

**4<sup>th</sup> DEED OF AMENDMENT OF TRUST DEED AND RULES**

DATED THE 09<sup>th</sup> DAY OF May 2022

---

**KENYA SCHOOL OF GOVERNMENT**

("the Sponsor")

AND

**JOSEPH MUSYOKI MUSENGYA**

**ISHMAEL KAMONJO MAINGI**

**ACHIENG SARAH BUKACHI**

**MOHAMED KALMEY MUHUMED**

&

**PROF. PETER NGATIA**

("the Trustees")

---

of the

**KENYA SCHOOL OF GOVERNMENT STAFF RETIREMENT BENEFITS SCHEME**

**(FORMERLY KNOWN AS**

**KENYA INSTITUTE OF ADMINISTRATION STAFF RETIREMENT BENEFITS SCHEME)**

---

**DRAWN BY**

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**ADVOCATES**

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## TRUST DEED

THIS TRUST DEED is made on the..... day of ..... 20.....

### **BETWEEN:**

- (1) **KENYA SCHOOL OF GOVERNMENT** a body corporate established in the Republic of Kenya, by Kenya School of Government Act (Act No. 9 of 2012) and having its registered office at Lower Kabete, Nairobi and of Post Office Box 23030-00604 in the Republic of Kenya (hereinafter referred to as "the Sponsor") which expression shall where the context so admits include its successors and assigns of the one part; and
- (2) **JOSEPH MUSYOKI MUSENGYA, ISHMAEL KAMONJO MAINGI, ACHIENG SARAH BUKACHI MOHAMED KALMEY MUHUMED and PROF. PETER NGATIA** jointly as TRUSTEES of KENYA SCHOOL OF GOVERNMENT STAFF RETIREMENT BENEFITS SCHEME (FORMERLY KNOWN AS KENYA INSTITUTE OF ADMINISTRATION STAFF RETIREMENT BENEFITS SCHEME) all care of Post Office Box number 23030-00604 Nairobi, Kenya (hereinafter together referred to as "the Trustees" which expression where the context so admits shall include every other Trustee or Trustees for the time being hereof) of the other part.

### **WHEREAS**

- A. **KENYA SCHOOL OF GOVERNMENT STAFF RETIREMENT BENEFITS SCHEME (FORMERLY KNOWN AS KENYA INSTITUTE OF ADMINISTRATION STAFF RETIREMENT BENEFITS SCHEME)** (hereinafter referred to as "the Scheme") was established by a Trust Deed dated 15<sup>th</sup> July 2003 between the Founder and the Trustees at the time (herein referred to as "the Original Trust Deed") which expression shall include all deeds expressed to be supplemental thereto including this Deed for the purpose of providing pensions, lump sum payments and other benefits prescribed therein;
- B. By a supplemental trust deed dated December 2008 made between the Founder and the Trustees at the time the Original Trust Deed was amended as therein appearing;
- C. By a revised Trust Deed and Rules dated 1st December 2010 made between the Founder and the Trustees at the time the Original Trust Deed was amended as therein appearing;
- D. By a deed of amendment dated 9th December 2015 made between the Sponsor and the Trustees at the time the Original Trust Deed was amended as therein appearing;
- E. It was a term of the Original Trust Deed that subject always to the limitations and restrictions therein set out including without limitation (and for so long as the Scheme should be registered under the Act and Income Tax Act) to the approval of the Commissioner and the Authority the Trustees for the time being of the Scheme should be entitled and empowered at any time and from time to time with the consent of the Sponsor by deed to amend any of the provisions of the Original Trust Deed;
- F. Pursuant to clause 24 of the Original Trust Deed, the Trustees may at any time from time to time with the consent of the Sponsor amend any provision of the trust deed and rules;
- G. Pursuant to a Trustee resolution dated.....the Trustees resolved to amend the Original Trust Deed and Existing Rules in the manner hereinafter appearing;
- H. Pursuant to a resolution of the Council (hereinafter defined) dated .....the Sponsor resolved to consent to the Trustees resolution dated ..... to amend the Original Trust Deed and Existing Rules in the manner hereinafter appearing;
- I. The Trustees are the present trustees of the Scheme.

**NOW THIS DEED WITNESSETH AND IT IS HEREBY AGREED AND DECLARED:**

That pursuant to the powers conferred upon the Trustees by the Original Trust Deed as amended from time to time and all enabling powers, the Trustees with the consent of the Sponsor hereby amend the Original Trust Deed in the manner hereinafter appearing with effect from the date hereof. The Original Trust Deed and Rules (including the amendments thereto from time to time) is amended as set out in the Trust Deed set out in Schedule 1 and the Rules set out in Schedule 2, Schedule 3 and Schedule 4 of this Deed but without prejudice to any benefits existing or increases granted before the effective date hereof.

**THE FIRST SCHEDULE - TRUST DEED**

**1. DEFINITIONS**

(a) In this Deed and the Rules, unless the context otherwise requires, the following words and expressions shall have the following meanings:

- "Accumulated Credit" means in relation to a particular Member as at a particular date the balance of the Member's Account.
- "Act" means the Retirement Benefits Act (Act No. 3 of 1997) or any statutory restatement or re-enactment thereof and any regulations and guidelines issued under the Retirement Benefits Act.
- "Actuary" means a Fellow of the Institute of Actuaries of England, the Faculty of Actuaries in Scotland, the Society of Actuaries of the United States of America, the Canadian Institute of Actuaries, the Institute of Actuaries of Japan, the Institute of Actuaries of Australia or a person holding such equivalent qualification as the Authority may by notice in the Gazette prescribe which person or persons as shall from time to time be appointed by the Trustees with the approval of the Authority to hold office as such under the Rules and in compliance with the Act.
- "Adequate Security" means (a) a first mortgage on the immovable property in respect of which the Facility is granted, or in the case of rural housing, where a first mortgage may not be easily obtained, suitable security acceptable to the Institution and (b) an assignment to the Scheme by the Eligible Member concerned of the Prescribed Proportion to which the Eligible Member is entitled to under the Rules of the Scheme.
- "Administrator" means any person appointed under an instrument as such by the Trustees pursuant to the provisions of the Act. Provided Always that the Administrator shall not be, whether directly or indirectly and whether as principal, shareholder, director, employee, agent, consultant, partner or otherwise, related to the Fund Manager. Provided Further the Administrator shall not be related to the trust Corporation by way of ownership, directorship or employment.
- "Age of Majority" means the age of eighteen years as per section 2 of the Age of Majority Act.
- "Age of Majority Act" means the Age of Majority Act Chapter 33 Laws of Kenya or any statutory restatement or re-enactment or amendment thereof and any rules and regulations issued under the Age of Majority Act.
- "Annuity" means a monthly benefit payable to a former employed Member or to a Dependant of a former employed Member who becomes entitled to receive an Annuity upon or at any time after the death of a former employed Member and the word "Pension" has the same meaning.
- "Associated Organisation" means any organization which the Sponsor declares to be associated with or a subsidiary which by a deed of adherence agrees to participate in the Scheme by making contributions thereto on behalf of employees under clause 25 of the Original Trust Deed.

"Approved Issuer"	means an insurer registered under the provisions of the Insurance Act or any other issuer approved in writing under the provisions of the Capital Markets Authority Act or under any other written law.
"Auditor"	means such firm, person or persons as shall from time to time be appointed by the Trustees with the approval of the Authority to hold office as such under the Rules and in compliance with the Act. Provided Always that the person appointed shall be a member of the Institute of Certified Public Accountants of Kenya in good standing and the person shall not be a member, trustee or Sponsor of the Scheme.
"Authority"	means the Retirement Benefits Authority established under Section 3 of the Act and charged with the supervision and promotion of retirement benefits schemes.
"Beneficiary"	means a member and includes a Dependant of the member.
"Capital Markets Act"	means Capital Markets Authority Act Chapter 485A Laws of Kenya or any statutory restatement or re-enactment or amendment thereof and any rules and regulations issued under the Capital Markets Authority Act.
"Capital Markets Authority"	means the Capital Markets Authority established under Section 5 of the Capital Markets Act.
"Chartered Financial Analyst"	means a person recognized and registered as a member of the Chartered Financial Analyst Institute and approved to hold office as such by the Authority.
"Chief Executive Officer"	means the Chief Executive Officer of the Authority appointed under Section 11 of the Act.
"Child"	means any human being under the age of eighteen years as defined under section 2 of the Children's Act.
"Children's Act"	means the Children's Act Chapter 141 of the Laws of Kenya or any statutory restatement or re-enactment or amendment thereof and any rules and regulations issued under the Children's Act.
"Commencement Date"	means the Scheme effective date which is 1st July 2009.
"Commissioner"	means the Commissioner General or such other officer as may from time to time be appointed to administer the collection of income tax under the provisions of the Income Tax Act.
"Continuous Service"	means the period during which an Employee has been continuously or uninterruptedly in the service of the Sponsor from the date of confirmation of his employment with the Sponsor and shall include all authorised leave of absence whether or not the Employee is in receipt of a salary during such absence and such leave of absence of not more than 12 months shall not be regarded as breaks in service by the Sponsor for the purposes of the Scheme.
"Contributions"	shall mean, for a Member, the amounts payable by him or deemed payable by him to the Scheme and, in respect of the Sponsor, shall mean amounts payable in respect of a Member or Members, Member's Contribution, Sponsor's Contribution being construed accordingly.
"Contribution Year"	means any period of one year starting on the commencement date or any anniversary thereof.
"Corporation"	means a company incorporated under the Companies Act having a subscribed share capital of not less than ten million shillings and which is for the time being empowered (by or under written law, its charter, memorandum of association, deed of settlement or other instrument constituting it or defining its powers) to undertake trusts, Provided That such company does not by any prospectus, circular, advertisement or other document issued by it or on its behalf, state or hold out that any liability attaches to the Public Trustee or to the

Consolidated Fund in respect of any act or omission of that company when acting as an executor or administrator, Provided that at least one director of the company must have been vetted by the Authority to undertake trust services. Provided Further that if appointed as a Trustee the Corporation shall not appoint an administrator who is related to it by way of ownership, directorship or employment.

