

PRIVATE WELL INTERFERENCE COMPLAINTS RESOLUTION AGREEMENT

THIS AGREEMENT is made as of _____, 20__ (the “**Effective Date**”) between the Corporation of the Town of Erin (the “**Town**”) and Nestlé Waters Canada, a division of Nestlé Canada Inc. (“**NWC**”).

RECITAL:

The parties wish to set out in this Agreement the procedure and terms on which complaints, if any, that may be raised by the Well Owners about their wells being affected by NWC Operations may be received, investigated and, if found to be caused by NWC Operations, remedied by NWC.

FOR GOOD AND VALUABLE CONSIDERATION the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Key Definitions

In this Agreement, unless the context otherwise requires:

- (1) "**Agreement**" means this Private Well Interference Complaints Resolution Agreement as it may be amended from time to time.
- (2) "**Business Day**" means any day except Saturday, Sunday or a statutory holiday in the Province of Ontario.
- (3) "**Committee**" has the meaning given to it in Section 2(1).
- (4) "**Contractor**" has the meaning given to it in Section 5(1).
- (5) "**GRCA**" means the Grand River Conservation Authority.
- (6) “**including**” means to include without limitation.
- (7) "**NWC Operations**" means the present and future operations by NWC of NWC's production water wells in the Town of Erin, County of Wellington, Ontario.
- (8) “**PTTW**” means a Permit to Take Water under the *Ontario Water Resources Act* and any applicable regulations, which is applicable to at least part of the Potential Well Interference Area.
- (9) "**Well Owner**" means such owners from time to time who have a water supply well within the Potential Well Interference Area.
- (10) "**Potential Well Interference Area**" means the area defined in the attached **Schedule A**.

2. Well Protection Committee

- (1) The parties shall establish a committee called the "Well Protection Committee" (the "**Committee**") comprised of five members (the "**Members**") being: (a) two members appointed by NWC (each, a "**NWC Member**"); (b) one member appointed by the Town (each, a "**Town Member**"); (c) one member appointed by the GRCA who is a member of GRCA's board of directors or professional staff (the "**GRCA Member**") and one member appointed by the Ministry of Environment, Conservation, and Parks (the "**MECP**"). The Members should, to the extent reasonably possible, have a strong technical understanding of hydrogeology.
- (2) The Committee shall meet quarterly unless otherwise determined by the Committee that an additional meeting is required. A quorum for a meeting shall be constituted by the attendance of at least: (a) one NWC Member; and (b) one Town Member. Members may participate by telephone or by web-based or video conference call or other electronic means (and as a result be deemed to be in attendance) at a meeting of the Committee.
- (3) Decisions of the Committee shall require the approval of a majority of those in attendance at a meeting at which a quorum is constituted, subject to the jurisdiction of the MECP, where applicable.
- (4) At meetings of the Committee, the Committee may review and discuss any outstanding Complaints (defined in Section 6 below) related to NWC Operations.
- (5) The Committee may, if it determines it relevant and beneficial to do so, keep an active log of all correspondence and arrange for minutes to be prepared of each meeting.
- (6) Any Member may call a meeting of the Committee on ten days' prior written notice to the other Members. Such notice shall set out the reason for the meeting and include any relevant documents or information.

3. Well Owners

- (1) At the Committee's reasonable request, NWC shall prepare and deliver to the Committee a list of the addresses of all current Well Owners. At the Committee's reasonable request, NWC, with the assistance of the Town, will update such list from time to time to reflect changes relating to the Well Owners.
- (2) NWC shall make commercially reasonable efforts to, within sixty (60) days of receiving a new PTTW or a renewal of an existing PTTW, send a package to each then-current Well Owner consisting of: (a) a letter to the Well Owner describing this Agreement; (b) a copy of this Agreement; (c) a laminated card outlining the process to follow in case of a claim or problem; (d) contact information; and (e) such other information as may be approved by the Committee,

4. Private Well Survey

- (1) As part of its periodic applications for and renewals of its relevant PTTWs, where required by the permitting process, NWC will, at its expense, arrange for a well survey to be

conducted with respect to each Well Owner's well. The assessment may include: well location, type of casing and other well construction details, well depth, water level, depth of pump intake, condition of well and pump, history of water quantity and quality issues, source aquifer and municipal address. In conducting the assessment, account will be taken of public information, information from the Well Owners and, where appropriate, from actual testing of the well in question.

