limited, P O Box P O Box 100-40403, Rapogi. Telephone: 0722 508886 / 0728 989472. Email address: ligwaras@yahoo.com.**
- 2 Rule 5.2.2 – **Respondent's Contact Details: County Government of Migori, P O Box 195-40400, Suna-Migori. Email addresses: procurement@migori.go.ke / migoricountygov@gmail.com.** 10
- 3 Rule 5.2.3 – The Claimant is relying on Article 50(1) of the Constitution of Kenya, 2010 that provides that every person has the right to have any dispute than can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body. The Claimant has therefore instituted these proceedings before an independent and impartial tribunal, being an arbitral tribunal administering arbitration under the ADR Arbitration Rules.
- 4 Rule 5.2.4 – Statement describing the nature and circumstances of the dispute giving rise to the claim, and the relief sought by the Claimant against the Respondent: 20
 - 4.1 This claim consolidates issues arising from three separate contracts, being:
 - 4.1.1 CGM/PH/Q42/170/2019-2020 – Construction of Kangeso Dispensary Twin Staff House.
 - 4.1.2 CGM/PH/Q42/336/2019-2020 – Completion of Yago Dispensary.
 - 4.1.3 MC/17/08/2016-17 – Construction of Blood Bank at Migori County Referral Hospital
 - 4.2 CGM/PH/Q42/170/2019-2020 – Construction of Kangeso Dispensary Twin Staff House. This project has been duly completed and handed over, but no payment has been made to the Claimant, contrary to the contract. Outstanding amount is **Kshs 2,768,050.00**. 30
 - 4.3 CGM/PH/Q42/336/2019-2020 – Completion of Yago Dispensary. This project has been duly completed and handed over, but no payment has been made to the Claimant, contrary to the contract. Outstanding amount is **Kshs 756,175.00**.
 - 4.4 MC/17/08/2016-17 – Construction of Blood Bank at Migori County Referral Hospital. This project, after site mobilisation and commencement of groundworks, was varied in scope by the Respondent, altering the building from a single storey building into a two-storey building – the variation instructed by the issue of new drawings. The revised bill of quantities, based on the contract bill of quantities, resulted in a revised price of Kshs 12,816,294.80, up from a contract price of **Kshs 7,161,032.80**. The Respondent later disowned the variations instructed. Construction of the building was left at the single story originally contracted for. Payments made to date total **Kshs 3,408,345.00**. Value of works done as at 24th February, 2022 was **Kshs 5,961,027.00**. Outstanding retention as at that date was **Kshs 340,834.50** being 10% of assessed payments made as at that date. The Respondent then re-advertised the original contract works and awarded the same to a different contractor. It is believed that the new contractor on the separate contract has been duly paid for works done, while the 40

Claimant is still owed payments on its contract with the Respondent.

- 4.5 A valuation of works done was carried out by a firm of licensed valuers, and in a report dated 7th May, 2022, arrived at a value of **Kshs 7,500,000.00** on an open market value basis. A certificate of practical completion was eventually issued dated 22nd March, 2023 and date-stamped 23rd March, 2023 by its 3 separate signatories. A payment voucher dated 26th February, 2024 was signed by two signatories of the Respondent. As at today's date, total amount paid on the contract amounts to **Kshs Kshs 3,408,345.00**, with outstanding amount of the contract sum being **Kshs 3,752,687.80**. The Claimant is therefore claiming the amount of **Kshs 3,752,687.80** from the Respondent on this contract. 10
- 4.6 The Claimant has documentary evidence to assert its claim.
- 4.7 The reliefs that the Claimant is seeking from the Respondent are:
- 4.7.1 Payment of the amounts of:
- 4.7.1.1 **Kshs 2,768,050.00** on the CGM/PH/Q42/170/2019-2020 contract – Construction of Kangeso Dispensary Twin Staff House.
- 4.7.1.2 **Kshs 756,175.00** on the CGM/PH/Q42/336/2019-2020 contract – Completion of Yago Dispensary.
- 4.7.1.3 **Kshs 3,752,687.80** on the MC/17/08/2016-17 contract – Construction of Blood Bank at Migori County Referral Hospital.
- 4.7.1.4 Total of **Kshs 7,276,912.80**. 20
- 4.7.2 Compensation, by way of interest, at commercial rates, for delayed payment.
- 4.7.3 An order that the Respondent implements Article 226(5) of the Constitution against the public officers within the Respondent who are responsible for the extra costs that have arisen on these three contracts, at the Respondent's expense.
- 4.7.4 The costs of the arbitration.
- 5 Rule 5.2.5 – the Claimant proposes that the language of the arbitration be English – the same as the language of the contracts.
- 6 Rule 5.2.6 – not applicable.
- 7 Rule 5.2.7 – the Claimant intends to serve the Respondent electronically through the Institute, Aluochier Dispute Resolution, with this Request for Arbitration and any supporting documents. 30
- 8 Rule 5.2.8 – the Claimant on 13th May, 2024 paid a filing fee of Ksh 1,000/- in cash, which was subsequently remitted by Mpesa, with Mpesa reference number SEF6ATQ7FE on 15th May, 2024.
- 9 Rule 5.3 – **the arbitration is deemed to have commenced on 22nd May, 2024**, upon the Claimant providing the Institute with outstanding payment amounts.
- 10 Rule 6.1 – The Respondent should send, electronically, by email, its response to this request for arbitration within 30 days of service of this request for arbitration. The response should contain the information as provided for in ADR Arbitration Rule 6. The ADR Arbitration Rules can be downloaded at <https://www.aluochier.co.ke/ADR-Arbitration-Rules-20240430.pdf>. 40

Please go through the ADR Arbitration Rules to familiarise yourself with the arbitration process as administered by ADR, taking special note of dates by which any actions on your part are required. We look forward to receiving your response to facilitate progression of the arbitration proceedings in a manner in harmony with Article 50(1) of the Constitution.

Yours faithfully

**For and on behalf of
Aluochier Dispute Resolution**



**Isaac Aluochier
Chief Executive**

cc Ligwaras Enterprises Limited, P O Box 100-40403, Rapogi. Telephone: 0722 508886
(WhatsApp)/ 0728 989472. Email address: ligwaras@yahoo.com.