- "Council" means the Council of the Kenya School of Government established by Section 6 of the Kenya School of Government Act (Act No. 9 of 2012).
- "Custodian" means a person registered as a custodian by the Authority and appointed as such by the Trustees under the provisions of the Act whose business includes taking responsibility for the safe custody of the scheme funds, securities, financial instruments and documents of title of the assets of the scheme fund.
- "Deferred Member's Account" means the account of Deferred Member in which is recorded the portion of the Deferred Member's Accumulated Credit which was not withdrawn or transferred from the Scheme when the Member left Pensionable Service and which continues to be credited with amounts representing distribution of investment yield and debited with amounts representing apportionment of investment loss.
- "Deferred Member" means a Member who has left the Pensionable Service of a Sponsor and who has left all or part of his Accumulated Credit in the Scheme until attaining Early Retirement Age or Normal Retirement Age.
- "Defined Contribution Scheme" means a scheme in which members' and sponsors' contributions are fixed as a percentage of Pensionable earnings or as a shilling amount, and a member's retirement benefit has a value equal to those contributions, net of expenses including premiums paid for insurance of death or disability risks, accumulated in an individual account with investment return and any surpluses or deficits as determined by the trustees of the scheme.
- "Dependants" means in relation to a particular Member, the Member's Spouse, sons, daughters, grandsons, granddaughters, adopted children, parents, grandparents, nephews, nieces, uncles, aunts, brothers and sisters in each case whether related in the whole or the half blood, living at the time of the Member's death and such other person or persons as were, in the opinion of the Trustees, immediately before the Member's death substantially dependent upon the Member (whether alone or with others) for the provision of the necessaries of life Provided That the class of Dependants shall be closed at the death of the Member except that it shall include unborn children who if born would have been Dependants.
- "Early Retirement Age" means the fiftieth (50th) birthday of a Member where the exact date of birth is known and where it is not known the first day of the month in the year in which his fiftieth (50th) birthday is deemed by the Sponsor and Trustees to occur.
- "Early Retirement" means Retirement from the Pensionable Service of the Sponsor or an Affiliated Employer at any time before Normal Retirement Age but not earlier than the date on which the Member attains the Early Retirement Age and subject to such consents as are stipulated in the Rules.
- "Eligible Child" means a child of a Member and shall include a posthumous child, a stepchild or a legally adopted child Provided That a child shall only be an Eligible Child if and for so long as he:
- (a) was during the lifetime of the Member fully dependant on him;
  - (b) is under age of 18 years and is not married. However, a child who has attained the age of 18 years but who has not exceeded the age of 25 years shall be considered an Eligible Child for the purpose of this Scheme if he is a full-time student at an approved educational establishment; and



c) is not, in the opinion of the Trustees, fully self-supporting:

"Eligible Retirement Scheme" means a Retirement Benefits Scheme registered with the Authority.

"Eligible Employee" means an Employee in the Service of the Sponsor who has been notified by the Sponsor of his appointment to permanent and pensionable status, who has attained at least eighteen (18) years of age, has completed any probationary period of employment or a maximum of one year of Continuous Service with the Sponsor from the date of his confirmation in employment (whichever is the shorter) and may include an Employee of an Associated Organisation and for so long as he remains an Employee of the Sponsor.

"Eligible Member" means,

- a) for the purpose of determining whether the Trustees should issue a guarantee in respect of a Member, a Member who has no existing guarantee and has Adequate Security for the Facility or
- b) for the purpose of approving an application by a Member to who wishes to utilize a portion of his accrued benefits to purchase a residential house, a Member who;
  - (i) has not previously utilized his accrued benefits to purchase a residential house;
  - (ii) has not attained retirement age;
  - (iii) has not taken early retirement; or
  - (iv) is not being paid a pension.

"Employee" means any person who is employed by the Sponsor.

"Employer" shall include the Sponsor or any successor by merger, purchase or otherwise, with respect to its employees or any other Sponsor participating in the scheme as provided in this deed

"Entry Date" means initially the Commencement Date and thereafter the actual date an Employee is admitted to the scheme.

"Existing Rules" means the rules governing the constitution and administration of the Scheme and enacted pursuant to the Original Trust Deed.

"Facility" means a retirement benefits mortgage facility or house ownership loan arrangement granted by an Institution in accordance with the Act.

"Financial Year" means the period of twelve months ending on 30<sup>th</sup> June in each year.

"Founder" means **KENYA INSTITUTE OF ADMINISTRATION** or any other corporation, institution or organisation undertaking substantially the same functions as those now undertaken by the Founder and in succession thereto or any subsidiary of the Founder which by a deed of adherence agrees to participate in the scheme by *inter alia*, making contributions thereto on behalf of its employees.

"Fund" means all monies from time to time held by or on account of the Trustees and subject to the terms and provisions of the Trust Deed and the Rules and the investments for the time being representing the same.

"Fund Manager" means a person registered as a manager under the Capital Markets Act and whose registration has been accepted and constitutes registration under the Act by the Authority subject to an agreement to that effect between the Capital Markets Authority and the Authority and is appointed as such by the Trustees pursuant to the provisions for appointment of a "manager" under the Act Provided Always that the Fund Manager shall not be, whether directly or indirectly and whether as principal, shareholder, director, employee, agent, consultant, partner or otherwise, related to the Administrator.

"Guarantee Amount" means an amount not exceeding the Prescribed Proportion at the time a guarantee is issued Provided Always (a) where a transaction is for the purpose of providing a refinancing opportunity on the guarantee amount in respect of a Facility advanced, the accrued benefit

shall be reevaluated at intervals of not less than three years until the redemption of the guarantee or (b) where a transaction for the purchase of an immovable property has not been finalized and a purchase price has been agreed upon by the parties, the value of the property shall not be fixed at an amount higher than the purchase price declared by the parties for the purposes of stamp duty or (c) where a transaction is for a Facility for the erection of, or additions or alterations to, or to carry out repairs to a House is contemplated, the estimate of the fair market value of the immovable property shall not be fixed at an amount higher than an amount equal to the cost of such erection, addition, alterations, maintenance or repairs, as the case may be.

"Income Draw down Plan" means an arrangement through which a Member after attaining the Early Retirement Age or Normal Retirement Age can use to access his pension benefit as per Rule 8(d) as an alternative or in addition to the purchase of annuity.

"Income Tax Act" means Chapter 470 of the Laws of Kenya or any statutory restatement or re-enactment thereof or any rules made there under.

"Individual Retirement Benefit Fund" means a retirement benefit Scheme or fund established for the benefit of individual beneficiaries for purposes of paying a retirement benefit.

"Institution" means (a) a bank or financial institution licensed under the Banking Act, a building society licensed under the Building Societies Act, a microfinance institution established and registered under the Microfinance Act, the National Housing Corporation; or (b) any other institution, including an issuer of tenant purchase arrangements that is specifically approved by the Authority, upon application, for the purpose of providing the Facility or (c) any other entity offering a residential house for sale.

"Insurance Documentation" means written evidence from the Institution confirming and satisfying the Trustees that adequate insurance arrangements have been made in respect of a Facility and the property for which the Facility is advanced.

"Investment Advisor" means a person recognized and registered as such by the Capital Markets Authority to hold office as such under and in compliance with the Capital Markets Act Chapter 485 Laws of Kenya.

"Microfinance Act" means Microfinance Act No. 19 of 2006 or any statutory restatement or re-enactment or amendment thereof and any rules and regulations issued under the Microfinance Act.

"Married" means married by any ceremony (whether monogamous or not) that would be recognised by a Court of Law in Kenya.

"Medical Cover Provider" means (a) a Post-Retirement Medical Fund or (b) the National Hospital Insurance Fund established by the National Hospital Insurance Fund Act 1998; or (c) an insurer, broker or medical insurance provider registered under the Insurance Act.

"Medical Fund" means the Post-Retirement Medical Funds contributed by the Sponsor or Members or both together with interest and other accrued income thereon.

"Medical Fund Rules" means the guidelines passed by and adopted by the Scheme Trustees relating to the establishment, administration and management of the Post-Retirement Medical Funds.

"Member" means an Eligible Employee of the Sponsor who has been duly admitted to membership of the Scheme and who has not ceased to be an Employee or who has not ceased to be a Member in terms of the Rules and includes any person who is entitled to or receiving a benefit under a retirement benefits Scheme.

"Member's Account" means the account of each Member in which is recorded the contributions made by the Member and by the Sponsor in respect of the Member and monies transferred to the Scheme on behalf of a Member in accordance with this Trust Deed and Rules together with

all amounts credited to the Member representing distribution of investment yield net of expenses and all amounts debited to the Member representing apportionment of investment loss.

**"Member's Portion"** means in relation to each Member at any particular date an amount equal to the aggregate of the Contributions made by the Member towards the Member's retirement benefit plus the member portion of any transfer payment received in respect of the member, increased or decreased at such rate that the scheme trustees, in consultation with the investment manager (or such other qualified person as the Scheme Trustees may determine), shall in their reasonable discretion from time to time declare, at least annually, having regard to the income on the scheme's assets. **"National Housing Corporation"** means the statutory body established and constituted under the Housing Act Chapter 117 Laws of Kenya or any statutory restatement or re-enactment or amendment thereof and any rules and regulations issued under the Housing Act.

**"Normal Retirement Age"** means the age a Member attains on the Normal Retirement Date.

**"Normal Retirement Date"** means the first day of the month coincident with or next following:

- (a) the 60<sup>th</sup> birthday of a member who is an administrative staff or faculty staff without earned Doctorate when the exact date of birth is known and when such date is not known, the first day of July, in the year in which such birthday shall be deemed by the Employer to occur;
- (b) the 65<sup>th</sup> birthday of a member who is a faculty staff with earned Doctorate or a member who is a Person living with disability when the exact date of birth is known and when such date is not known, the first day of July, in the year in which such birthday shall be deemed by the Employer to occur;
- (c) the 70<sup>th</sup> birthday of a member who is a Professor when the exact date of birth is known and when such date is not known, the first day of July, in the year in which such birthday shall be deemed by the Employer to occur.

**"Pensionable Salary"** means a Member's basic yearly salary or wage as determined by the Sponsor as at each Entry Date excluding all allowances, bonuses, overtime pay or other fluctuating emoluments or other forms of compensation.

**"Pensionable Service"** of a member shall, solely for the purposes of this Trust Deed and Rules, be a member's period of full-time continuous service with a Sponsor following the Entry date and after completion of probation which shall not be more than twelve months provided that temporary periods of absence of up to twelve months shall be included as Pensionable Service. This definition of Pensionable service shall not apply in any way nor have any bearing on the other terms on which a Member has been employed by a Sponsor.

**"Pensioner"** means a Member who has retired from the service of the Sponsor.

**"Person"** includes a company, corporation or other body having a legal personality.

**"Person living with disability"** means a Person with disability as defined in Section 2, of Persons with Disabilities Act, (Act No. 14 of 2003) and registered with the National council of persons living with disability.

**"Personal Representative"** means the administrators or executors of a deceased Member's estate or the holder of a public trustee's certificate of summary administration thereof.