- (2) NWC shall seek permission to access the well, but no formal written site access agreement will be required by NWC, and NWC shall not be required to pay for access rights. If access to the well is limited or denied by the Well Owners, then the assessment will still be conducted to the extent possible, but the parties acknowledge that the assessment may be incomplete.

5. Use of Independent Well Contractors

- (1) NWC shall enter into a contractual arrangement with up to two professional licensed well contractors (a "**Contractor**") to provide, if necessary, the services contemplated of Contractors under this Agreement on a seven day-a-week basis.
- (2) NWC shall deliver to each Contractor a list of the addresses of the Well Owners and a description, including a map, of the Potential Well Interference Area and provide updates of such list to each Contractor as necessary from time to time.
- (3) NWC shall also deliver to each Well Owner the contact information for one or more Contractors.

6. Well Owner Complaints

- (1) If a Well Owner in good faith believes that the quantity or quality of the water from its well located within the Potential Well Interference Area is being adversely affected by NWC Operations (a "**Complaint**"), then the following procedure shall be followed:
 - (a) the Well Owner shall contact, as soon as possible, one of the Contractors, who will subsequently notify NWC, to ensure NWC is immediately aware of the issue;
 - (b) such Contractor, at NWC's cost, will respond to all calls within 24 hours; and
 - (c) the Contractor will deliver five (5) cases of bottled water (consisting of at least 60 litres in total) to the Well Owner at NWC's cost within 24 hours after the Well Owner's call.
- (2) NWC will instruct the Contractor to investigate the cause of the Complaint as soon as reasonably possible. NWC will continue to provide a suitable alternate water supply to the Well Owner while the Contractor investigates.
- (3) If the Contractor determines that the cause of the Complaint is a mechanical issue or otherwise unrelated to NWC Operations (a "**Non-NWC Failure**"), then the Contractor will issue a written report to that effect and deliver it to the Well Owner with a copy to the Committee, the Town and NWC. There will be no further action by NWC.

- (4) If, however, the Contractor does determine that the water from the well has been adversely affected, and does not determine that the Complaint is a Non-NWC Failure, then, NWC, at NWC's cost, shall: (a) take all reasonable steps to arrange for an alternative water supply; and (b) arrange for a qualified independent consultant (which may in appropriate circumstances be the Contractor) to undertake a scientific study of the Complaint. To the extent reasonably possible, NWC shall take the foregoing steps within twenty-four (24) hours after receiving the Contractor's report.
- (5) The scientific study shall be documented in a written report (the "**Report**"), prepared in a timely manner and shall summarize all relevant information regarding the Complaint, its cause, and recommendations regarding possible mitigation. The Report must be signed and stamped by a Professional Geoscientist (P.Geo.) or Professional Engineer (P.Eng.) licensed in the Province of Ontario.
- (6) NWC shall promptly deliver a copy of the Report to the Well Owner.
- (7) If the Report concludes that the Complaint was caused by NWC Operations, then NWC shall so inform the Committee and the Well Owner and NWC shall also promptly provide a copy of the Report to the appropriate Manager of the MECP. Subject to Section 6(8) below, NWC shall promptly take all reasonable steps to remedy the Complaint and shall promptly report the details and results of such remedial action to the Committee, the Well Owner and the Manager of the MECP.
- (8) If the Report concludes that the Complaint was not caused by NWC Operations, then NWC shall promptly inform the Committee and the Well Owner of that conclusion in writing and no further action will be required of NWC.
- (9) Any complaints, whether caused by NWC or not, shall be logged by NWC and form part of its annual reporting requirements.
- (10) If the Well Owner limits or denies access to the Contractor or to the consultant engaged to do the scientific study contemplated above, then NWC shall not be responsible for remedying the Complaint raised by the Well Owner. Such access includes, as necessary or appropriate, such tests as may be required or appropriate to assist in determining the cause of the Complaint. The MECP shall be so notified.
- (11) In managing any Complaints, NWC shall comply with the terms of its applicable PTTWs.