**"Prescribed Proportion"** means an amount of the Eligible Member's assignable benefits that does not exceed either:

- (a) sixty per cent of the accrued benefit which the Eligible Member would be entitled to under the Scheme rules at the time of application for the Facility; or
- (b) the market value of the immovable property concerned whichever is less;

	Provided Always that the Trustees may provide a guarantee to cover the initial transaction fees including purchase deposit, applicable duties and taxes, valuation, and legal fees for the acquisition of the house.
"Registered Insurer"	means an insurer registered under the provisions of the Insurance Act (Chapter 487).
"Registered Scheme"	means a pension fund or provident fund, which has been registered by the Commissioner under the provisions of the Income Tax Act relating to such registration.
"Residential House"	means a dwelling built wholly or in part for provision of residential accommodation in urban and rural areas and the term "house" shall have the same meaning as residential house.
"Rules"	means the Rules of the Scheme set out in the Second and Third Schedule hereto including any amendments thereto from time to time.
"Scheme"	means the <b>KENYA SCHOOL OF GOVERNMENT STAFF RETIREMENT BENEFITS SCHEME (FORMERLY KNOWN AS KENYA INSTITUTE OF ADMINISTRATION STAFF RETIREMENT BENEFITS SCHEME)</b> established by the Original Trust Deed and registered under the provisions of the Act.
"Scheme Credit"	means for each Member at any particular date the sum of: <ul style="list-style-type: none"> <li>(a) his Member's Portion;</li> <li>(b) his Sponsor's Portion; and</li> <li>(c) any accrued income and/or losses arising out of investing (a) and (b) above.</li> </ul>
"Segregated"	means that Post-Retirement Medical Funds shall be administered and managed jointly with the Scheme funds but shall be invested and reported separately in the statutory reports of the Scheme.
"Sponsor"	means the <b>KENYA SCHOOL OF GOVERNMENT</b> and the Associated Organisation in relation to an Employee.
"Sponsor's Portion"	means in relation to each Member at any particular date an amount equal to the aggregate of the Contributions made by the Sponsor towards the Member's retirement benefit in terms of Rule 6 (c) plus the Sponsor's Portion of any transfer payment received in respect of the Member, increased or decreased by the same rate applied by the Trustees to the Member's Account. "Spouse" includes a wife or husband to whom a Member is married, or was so married, by any ceremony, immediately before his death (whether monogamous or not), which would be recognized by a Court of Law in Kenya.
"Trivial Amount"	means any amount, which shall be from time to time determined by the Authority, which shall not be less than fifty percent (50%) of the average minimum wage prescribed by the Minister for the time being responsible for matters relating to labour in the year in which the benefit becomes due.
"Trust Deed"	means this Deed and to which the Rules constitute the Schedule (being an integral part of the Deed) and any deed expressed to be supplemental thereto; references to the "Trust Deed" or to "this Deed" shall be deemed to include the Rules.
"Trustees"	means and includes the survivor or survivors of the Trustees or the trustees for the time being of the Scheme appointed under the provisions of the Trust Deed, and in this Deed.
"Valuer"	means a registered and practicing valuer as defined under Section 2 of the Valuers Act.
"Valuers Act"	means the Valuers Act Chapter 532 of the Laws of Kenya or any statutory restatement or re-enactment or amendment thereof and any rules and regulations issued under the Valuers Act.

(b) Interpretation

- (i) The singular includes the plural and vice versa and the masculine includes the feminine and vice versa.
- (ii) The list of contents in the Trust Deed and the Rules and the short titles to Clauses and Rules are not to be taken into account in interpretation.
- (iii) Punctuation is not to be taken into account in interpretation.
- (iv) Unless the contrary is expressly stated in the Trust Deed and the Rules the Trust Deed prevails over the Rules.
- (v) References to statutes and acts include amendments to them. References to the Deed and Rules include amendments to them.

**2. NAME OF THE SCHEME**

The name of the Scheme shall be the “Kenya School of Government Staff Retirement Benefits Scheme (formerly known as Kenya Institute of Administration Staff Retirement Benefits Scheme)”.

**3. COMMENCEMENT OF THE SCHEME**

The Scheme shall be deemed to have commenced on the Commencement Date.

**4. DECLARATION OF TRUST**

The Scheme shall be deemed to have been established under irrevocable trusts hereby declared with effect from the Commencement Date and shall be called the **Kenya School of Government Staff Retirement Benefits Scheme (formerly known as Kenya Institute of Administration Staff Retirement Benefits Scheme)**”. The Trustees shall stand possessed of the monies and investments from time to time forming part of the Scheme and the income thereof respectively as and when received by them upon irrevocable trust out of the capital or the income thereof or both as they may think proper to pay to the Members such benefits payable under and in accordance with the Rules.

**5. MAIN PURPOSE OF THE SCHEME**

The Scheme is constituted in Kenya as a Defined Contribution Scheme and the main purpose of the Scheme is the provision of pension and other retirement benefits for Members upon their retirement from the Sponsor's service and relief for the Dependants of deceased Members and, for that purpose, the Trustees shall hold the contributions paid to them by the Sponsor and the Members and any other sums, investments and income and all lump sums representing the same upon trust for the respective persons for whose benefit such sums and other benefits are expressed to be payable in accordance with the provisions of this Deed and the Rules.

**6. COMPOSITION OF THE SCHEME**

The Scheme shall consist of all sums paid or contributed to the Scheme by the Sponsor and the Members, together with:

- a) Amounts transferred to the Scheme from another registered retirement benefits scheme, subject to such consents as may be required, in respect of a Member joining the Scheme;
- b) The investments for the time being representing such contributions and any other sum or sums which may, under this Deed or the Rules, be paid into the Scheme; and
- c) The interest, dividends and income from such investments and the investments representing accumulations of such income, reduced by the costs, levies, benefits and other outgoings to be paid from the Scheme Fund.

**7. SPONSOR'S COVENANTS**

The Sponsor covenants with the Trustees that it will discharge all the duties and obligations imposed on it under the Scheme or by law which include as follows:

- (a) to observe the provisions of and perform its obligations under this Trust Deed and the Rules, the Act and the Income tax Act;

- (b) to collect all sums contributed by it and the Members in accordance with the Rules and such other payments as and on its behalf are to be made under the Rules and to pay such sums to the Scheme or as the Trustees shall direct;
- (c) subject to Clause 10 hereof, to pay all necessary charges and expenses incurred by the Trustees in the administration and management of the Scheme;
- (d) to pay contributions into the scheme, within the specified periods;
- (e) to provide key Member data to Scheme Trustees and Scheme administrators;
- (f) in the case of defined contribution schemes, to ensure the funding objectives of the Scheme are met; and
- (g) to ensure the cost of the benefits provided under the Scheme rules are met.
- (h) To do all things required to be done by a Sponsor of a retirement benefits scheme, which includes appointment of Scheme Trustees.

#### **8. SPONSOR'S RIGHT TO DISCONTINUE CONTRIBUTIONS**

The Sponsor shall have the right to discontinue payment of contributions to the Scheme upon giving six (6) calendar months prior written notice to the Trustees and in such event, the Trustees upon taking into account of all relevant circumstances, resolving that the Scheme shall be wound up, the Scheme shall be dealt with in accordance with Clause 33 of this Deed.

#### **9. TRUSTEES' COVENANTS**

The Trustees covenant with the Sponsor as follows:

- (a) to manage, generally supervise and administer the Scheme for the benefit of the Members and beneficiaries;
- (b) subject always to the assets of the Scheme being sufficient for the purpose, to pay or provide for the payment of the benefits prescribed by the Rules to the persons entitled to them and to observe and perform the terms and conditions thereof;
- (c) to hold the Scheme upon irrevocable trusts and to apply the same in accordance with the provisions of this Trust Deed and the Rules;
- (d) to comply with the provisions of the Act, the Income Tax Act and any other legislation for the time being in force relating to the administration and management of the Scheme;
- (e) all Trustees shall sign any contracts and documents binding the scheme;
- (f) to act with due care, diligence, in good faith and to avoid conflict of interest;
- (g) to formulate and document the policies and procedures of the Scheme;
- (h) to have a full understanding of the Sponsor's responsibilities;
- (i) to work with the Sponsor to ensure that the Sponsor understands the Trustees' responsibilities;
- (j) to inform the Sponsor of the potential impact on Scheme Trustees and additional cost of operations of the Scheme if the Scheme Trustees or Sponsor fail to meet their obligations;
- (k) to regularly review the processes and mechanisms that the Sponsor shall use to provide information with the aim of constantly improving the processes and mechanisms; and

- (l) at least once in every three months, to submit to the Sponsor a report on the Scheme in accordance with the Act.

## 10. EXPENSES OF ADMINISTRATION AND MANAGEMENT

Except as otherwise agreed with the Sponsor and as set out in Rule 21(o). The Scheme shall pay all charges and expenses incurred by the Trustees in connection with the administration of the Scheme, including but not limited to the professional fees of an Investment Manager, Custodian, Actuary, Administrator, Accountant and any other providers of professional services and all levies imposed on the Scheme by the Act.

## 11. APPOINTMENT OF TRUSTEES

- (a) Subject to the Sponsor deciding to appoint a Corporation as a sole trustee under the provisions of Clause 13 of this Trust Deed, the number of Trustees shall always be not less than four (4) and not more than nine (9), at least one-half of whom (or the number nearest to but not more than one half) shall be nominees of the Members, Provided Always That the appointment of any person as a Trustee shall be subject to the approval of the Authority and Provided Further That at least one such approved Trustee must have been vetted by the Authority to undertake trust service. Except in the case of death or removal of a Trustee under Clause 14 each Trustee shall hold office for a period of three years but shall be eligible for re-appointment for another term of three (3) years subject to a most recent evaluation of the Scheme Trustee's performance and submission of a certificate of good conduct. In the event of death or removal of a Trustee resulting in the number of Trustees being less than four (4) the Trustees shall ensure that a new Trustee is appointed in line with the provisions of the scheme rules within a reasonable time but in any case, within twelve months from the date of the death or removal. PROVIDED THAT all acts and proceedings of the continuing trustees pending the filling of the vacancy shall be valid and binding.
- (b) Each Trustee shall be appointed and may be removed by the Sponsor pursuant only to a resolution of the Council except a Trustee appointed pursuant to a nomination of the Members who may be removed in accordance with Clause 14 hereof. A copy of such resolution certified by the Secretary to the Council or any person authorized by the Council shall be sufficient evidence thereof.
- (c) Upon such appointment or removal of a Trustee, any assurance or thing requisite for vesting the trust property or any part thereof jointly in the persons who are continuing Trustees shall be executed or done.
- (d) The Sponsor and Trustees shall ensure that Scheme Trustees nominations and elections shall be conducted in such manner and in accordance with any procedures or regulations laid down by the scheme rules and that appointees to the Board of Scheme Trustees shall take into account gender balance, age & experience.
- (e) The Board of trustees shall have a broad mix of skills and competencies and shall include at least one trustee who shall be professionally qualified in any matter related to finance as may be recognised by a relevant industry body.
- (f) The tenure of Trustees shall be staggered so that not more than one-third of the Trustees shall simultaneously retire.
- (g) A duly nominated and appointed Scheme Trustee shall be issued with a letter of appointment by the Scheme's Trust Secretary and shall undergo a well-structured induction process.

## 12. ELECTION OF TRUSTEES BY MEMBERS

The election of the requisite number of the Trustees by the Members pursuant to Clause 11 and the removal of such Trustees shall be conducted in such manner and in accordance with any procedures or regulations laid down or issued by the Trustees from time to time and notified to the Members.

### **13. POWER TO APPOINT CORPORATE TRUSTEE**

The Sponsor may pursuant to a resolution of the Council appoint a Corporation to be a Trustee or sole Trustee hereof upon such terms as to remuneration as at or prior to its appointment may be agreed in writing between such Corporation and the Sponsor or in default of such agreement in accordance with the Corporation's published terms and conditions as to acceptance of trusts current at the date of such appointment and the Sponsor may also remove such Corporation in a similar manner.

### **14. REMOVAL OF TRUSTEES FROM OFFICE**

A person shall in addition to the grounds set out in the Act cease to be a Trustee and shall vacate office as such if:

- (a) he has been or is sentenced to imprisonment by a court of competent jurisdiction for a period of six (6) months or more; or
- (b) he becomes bankrupt or makes an arrangement or composition with his creditors generally; or if a corporation, it becomes insolvent; or
- (c) he becomes of unsound mind; or
- (d) he fails, to attend 2 (two) consecutive meetings of the Trustees without reasonable cause and the other Trustees resolve that, by reason of such failure, he shall cease to be a Trustee; or
- (e) he resigns by issuing a one (1) month written notice addressed to the Trust Secretary (as defined at Clause 18(a)); or
- (f) fails to undergo statutory training within the period stipulated under the Act; or he is disqualified or forbidden to act as a trustee pursuant to the Act or any other written law; or
- (g) he is removed by the Sponsor pursuant to Clause 11 hereof; or
- (h) he is removed (in case of a Trustee appointed pursuant to a nomination of the Members) under Clause 12 hereof; or
- (i) he dies.

The removal of a Scheme Trustee from office shall be finalised through a resolution of the Board of Trustees and notified to the Sponsor and Members in writing promptly.

### **15. REMUNERATION OF TRUSTEES**

A Trustee may be remunerated as follows:

- (a) a Corporation in accordance with Clause 13 hereof;
- (b) Trustees may be paid a sitting allowance and be reimbursed for reasonable expenses they incur in the course of rendering their services to the scheme.
- (c) In accordance with the prevailing Trustee's remuneration policy, which Trustee's remuneration policy shall be subject to approval by the members at an annual general meeting once every three years and where the approval shall not be granted, the policy prevailing at the time shall continue to apply until the Authority makes a determination regarding the proposed new policy.

### **16. APPOINTMENT OF ADVISORS**

- (a) The Trustees through a competitive selection process and after considering several key issues such as competency, quality of service, use of technology and compliance with information technology laws, business continuity plans, data safety and protection, cost, liability, personnel capacity, experience and professional indemnity cover of the service provider:



- (i) shall appoint in writing a Fund Manager (except where all the assets of the Scheme are invested in Guaranteed Funds) and ensure that at all times the Fund Manager is carrying out his work competently and in accordance with the Act;
  - (ii) shall, (except where all the assets of the Scheme are invested in Guaranteed Funds), appoint in writing a Custodian who shall, inter alia, have custody of the documents of title to the assets of the Scheme and other securities belonging to the Scheme;
  - (iii) may appoint in writing an Actuary to be the Scheme Actuary;
  - (iv) shall appoint the Internal Auditor to the Scheme. No person shall be eligible for appointment as the Auditor unless he is a member of the Institute of Certified Public Accountants of Kenya, in good standing and whose appointment has been approved by the Authority Provided That the Auditor shall not be a Member, a Trustee or the Sponsor. The Trustees shall notify the appointment of the Auditor to the Authority within 30 days thereof;
  - (v) shall appoint an External Auditor who shall examine the accounting records of the Scheme and provide the board with an opinion on the financial statements of the scheme. The Board of Trustees shall upon receiving the annual audit management report, discuss the content of the report and implement the recommendations therein. The services of the External auditor shall be reviewed at least once every five year;
  - (vi) shall, subject to the Act, appoint in writing a liquidator in the event of the Trustees resolving to voluntarily dissolve or wind-up the Scheme;
  - (vii) shall appoint in writing an internal or external scheme Administrator to manage the administrative affairs of the Scheme on behalf of the Board of Trustees Trustees; and
  - (viii) may appoint and obtain advice (whether directly or indirectly) from any professional adviser upon terms as they think fit and if they require legal advice they shall appoint as necessary a legal adviser and other appropriate advisers.
- (b) The terms and conditions for each appointment shall be set out in the relevant written instrument and shall align to the requirements of the Act Provided Always That all instructions from the Board of Trustees to the service providers shall be in writing. The Board of Trustees shall communicate regularly with the representatives of the service providers and where appropriate invite them to attend meetings of the Board of Trustees.
  - (c) The Trustees may remove any person appointed pursuant to this Clause, and on the removal of a Fund Manager, the Actuary, the Custodian, the Administrator or the Auditor, the Trustees shall appoint a replacement soon thereafter and notify the Authority Provided Always That where an External Auditor is removed, the External Auditor may not be re-appointed to offer services to the Scheme for at least two years from the date of the lapsing of the previous appointment.
  - (d) Subject to the Medical Fund Rules, the Scheme Trustees may appoint a new service provider for the Post-Retirement Medical Fund or may retain the service providers already appointed for the Scheme.
  - (e) Where the Board of Trustees appoints service providers or advisors in accordance with this clause, the Board of Trustees shall retain the ultimate accountability for the management and supervision of the affairs of the Scheme.

## 17. TRUSTEES TO KEEP RECORDS

- (a) The Trustees shall have the responsibility for the general management and administration of the Scheme and they shall keep all proper books and records of account showing the position in respect to Contributions, other income, expenditure, liabilities, guarantees, assignment of benefits, purchase of residential houses by members, indemnities, undertakings and assets of the Scheme and bank account and Facility accounts details of the Members for the purpose of payment of benefits and

monitoring of repayment of any Facility issued by Institutions to Members respectively and ensuring that any assignments are discharged once the Facility is paid in full and all other matters relevant to its management and shall prepare or cause to be prepared and furnish to the Sponsor with an audited account of all such transactions in accordance with the provisions of the Act, the Rules or as the Sponsor may from time to time determine;

- (b) The Trustees shall keep at the registered office of the Scheme a register of the Members of the Scheme showing particulars of all such Members and shall keep records of the account of every Member and all transactions in respect of each Member shall be duly recorded. The account of each Member shall be kept separate and distinct from the account of every other Member. Every Member of the Scheme shall have a right to inspect his own account in the register during usual business hours on giving written notice of fourteen (14) days.
- (c) Subject to maintaining of confidentiality with the limits of the law, the Scheme Trustees shall ensure that information shared with Members is accurate, clear, relevant and understandable. Members who are challenged or otherwise unable to use or comprehend written communication because of a disability shall be suitably accommodated. Electronic communication may be used to communicate with Members if a Member wishes to receive information in electronic form and notifies the Scheme of this desire in writing.
- (d) The Scheme Trustees shall retain and store information in accordance with the provisions of the Act.

#### 18. SCHEME TRUSTEE'S ADMINISTRATIVE ARRANGEMENTS

In the event of there being Trustees who are natural persons, the following provisions shall apply:

- (a) The Trustees may appoint a Trust Secretary possessing all relevant qualifications and experience on agreed terms and conditions of appointment and remuneration, to carry out the specific roles listed in his letter of appointment ("the Trust Secretary") from:
  - i) the staff of the Administrator of the Scheme;
  - ii) among the body of Trustees (when the Trust Secretary is absent); and
  - iii) any person, preferably, who possesses law qualification or a certified public secretary

Provided That, in appointing a trust secretary, the Board of Trustees shall take into account a person's prior experience as a trust secretary in lieu of the qualifications contemplated in Clause 18 (a) (iii) above.

- (b) The Trustees shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings. The Chairperson ("the Scheme Chairperson") shall be elected by the board of trustees at its first meeting after the appointment of the board or at the expiry of the term of the chairperson they shall appoint a Chairperson possessing all relevant qualifications, qualities and experience (Provided Always That the Administrator of the Scheme (if any), the Chief Executive Officer of the Sponsor and the chairperson of the Board of directors of the Sponsor shall not be eligible for appointment as the Scheme Chairperson) and at least one half of the Trustees shall constitute a quorum which shall include the Trustees nominated by the Sponsor and at least one elected Trustee.
- (c) The Administrator of the Scheme, where relevant, shall sit in on the meetings of the Board of Trustees but shall have no vote.
- (d) In a duly constituted Board of Trustees meeting, decisions shall be arrived at by consensus, and in the event, there is no consensus the Trustees shall by a majority of votes on a show of hands of those present and in case of any equality of votes the Scheme Chairman shall have a casting vote.
- (e) The Trust Secretary on being requested by the Scheme Chairman in consultation with the Scheme Trustees at any time shall convene a meeting or special meeting of the Scheme Trustees upon fourteen days' written notice to the Scheme Trustees and develop the agenda of the meetings Provided That the Scheme Trustees shall meet at least two (2) times in a calendar year and the interval between meetings shall not exceed six (6) months. The agenda of the meeting and

any other relevant document shall be issued to the Scheme Trustees at least seven days before the date of the meeting.