7. Term

This Agreement shall commence on the Effective Date and, unless terminated earlier pursuant to the terms of this Agreement, shall remain in effect until NWC ceases to have any valid PTTWs applicable to the Potential Well Interference Area, at which point this Agreement shall immediately expire automatically. Notwithstanding the foregoing, either party may terminate this Agreement at any time, without cause or penalty, upon not less than six (6) months' prior written notice to the other party.

8. Notices

(1) Any notice required or permitted to be given by either party under this Agreement to the other shall be in writing and shall be delivered or sent by registered mail (except during a postal disruption or threatened postal disruption) or fax or email to the applicable address set out below:

(a) in the case of the Town, to:

The Corporation of the Town of Erin
5684 Trafalgar Rd. (WCR #24), R.R.#2
Hillsburgh, ON
N0B 1Z0
Attention: Nathan Hyde
Tel: (519) 855-4407 ext. 222
Fax: (519) 855-4821
E-mail: Nathan.Hyde@erin.ca

(b) in the case of NWC, to:

Natural Resource Manager, Nestlé Waters Canada
Nestlé Waters Canada, a division of Nestlé Canada Inc.
101 Brock Road,
Puslinch, ON
N0B 2J0
No: 519-767-6422

And

General Counsel
Nestlé Canada Inc.
25 Sheppard Avenue West,
North York, ON
M2N 6S8
No: 1-416-218-2816

(2) The contact information for the Manager of the MECP is:

Dan Dobrin, Manager
Ontario Ministry of the Environment, Conservation, and Parks, Section 34.1
Ontario Water Resources Act, R.S.O. 1990
12th Floor
119 King St W
Hamilton ON L8P 4Y7
Fax: (905) 521-7820

- (3) Any notice delivered shall be deemed to have been validly and effectively given on the day of such delivery. Any notice sent by registered mail shall be deemed to have been validly and effectively given on the third Business Day following the date of mailing. Any notice sent by fax or email shall be deemed to have been validly and effectively given on the day the fax or email is sent if sent before 4:00 p.m. but if after 4:00 p.m., then on the next Business Day after it was sent.
- (4) Either party may from time to time by notice to the other change its address for service under this Agreement.

9. General

- (1) The parties agree to cooperate in the implementation of this Agreement with the intent that good faith complaints from Well Owners should be addressed promptly, fairly and reasonably on their merits. Each party shall do such further things and execute such further documents as may be reasonably required by the other party to more fully implement the intent of this Agreement.
- (2) This Agreement shall enure to the benefit of, and bind, the parties to it and their respective successors and permitted assigns provided that the Town shall not assign this Agreement (other than to a successor municipality) without the prior consent of NWC, which consent shall not be unreasonably withheld.
- (3) A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the party to be bound by the waiver. No waiver will be inferred from or implied by any failure to act or delay in acting by a party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other party. The waiver by a party of any default, breach or non-compliance under this Agreement will not operate as a waiver of that party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).
- (4) No amendment of this Agreement will be effective unless made in writing and signed by the parties.
- (5) This Agreement is in addition to, and does not replace, or supersede, any rights a Well Owner may have at law or in equity, including under municipal, provincial or federal statutes regulations.
- (6) Despite anything else in this Agreement, this Agreement shall be solely for the benefit of the Town and NWC and no Well Owner is a party to this Agreement and no Well Owner shall have any rights under this Agreement including as a third party beneficiary.

10. Interpretation

- (1) This Agreement constitutes the entire agreement between the parties with respect to the subject matter of it and cancels and supersedes any prior agreements, undertakings, declarations or representations, written or verbal in respect of it.

- (2) Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
- (3) The division of this Agreement into Sections, the insertion of headings, and the provision of any table of contents, are for convenience of reference only and will not affect the construction or interpretation of this Agreement.
- (4) Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (5) This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province.
- (6) This Agreement may be executed by fax or in counterpart, or both.

The parties have executed and deliver this Agreement as of the date first written above.

**THE CORPORATION OF THE TOWN OF NESTLÉ WATERS CANADA,
ERIN** **A DIVISION OF NESTLÉ CANADA INC.**

By: _____	By: _____
Name:	Name:
Title:	Title:
Date:	Date:
I have the authority to bind the corporation.	I have the authority to bind the corporation.

Schedule A

Potential Well Interference Area