- (f) The Trustees shall convene an annual general meeting in each financial year by issuing a reasonable notice of the meeting to all Members at which Members shall be given reasonable opportunity to interrogate the Scheme affairs at a venue agreed by the Scheme Trustees and shall determine the agenda for such meeting **Provided That** the agenda be provided to the Members at least fourteen days before the date of the annual general meeting and shall include but not be limited to an annual report on any changes in Scheme benefits or Contributions structure, a summary of the schemes; investments, audited accounts and Trustee remuneration and questions from members **Provided Further that** Trustees' remuneration shall after every three years be approved by the Members during the annual general meeting and thereafter by the Authority.
- (g) A resolution in writing signed by all the scheme Trustees shall be valid and effectual as a resolution properly passed at a duly convened meeting of the Scheme Trustees.
- (h) The Trust Secretary shall keep minutes of all meetings of the Trustees and the exercise by the Trustees of all powers and discretions vested in them and the passing of resolutions shall be recorded in such minutes. A document certified by the Scheme Chairman or any authorized Trustee to be a true copy of a resolution of the Trustees shall be sufficient evidence of the resolution. The Trust Secretary shall ensure the minutes of the annual general meeting are available at the Scheme's office for Member's review as soon as possible after the meeting but in any case, not more than three months after the date of the meeting.
- (i) The Trustees shall have power to act notwithstanding any vacancy in their number. Any vacancy in the Board of Trustees shall be filled within a reasonable time but in any case, within twelve months from the date of the vacancy.
- (j) The Trustees shall make such banking arrangements as they shall think fit **Provided Always That** cheques drawn on the moneys of the Scheme or other documents relating thereto may be signed by a Trustee or a duly authorized representative mandated by a resolution of the Trustees or by a Corporation or other corporate trustee if it shall be a sole trustee.
- (k) Contracts and other documents shall be signed by all the Trustees (unless resolved otherwise by a resolution of the Trustees) or by a Corporation if it shall be a sole Trustee.
- (l) Scheme Trustees shall establish a code of conduct of the Scheme as prescribed by the Authority, that shall set the values and ethical standards, corporate governance values and standards of integrity to be applied in the management of the Scheme. Each Scheme Trustee shall sign a copy of the Scheme code of conduct as a commitment to principles established by this guideline.
- (m) Scheme Trustees may organise Members' days and retirement planning seminar for Members to address and educate Members on their rights, obligations, benefits calculation and financial management.
- (n) The Chairperson of the Board of Trustees shall provide overall leadership to the Board of Trustees, ensure efficient and timely conduct of the Board of Trustees' business and act as the spokesperson of the Scheme in respect of the Scheme's policies. In addition to the general qualifications to be a member of a board of trustees the Chairperson shall possess the following qualities to be appointed as a chairperson-
  - (i) Effective leadership and governance skills;
  - (ii) Prudent judgement and effective decision making;

- (iii) The ability to develop a coherent and effective team among the trustees including ensuring that all trustees are treated equally;
  - (iv) Effective communication skill;
  - (v) The ability to mentor newly appointed trustees; and
  - (vi) Sociable, reliable, dependable and nonpartisan.
- (o) The Chairperson shall preside at each meeting of the board of trustees and in the absence of the Chairperson, the Trustees present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, enjoy all the powers of the Chairperson.
- (p) Scheme Trustees shall prepare a Board Charter, annual work plan and calendar of meetings to guide the business of the Board. Each Scheme Trustee shall sign a copy of the Scheme Board Charter, annual work plan and calendar of meetings as a commitment to principles established by this guideline.

#### 19. POWERS OF SCHEME TRUSTEES

Subject to the Act, the Trustees shall in addition and without prejudice to all powers conferred upon the Trustees by law, have the following powers:

- (a) to delegate any of their functions or any business relating to or under the Scheme (including the receipt or payment of money) to any one or more of their number, or to any person or to a committee composed of such persons as they may decide and may delegate any matters relating to the collection of Contributions and the administration and investment of the assets from time to time comprising the Scheme and of the income generated by such assets to such agents, administrators, advisers, custodians and managers or other professional advisers (whether remunerated or not) as they may determine and the Trustees may register or vest any of the assets from time to time comprised in the Scheme in the names of any other person as nominee of the Trustees Provided Always that such delegation be on such terms as the Scheme Trustees think fit and the Scheme Trustees may at any time revoke any such delegation made by them Provided Further That any decisions of the committees shall be ratified by the Board of Trustees before implementation;
- (b) to determine whether or not any person is entitled from time to time to any benefit under the Scheme;
- (c) to lease, mortgage, exchange, sell or otherwise deal with any interest in land forming part of the assets of the Scheme;
- (d) to commence, carry on or defend proceedings relating to the Scheme or the determination of any rights of the Members and others therein;
- (e) to raise or borrow any sum or sums of money and to secure the repayment thereof in such manner and upon such terms as the Trustees may deem advisable and to charge or mortgage the sums so raised or borrowed or any part thereof on all or any part of the Scheme;
- (f) subject to the investment guidelines and regulations of the Act, to invest any moneys forming part of the Scheme in the purchase of or at interest upon the security of such stocks, shares, securities or other investments of whatever nature and wheresoever situate (and without prejudice to the generality of the foregoing to purchase, take on, or lease any freehold, leasehold or other immovable property and to sell, let or otherwise deal in the same) as the Trustees shall in their absolute discretion think fit;
- (g) of investing and transposing investments in all respects as if they were absolutely entitled thereto beneficially;

- (h) of preparing and submitting to the Authority a written statement of investment principles, governing investments decisions of the scheme fund which shall be revised after every three years and submitted to the Authority. The statement shall be prepared or revised under the considered written advice of a Chartered Financial Analyst, Actuary, Investment Advisor or Manager. Provided That the Advisor is not the scheme Fund Manager, related to the company or an employee of the Scheme. The statement shall be signed by the Trustees and the Investment Advisor and shall cover, inter alia, the policy of the Scheme in relation to the following matters:
- (i) the categories of investments to be held;
  - (ii) risk;
  - (iii) the realisation of investments;
  - (iv) asset liability matching; and
  - (v) any other matter as may be prescribed by the Authority from time to time;
- (i) to ensure Funds from the Post-Retirement Medical Fund shall be Segregated from the funds of the Scheme and Provided Further That a separate written statement of investment principles shall be prepared and submitted to the Authority for the Post-Retirement Medical Fund where the value of the Post-Retirement Medical Fund is at least fifty million shillings (KShs.50,000,000.00);
- (j) to underwrite or sub-underwrite and to enter into any agreement or agreements for underwriting or sub-underwriting any investments or securities whether on issue or sale and whether jointly with other persons or not and to do all things incidental thereto;
- (k) to apply any moneys forming part of the Scheme in effecting or maintaining any insurance which in the opinion of the Trustees is suited for the purposes of the Scheme and to vary the terms of surrender, sell or otherwise dispose of any such insurance or exchange the same for a substituted insurance;
- (l) subject to the regulations of the Act, to determine whether or not any member is entitled to a guarantee for a Facility and give guarantees, indemnities, assignments or undertakings and do all such acts and things as the Trustees may consider necessary and expedient to facilitate such guarantee in accordance with the Act including but not limited to ensuring that agreements made between the Scheme Members and institutions in respect of any Facility comply with the Act, Trust Deed and Rules, verify that the Institutions to which assignments are to be made have complied with the Act and ensure the proper execution of all the documentation required in accordance with Rule 21;
- (m) to administer and manage the Post-Retirement Medical Fund to the exclusive benefit of Members and their Beneficiaries;
- (n) to exercise leadership, enterprise, integrity and sound judgment in directing the affairs of the Scheme to achieve continuity and sustainability;
- (o) to promote good governance in the Scheme;
- (p) to approve and review overall strategies and significant policies relating to the Scheme;
- (q) to ensure the Scheme has sufficient and appropriate resources to achieve its strategic goals;
- (r) to be prudent in the oversight of the negotiation of the fees charged to the scheme by service providers having considered the value received and the long-term sustainability of the Scheme;
- (s) to take responsibility for the performance of the Scheme in achieving the Scheme/Fund's objectives and meeting the Scheme/Fund's obligations;
- (t) to ensure effective financial and other internal controls are established and maintained to achieve the Scheme's financial reporting and risk-management objectives;

- (u) to monitor the effectiveness of the internal control and risk-management systems of the Scheme;
- (v) to deal fairly with stakeholders' interests, demands and expectations;
- (w) to appoint service providers and experts to advise the Scheme Trustees;
- (x) to ensure the scheme complies with all statutory requirements including the good corporate governance guidelines;
- (y) to appoint not more than 4 committees to facilitate the work of the Board of Trustees by conducting detailed analysis of and holding discussions on specific areas of the Scheme's operations. The recommended committees shall be investment committee, audit and risk-management committees and administration and communications committee all of which must have terms of referenced prepared as prescribed by the Authority. The services of experts may be engaged to provide consultancy services or co-opt experts to sit in committees of the Board of Trustees to provide guidance; and
- (z) to generally execute and do all such acts and things as the Trustees may consider necessary or expedient for the maintenance and preservation of the Scheme and of the rights of the Members and others therein.

## 20. PROTECTION OF SCHEME TRUSTEES

- (a) None of the Trustees shall be liable for the act, neglect, default, fraud or misconduct of any agent, officer, servant or other person employed by them or otherwise engaged or occupied in connection with the Scheme notwithstanding that it may not have been strictly necessary or expedient for any person to be so employed, engaged or occupied or by reason of any mistake or omission made in good faith or by reason of any other matter or thing except willful fraud or wrong-doing on the part of any of the Trustees.
- (b) No decision of or exercise of a power by the Trustees shall be invalidated or questioned on the ground that the Trustees or any of them or any director or officer of anybody corporate, which is a Trustee, had a direct or indirect interest in such decision or in the exercise of such power but a Trustee or director of a corporate Trustee or a service provider or advisor shall disclose any such personal interest in writing to the other Scheme Trustees and record in the minutes of the meeting at which the disclosure is made that the board's decision or approval shall be informed of the conflict. A trustee with a conflict of interest on any matter shall not vote when the matter is determined by the board and shall not use his or her influence to determine the matter. Trustee with a conflict of interest shall not be counted when determining the quorum for the meeting at which the matter shall be determined by the board.
- (c) A Trustee (or any director or officer of a body corporate which is a Trustee) who is or has been a Member shall be entitled to retain for himself any benefit to which he is entitled by virtue of such membership.
- (d) A Trustee shall not be victimized, removed from office of trustee or discriminated against for having performed the functions of office in accordance with the Trust Deed and Rules of a Scheme or any law without due process of the law.

## 21. PROTECTION AGAINST FINANCIAL LOSS

The Trustees may take such steps as they deem appropriate to protect the Scheme and the individual assets comprising the same against any manner of insurable risk or financial loss which might arise out of the negligence or default (willful or otherwise) of the Trustees, officers, administrator, manager or custodian or other professional advisers either by way of guarantee provided by the Sponsor or by way of such insurance and in such amount as the Trustees shall determine.

## 22. POWERS CONFERRED BY LAW

It is declared that, in addition to any powers or provisions for the indemnity or otherwise for the protection of the Trustees conferred by or contained in this Deed, the Trustees shall be entitled to exercise any powers conferred by law on Trustees if and in so far as a contrary intention is not expressed in this Trust Deed and rules to have the benefit of any indemnity or other protection given by law to Trustees.

## 23. PROFESSIONAL CHARGING CLAUSE

Any person being an advocate, accountant or other person engaged in any profession or business shall be entitled to charge and be paid out of the Scheme Fund all usual professional or other charges for business done by him or his firm in relation to this Trust Deed and the Rules and also his reasonable charges in addition to disbursements for all other work and business done and all time spent by him or his firm in connection with the administration of the same including matters which might or should have been attended to in person by a Trustee not being an advocate, accountant or other professional person but which such Trustee might reasonably require to be done by an advocate, accountant or other professional person **PROVIDED ALWAYS** That no Trustee engaged in any profession or business shall be engaged in professional services done by him or his firm in connection to the Scheme.

## 24. AMENDMENT OF DEED AND RULES

The Trustees may at any time and from time to time with the consent of the Sponsor and the approval of the Authority amend by deed any of the provisions of this Trust Deed or the Rules Provided That no such amendment shall be made valid which:

- (a) Varies the main purpose of the Scheme;
- (b) Authorises the payment of any part of the moneys of the Scheme to the Sponsor (otherwise than upon the dissolution of the Scheme and/or with the written consent of the Commissioner and the Authority) or to any Member while still in service of the Sponsor;
- (c) Diminishes or invalidates any benefit or any rights or interests which shall have accrued to a Member in respect of benefits secured under the Scheme up to the date on which such amendment takes effect unless such amendment (whether retrospective or otherwise) is necessary in order to secure approval or continued registration of the Scheme under the Act and the Income Tax Act or is with the consent of such Member;
- (d) Extends the operation of the Scheme beyond the Trust Period (as defined in Clause 27);
- (e) Prejudices or causes withdrawal of approval or registration of the Scheme under the Income Tax Act or the Act;
- (f) affect any right of a creditor of the Scheme, other than as a Member thereof; and
- (g) invalidate or reduce accrued rights and interests of the Sponsor and Members of the Scheme.

Provided Further That (i) no such amendment shall become effective until it shall have been approved by the Commissioner (if the Scheme shall then be a Registered Scheme) and the Authority in the manner set out in the Act and (ii) any amendment affecting the financial position of the Scheme shall be referred to an Actuary before being adopted and a certificate from an Actuary submitted to the Authority certifying that the financial soundness of the Scheme shall not be affected thereby.

## 25. PARTICIPATION BY ASSOCIATED ORGANISATIONS

In the event of any other Sponsor associated with the Sponsor applying to participate in the Scheme and agreeing by a deed of adherence to be bound by the provisions of this Trust Deed and the Rules, the Trustees shall have the power, with the consent of the Sponsor and the Authority (and of the Commissioner, if the Scheme is then a Registered Scheme) to admit any employees of that other Sponsor to membership of the Scheme and thereupon that other Sponsor shall be deemed to be included in the expression the "Sponsor"

for the purposes and to the extent set out in the deed of adherence Provided That the participation of the new Sponsor shall not be to the disadvantage of the existing Members.

## 26. PERPETUITY PERIOD

In the event that a perpetuity period is applicable to any disposition made under the provisions of this Trust Deed or the Rules the perpetuity period shall be for the life of the "Relevant Member" and eighteen years thereafter (the "Perpetuity Period"). For the purposes of this clause "the Relevant Member" shall mean the Member making the relevant disposition or the Member in respect of which the Sponsor has made the relevant disposition.

## 27. TRUST PERIOD

Unless otherwise terminated under the provisions hereof or the Rules, the trusts hereof shall continue until the death of the last Member who having been born on or before the Commencement Date, dies whilst still a Member or such longer period as the law may allow (herewith referred to as the "Trust Period").

## 28. TRANSFER OF UNDERTAKING OF THE SPONSOR

If, upon any reorganisation or reconstruction or transfer of the undertaking of the Sponsor, the Sponsor shall enter into an arrangement for the purchasing or continuing employer to undertake the Sponsor's rights and obligations under this Trust Deed and the new Sponsor shall bind itself by deed to assume those rights and obligations then, subject to such changes as may be necessary and to the consent of the Authority (and of the Commissioner if the Scheme is then a Registered Scheme), the trusts of this Trust Deed shall continue to have effect as though the new employer had been a party to this Trust Deed and the Sponsor shall be released from all obligations under this Trust Deed and the Rules.

## 29. TRANSFERS TO THE SCHEME

- (a) At the request of a Member to transfer the value of his accrued benefits from another retirement benefits scheme registered under the Act and under the Income Tax Rules of which the Member was previously a member, including another registered retirement benefits scheme established by the Sponsor, and subject to such consents as may be stipulated in the Act, the Trustees shall accept from such other scheme any moneys which the trustees of such other scheme are empowered to transfer to the Scheme.
- (b) In such event the Member shall be granted in respect of such transfer such benefits and on such terms as the Trustees may consider just and equitable.
- (c) The portion of the amount transferred into the Scheme shall be recorded in the Member's Account.
- (d) If any person is transferred to the Pensionable Service of the Sponsor or from the service of another organization allied or subsidiary to the Sponsor and becomes a Member of the Scheme and if an amount is transferred to the Scheme from a registered retirement benefits scheme established by such other organization the Trustees may subject to the consent of the Sponsor and such consents as may be required under the provisions of the Act and Regulations permit the whole or a portion of his service with such other organization to be considered as Pensionable Service on terms to be determined by the Trustees.

## 30. TRANSFERS FROM THE SCHEME

In the event of an Employee ceasing to be a Member and becoming a member of any other Scheme/fund or arrangement which has been registered under the Income Tax Act or the Act, The Trustees shall at the request of the Member and and after taking all reasonable steps to ensure that such other Scheme/fund is an approved Scheme/fund transfer to such other Scheme/fund an amount equal to such portion of the Member's Accumulated Credit as the Member shall not have withdrawn. The Member shall give to the Trustees *inter alia*, as a condition of any such transfer, a discharge of all liabilities on terms satisfactory to the Trustees.



### 31. TRANSFER, SECONDMENT & LEAVE OF ABSENCE

- (a) If a Member is transferred to the service of a company or other organisation constituting "Other Public Service" and such transfer is deemed by the Council to be in the public service interest and is not a temporary one in accordance with the terms of paragraph (b) of this clause then subject to the agreement of the new employer and with the consent of the Commissioner and the Authority the Trustees may, in respect of the Member:
- (i) If he becomes a member of a scheme or fund established for the benefit of the employees of the company or organisation to which he is transferred in Kenya, the Member may opt for the Trustees to pay to such scheme or fund an amount equal to his Accumulated Credit to be determined by the Trustees in respect of him, on terms determined by the Trustees after consulting the Administrator, provided that no further contributions shall be payable by or in respect of him. Upon such payment/transfer, the Member shall have no further interest in or claim against the Scheme;
- (ii) If he does not become a member of a scheme or fund established for the benefit of employees of the company or organisation to which he is transferred or if he does not opt to transfer his Accumulated Credit to the scheme or fund established for the benefit of employees of the company or organisation upon becoming a member, his Accumulated Credit shall remain in the Scheme and he shall remain as a deferred Member of the Scheme while in the service of such other company or organization.
- (b) If a Member is seconded or otherwise temporarily transferred to the service of a company or organisation constituting "Other Public Service" and not being an Employee for the purposes of this Scheme, he shall be deemed to remain in the service of the Sponsor and shall continue to be a Member and pay contributions accordingly and provided that if he is not re-transferred to the service of the Sponsor the provisions of paragraph (a) of this Rule shall apply except that the date of transfer shall be the date upon which the Sponsor decided that he shall not be re-transferred.
- (c) If any person is transferred to the service of the Sponsor from the service of a company or other organisation constituting "Other Public Service" not being an Employee for the purposes of the Scheme or if an amount is transferred to the Scheme from another pension scheme or provident fund in respect of a Member or if an amount is paid to the Scheme in respect of a Member, the Trustees may permit the whole or a portion of his service with any such company or organisation to be reckoned as Pensionable Service on terms to be determined by the Trustees subject to the approval of the Sponsor and the written consent of the Commissioner and the Authority.
- (d) A Member may be granted leave of absence when appointed to administrative positions or posted to Diplomatic service by the Council on a contract term and earning gratuity. Leave of absence shall be for an initial period of three years which may be extended at the discretion of the Council.
- (e) A Member who is granted leave of absence by the Council shall be deemed to remain in the service of the Sponsor and continue to be a Member of the Scheme, they shall be expected to maintain their pensionable status and pay contributions accordingly. Provided where the Sponsor pays pension contribution for such a Member, such contribution shall be deducted from the Member's service gratuity.

### 32. BULK TRANSFERS TO AND FROM THE SCHEME

The Trustees shall have the power to transfer the assets and liabilities of the Scheme or portion thereof to another Registered Scheme approved as such by the Authority and the Commissioner or to take transfer of the assets and liabilities or portion thereof of another Registered Scheme approved as such by the Authority and the Commissioner Provided That any such transfer or amalgamation shall be carried out in accordance with the Act **Provided Further That** no such transfer shall become effective until it shall have been notified to the Commissioner (if the Scheme shall then be a Registered Scheme) and approved by the Authority.

### 33. FULL OR PARTIAL DETERMINATION OCCASIONED BY THE SPONSOR

Subject Always to the Act, and to any discretion given to the Trustees by the Trust Deed and Rules to continue the Scheme, the trust of the Scheme shall determine upon the earliest of the following events:

- (a) The participation of the Sponsor in the Scheme shall cease upon the happening of one or more of the following events:-
  - (i) if the Sponsor ceases to participate in the Scheme in accordance with Clause 8 by Issuing the Trustees not less than six months calendar notice in writing of its intention to cease to contribute and the Trustees resolve to wind up the Scheme in accordance with Clause 34 hereof; or
  - (ii) if the Sponsor ceases to exist or for any other reason ceases to operate and some other statutory body or organisation shall not be empowered to undertake the rights and obligations of the Sponsor herein; or
  - (iii) if the Sponsor going into liquidation other than for the purpose of reconstruction or amalgamation with any other entity in which case the Trustees may make such arrangements as they think fit for the continuation of the Scheme by any entity resulting from or involved in the reconstruction or amalgamation; or
  - (iv) if the Sponsor failing to remedy any breach of its obligations under this Trust Deed or the Rules within ninety [90] days or such longer or shorter period as the Trustees may permit, from the date of receipt of a written notice from the Trustees requiring the breach to be remedied; or
  - (v) where there is a cession of deductions of Members' Contributions from Members' emoluments by the Sponsor upon a direction by the Authority following non-remittance of employer contribution; or
  - (vi) at the expiry of the Trust Period;
  - (vii) the court (whether upon application by the Authority pursuant to the Act or otherwise) orders that the Scheme be wound up.

Provided Always That the Scheme shall only be wound up subsequent to a final actuarial valuation done on a winding up basis.

- (b) Notwithstanding paragraph (a) of this Clause, if the Trustees with the agreement of the Authority shall think fit, the Scheme shall not be wound up and shall be continued as a closed Scheme subject to the Rules, but the liability of the Sponsor to contribute to the Scheme shall cease upon the occurrence of the event causing the determination of the trusts of the Scheme.
- (c) In the case of a partial determination the Trustees shall make such arrangements for the protection and disposition of the Accumulated Benefits of Members affected thereby as they may deem appropriate consistent with the terms of this Trust Deed and Rules, the Act, the Income Tax Act and any other applicable Law. Members affected by such partial determination may opt to transfer their benefits to another properly registered scheme subject to such consents as are required.
- (d) In the event that the Sponsor having determined participation in the Scheme, makes arrangement to contribute retirement benefits through another registered Retirement Benefits Scheme, Members shall transfer their benefits to that registered scheme in which the Sponsor is participating in subject

to: the consent of the Trustees; the provisions of this Trust Deed and Rules; the Act; the Income Tax Act and any other applicable Law.

#### 34. VOLUNTARY DISSOLUTION OCCASIONED BY THE TRUSTEES

- (a) Subject to seeking and receiving written approval from the Authority, the Trustees may resolve to voluntarily dissolve the Scheme in accordance with this Clause upon the happening of any one or more of the following events:
- (i) If it appears to the Trustees that the Scheme is in such an unsound financial condition as to warrant dissolution the Trustees thereupon with the agreement of the Sponsor deciding to determine the Scheme; or
  - (ii) The Sponsor terminating its liability to contribute to the Scheme; or
  - (iii) The expiration of the Trust Period.
- (b) The Trustees shall upon resolving to dissolve the Scheme appoint a Liquidator subject to the approval of the appointment by the Authority to liquidate the Scheme in the manner provided for in the Act.
- (c) The appointed Liquidator shall not:
- (i) be a person who has provided service to the scheme for a period of five years prior to the resolution to wind up the scheme,
  - (ii) have been imprisoned for a period of six (6) months or more by a court of competent jurisdiction,
  - (iii) have been adjudged bankrupt;
  - (iv) have been involved in the management or administration of a scheme that has been deregistered for failure on the part of the management or administration; or
  - (v) have been disqualified under any written law.
- (d) Consequences of Voluntary Dissolution of the Scheme:
- (i) Upon such voluntary resolution by the Trustees to wind up the Scheme they shall notify in writing each Member and advise them of the name of the Liquidator appointed;
  - (ii) upon application by Members under Rule 13 (f) (iv) **Option 1** and in conjunction with the Authority facilitate Members to join Registered Schemes where their Contributions shall be remitted;
  - (iii) and upon application by the relevant Eligible Members, issue notices of revocation to the relevant Institutions and discharge of assignments;
  - (iv) Appoint a liquidator in terms of Clause 16(a)(v) of this Deed for the purpose of winding-up the Scheme subject to and in accordance with the Act; and
  - (v) Before applying the whole or part of the Scheme for the benefit of Members, in accordance with this Clause the Liquidator shall be entitled to reserve out of the Scheme Fund such amount as he may consider necessary to meet any expenses of the administration and winding up of the Scheme and which in his opinion may not be recoverable from the Sponsor or any other Sponsor and to meet any liabilities for which the Trustees or himself may be accountable.
- (e) Thereafter the Liquidator shall apply the moneys held under the Scheme as follows:-

- (i) in securing so far as the Trustees have not already done so, the payment of benefits due to the Nominated Beneficiaries of Members who have died in service or in the absence of such Nominated Beneficiaries their dependants;
- (ii) so far as the moneys held in the Scheme shall permit in securing to each Member who has not yet reached his Normal Retirement Date and payment of whose benefits has not already commenced, the purchase in lieu thereof of a fully secured retirement benefit of a nature and value as similar as possible to the Accumulated benefits to which the Member was provisionally entitled under the terms of this Deed to be payable either: -
  - 1) In the case of any such Member who upon determination as aforesaid has attained Early retirement Age, immediately or at the Member's Normal Retirement Date, at the discretion of the Liquidator; or
  - 2) In the case of any such Member who has not attained Early Retirement Age, at Normal Retirement Date or within ten years before Normal Retirement Date.
- (iii) In respect of any moneys held in the Scheme then remaining unexpended the Liquidator shall, subject to the Act, (with consent of the Commissioner if the Scheme shall then be a Registered Scheme) and such other consents as may be required be applied by the liquidator to augment Members' benefits.
- (iv) In securing any retirement benefits under the terms of this Clause, the Liquidator shall have regard to each Member's interest in the Scheme as recorded in the Member's Account.
- (f) Notwithstanding the provisions of paragraph (e) of this clause:
  - (i) The amount available for a Member under Clause 34 (e) above shall, as directed by the liquidator, be transferred for his benefit to another Registered Scheme of his choice and the Trustees shall endeavor to assist any affected Eligible Members to obtain guarantees (if required) from the new Scheme/fund to which they are transferring to.
  - (ii) Notwithstanding the provisions of paragraphs (e) and (f), (i) of this Clause, in the event of any pension payable under this Clause being, in the opinion of the Trustees (or the liquidator), a Trivial Amount or the person entitled thereto upon provision of medical evidence of ill health, the Trustees (or the liquidator) may elect with the consent of the Authority and the Commissioner to pay a lump sum in lieu of any pension entitlement.

### **35. LAW AND CURRENCY**

This Deed shall be interpreted in accordance with and governed by the laws of Kenya and all Contributions and benefits payable shall be made in Kenya in Kenya Currency.

### **36. CLAIMS ONLY IN ACCORDANCE WITH THIS DEED**

No person whether a Member or otherwise shall have any claim right or interest upon or in respect of any lump sum payment or other benefit or any Contribution made to the Scheme or any interest therein or any claim upon or against the Trustees or the Sponsor except under and in accordance with the provisions of this Deed.

### **37. DISPUTE RESOLUTION**

- (a) Save whereby this Trust Deed and the Rules the decision of the Trustees is made final. A Member who is dissatisfied with a decision of the Trustees may request that such decision be reviewed by the Chief Executive Officer of the Authority. A Member aggrieved by a decision of the said Chief Executive Officer of the Authority or of the Authority may appeal to the Appeals Tribunal established under the Act.
- (b) If at any time hereafter any dispute, difference or question may arise among or between the Sponsor, any Trustees, the Members, Member's Dependents or other persons having a valid interest in the

Scheme or their Nominated Beneficiaries or any of them respectively, touching on the construction meaning or effect of the Trust Deed and the Rules or any clause or thing therein contained or the rights or liabilities of the said parties respectively or any of them hereunder or otherwise howsoever in relation to the Scheme then every such dispute or question may as a first alternative be referred for mediation and in the event the dispute is not resolved, the dispute shall thereafter be referred for arbitration by a single arbitrator to be appointed by agreement between the parties. In default of such agreement within fourteen (14) days an Arbitrator shall be appointed by the Chairman for the time being of the Chartered Institute of Arbitrators, Kenya Branch, upon application by any of the parties. The result of such arbitration shall be final and binding upon all parties and the proceedings shall be regulated by the provisions of the Arbitration Act 1995 (Act No.4 of 1995.) or any law or instrument amending, extending or replacing that Arbitration Act and such arbitration shall be conducted in Kenya.

#### **38. REGISTERED OFFICE**

The registered office of the Scheme shall be the principal office for the time being of the Sponsor located at **Lower Kabete, Nairobi Post Office Box 23030-00604** in the Republic of Kenya or such other place in the said Republic as the Trustees may from time to time determine and notify to the Authority.

#### **39. NOTICES**

Any notice which under the provisions of this Trust Deed is required to be given or served upon the Trustees shall be served in writing and delivered or addressed to the Trustees, care of the registered office for the time being of the Sponsor or, if a Corporation shall be a sole trustee, at the place of business of such Corporation.

#### **40. HEADINGS**

The headings in this Trust Deed are for convenience of reference only and are not to be construed as part of this Trust Deed.

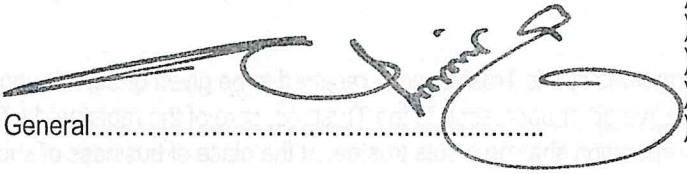
IN WITNESS WHEREOF the Common Seal of the Sponsor has been hereunto affixed and the Trustees have hereunto set their hands and seals the date and year first above written.

SEALED with the Common Seal of  
**KENYA SCHOOL OF GOVERNMENT**

in the presence of:

Affix Seal

Council Chairperson ..... 


Director General..... 

SIGNED AND DELIVERED by the said  
**JOSEPH MUSYOKI MUSENGYA**  
TRUSTEE in the presence of:

  
.....

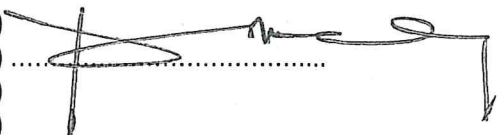
Name  
Address  
Occupation  
Signature

SIGNED AND DELIVERED by the said  
**ISHMAEL KAMONJO MAINGI**  
TRUSTEE in the presence of:

  
.....

Name  
Address  
Occupation  
Signature

SIGNED AND DELIVERED by the said  
**PROF. PETER NGATIA**  
TRUSTEE in the presence of:

  
.....

Name  
Address  
Occupation  
Signature

SIGNED AND DELIVERED by the said  
**ACHIENG SARAH BUKACHI**  
TRUSTEE in the presence of:

)  
)  
) *Sukachi*  
.....  
)  
)  
)

Name  
Address  
Occupation  
Signature

SIGNED AND DELIVERED by the said  
**MOHAMED KALMEY MUHMED**  
TRUSTEE in the presence of:

)  
)  
) *Mohamed*  
.....  
)  
)  
)

Name  
Address  
Occupation  
Signature

**THE SECOND SCHEDULE-  
THE RULES**

**RULE 1 – MEMBERSHIP**

- (a) On the Commencement Date, every Eligible Employee shall become a Member of the Scheme. Employees who are not eligible to join the Scheme on the Commencement Date may do so on the Entry Date coincident with or next following the date on which they become eligible;
- (b) Any Eligible Employee who declines to become a Member while eligible in accordance with the rules shall forfeit all future rights to become a Member except with the permission of the Trustees and the Sponsor and subject to the approval of the Authority;
- (c) Employees who enter the employment of the Sponsor after the Commencement Date shall be required as a condition of their employment to join the Scheme on the Entry Date coincident with or next following the date on which they become eligible;
- (d) If required, an application to join the Scheme shall be made in the form prescribed by the Trustees.
- (e) A Member shall not thereafter cease to be a Member (other than in accordance with these Rules) whilst he is employed by the Sponsor and no moneys shall be payable to a Member while he remains in the service of the Sponsor except as provided for under these Rules.
- (f) A Member who leaves employment of the Sponsor and ceases to be a Member as a result thereof, shall on being re-employed by the Sponsor and becoming an Eligible Employee, become a Member again on the Entry Date coincident with or next following the date on which he again becomes an Eligible Employee.
- (g) Each Member on his admission to Membership shall be issued a distinctive membership number.
- (h) A Member shall remain a Member while he continues to be an Eligible Employee.

**RULE 2 - EVIDENCE OF AGE**

- (a) Every Member shall produce to the Trustees evidence of age satisfactory to the Trustees for himself and such of his Dependants as the Trustees may require and shall give the Trustees such other information as they may require for the purpose of the Scheme, Provided That if satisfactory evidence of age of such Member or Dependant is not produced the Trustees may at their absolute discretion require the Sponsor to determine the date of birth for the purpose of the Scheme and the date of birth so determined shall be binding upon the Member.
- (b) The Trustees may request and receive such evidence as they deem necessary regarding the continued existence or death of the persons entitled to the benefit and if such evidence shall not be forthcoming the Trustees may suspend payments of the benefit until such evidence is produced.

**RULE 3 - RULES TO BE ACKNOWLEDGED AS BINDING**

Admission to membership of the Scheme shall be regarded as an acknowledgement by the Members that the Rules and the Trust Deed, including any amendments to the Rules and the Trust Deed, shall be binding upon him and any other person claiming to derive a benefit under the Scheme by virtue of his membership.

**RULE 4 - SUSPENSION OF BENEFITS**

If any Member fails to comply with the provisions of Rules 2 and 3, the Trustees may suspend or withhold payment of any benefit from the Scheme due to or in respect of him until the said provisions are complied with.

**RULE 5 - RIGHT TO DOCUMENTS**

Every Member shall have the right to inspect a copy of the Trust Deed and the Rules and any amendments thereto upon giving the Trustees written notice of 14 (fourteen) days of his wish to do so.



## RULE 6 - CONTRIBUTIONS

### (a) Member's Contributions

- (i) Subject to the rights reserved to the Sponsor by the Trust Deed with effect from his Entry Date, each Member shall contribute to the Scheme in each Contribution Year an amount equal to seven-point five percent (7.5%) of his Pensionable Salary such Contributions being deducted by the Sponsor each month from his Pensionable Salary and paid to the Trustees or in accordance with the Trustees' directions.
- (ii) Member contributions shall be deducted by the Sponsor in monthly installments from the Member's Pensionable Salary and paid to the Scheme and shall be credited to the Member's Account in the books of the Scheme. The Sponsor shall pay contributions due on a monthly basis and such payments shall be made to the Scheme before the tenth day of every calendar month or before any other day that may be notified in writing and approved by the Authority.

### (b) Additional Voluntary Contribution

- (i) A Member may pay to the Scheme additional voluntary contributions. The amounts of these contributions and the intervals at which they are paid shall be agreed with the Trustees. A Member may change the rate of his voluntary contributions or stop paying additional voluntary contributions by giving the Trustees one month's written notice or such other period as the Trustees may require in case of financial hardship.
- (ii) Each Member's additional voluntary contributions will be recorded separately for the purposes of administering the Member's benefits under the Scheme. The proceeds will be used to provide additional benefits for, or in respect of the Member. The additional benefits will comply so far as possible with any wishes made known by the Members in writing to the Trustees and subject to the requirements of the Act and Income Tax Act.
- (iii) A Member may also pay to the Scheme additional voluntary contributions in respect of funding a Post-Retirement Medical Fund to be accessed at retirement, Provided That the Scheme Trustees shall ensure that the funds shall be segregated and invested as per the investment policy of the fund for this purpose.
- (iv) A Member may opt to utilize their additional voluntary contributions to top up the portion of the Member's accrued benefits available to the Member for the purchase of a Residential House.

### (c) Sponsor's Contributions

- (i) Subject to the rights reserved to the Sponsor as set out in Clause 8 of the Trust Deed, from any Member's Entry Date the Sponsor shall contribute to the Scheme for the benefit of each Member an amount equal to fifteen percent (15%) of the Member's Pensionable Salary.
- (ii) The rates of contributions and limit on contributions specified in this sub rule shall be revised from time to time by the Trustees at the Sponsor's discretion and/or with the Sponsor's consent. Further, the rates of contributions and limit on contributions specified in this sub rule shall be adjusted at the Sponsor's discretion if at any time emoluments not included in the Pensionable Salaries of Members are included therein or consolidated therewith.
- (iii) If and to the extent that the Sponsor shall fail to remit Contributions to the Scheme within 15 days of making deduction at the rates aforesaid the Scheme Trustees may after giving the Sponsor not less than 7 days' notice (such notice shall be in writing and copied to the Authority) institute proceedings for recovery of the unremitted Contributions.
- (iv) The unremitted Contributions shall attract interest at the Scheme's current Investment rate of return or the current Treasury bill rate (whichever is higher) and shall constitute a civil debt recoverable from the Sponsor summarily. In the event the Trustees (upon issuing the Sponsor not less than seven

7 days' notice such notice shall be in writing and copied to the Authority) institute proceedings for summary recovery of the unremitted Contributions then such unremitted Contributions shall attract a compound interest at the rate of three percent (3%) per month. Notwithstanding the above, the Authority shall require the Sponsor to pay the unremitted Contributions and interest accrued in full to the Scheme Trustees in accordance with a remedial plan provided to the Authority and the Sponsor shall also pay a penalty of five percent (5%) of the unremitted Contributions or Kenya Shillings Twenty Thousand (Kshs. 20,000.00) whichever is higher to the Authority within seven days of receipt of a notice from the Authority. The Authority may in the alternative direct the Sponsor to cease further deductions from the Members and instruct the Sponsor to notify all Members of the cessation and the unremitted Contributions shall constitute a civil debt due from the Sponsor recoverable summarily by either the Trustees or the Authority. Provided Always That such cessation may be lifted by the Authority if the Authority is satisfied that the Sponsor is able to remit the Contributions as and when they fall due.

(d) Limits on Contributions

- (i) The aggregate of the Contributions to the Scheme that may be paid in any Contribution Year by a Member (including additional voluntary contributions) and the Sponsor in respect of the Member that are deductible for tax purposes under the Income Tax Act shall together not exceed the lesser of 30% of that Member's pensionable income (as defined in the Income Tax Act) for such Contribution Year or KShs 240,000.00 (Two Hundred and Forty Thousand Shillings) (or where contributions are made in respect of a part year of service with the employer, Kenya shillings twenty thousand (Kshs. 20,000/=) per month) or such other greater amount as may be prescribed from time to time under the Income Tax Act.

(e) Variation of Contributions

Notwithstanding any other provisions of this Rule but subject always to the maximum figures specified in the Income Tax Act, the Sponsor may on giving six (6) months' written notice to the Trustees and the Authority, vary the rate of Contributions to be made by the Sponsor. Further a Member or Sponsor may on giving six (6) months' written notice to the Scheme Trustees and the Authority vary the rate of Contributions to be made in respect of the Post-Retirement Medical Fund.

(f) Temporary Absence

If a Member is temporarily absent from service and the absence is authorised by the Sponsor, then during such absence:

- (i) If the Member's Pensionable Salary is neither reduced nor suspended during the absence, the Contributions by the Member and in respect of him by the Sponsor shall continue to be paid at the rate specified hereinabove;
- (ii) If a Member is absent either on leave or due to incapacity and his Pensionable Salary has been reduced during such absence contributions to the Scheme payable by the Member and the Sponsor shall continue to be made at the rates specified herein based on the Member's full Pensionable Salary or with the consent of the Trustees and the Sponsor on the Member's reduced Pensionable Salary.
- (iii) In the event that a Member is temporarily absent from work the Trustees may, at the request of the Sponsor, permit the contributions payable in respect of the Member to be suspended for a period not exceeding twelve (12) consecutive calendar months or such other period authorised in writing by the Sponsor. During the period of such absence, the Member shall be deemed for the purpose of the Scheme to remain a Member of the Scheme. If at the expiration of the period of absence agreed by the Sponsor, the Member has not returned to work, his membership will be deemed to have terminated from the date the period of absence commenced. The provisions of this Clause shall apply to the absence of a Member who is seconded by the Sponsor to the service of another employer **PROVIDED THAT** where the Member returns to work and his Pensionable Emoluments is neither reduced nor suspended during the absence, the contributions by the Member and in respect of him by the Sponsor shall continue to be paid **PROVIDED FURTHER THAT** where

the Member's Pensionable Emoluments is reduced or suspended for part or all of the absence, contributions by the Member and in respect of him by the Sponsor shall be reduced proportionally or suspended accordingly. The provisions of this Clause shall apply to the absence of a Member who is seconded by the Sponsor to the service of another Employer.

(g) Termination of Contributions

Unless otherwise agreed with the Sponsor, Contributions by and in respect of a Member shall cease to be payable as from the first day of the month in which he reaches his Normal Retirement Date or from any earlier date upon which he ceases to be a Member.

(h) Reduction in Pensionable Salary

Notwithstanding the provisions of Rule 6 (a) but subject to Rule 6 (g), if the Pensionable Salary of a Member is temporarily reduced he may elect with the consent of the Sponsor to contribute to the Scheme while his Pensionable Salary is less than before the reduction at such increased rate as will make his Contributions during the period of reduction equal to, but not greater than his Contributions immediately before the reduction. Contributions in respect of the Member by the Sponsor will be based on the reduced Pensionable Salary.

(i) Schedule of Contributions

The Trustees shall prepare and maintain a schedule showing the rates of contributions payable by and in respect of the Members (including any additional voluntary contributions). The schedule shall be certified by the Administrator and approved by the Trustees and the Sponsor. The schedule may be revised with the agreement of the Trustees and certified by the Administrator. A copy of the revised schedule(s) shall be submitted to the Authority within 30 days of such revision.

(j) Remittance of Contributions

Contributions by and in respect of the Members in accordance with the schedule of Contributions shall be paid to the Trustees or Custodian before the tenth (10<sup>th</sup>) day of every calendar month or any other day as may be notified or approved by the Authority. Any Contributions not remitted within the stipulated period shall attract interest and penalties or otherwise recoverable as civil debt owed as set out in Rule (6) (c) (v).

(k) Record of Contributions

The Trustees shall maintain and submit to the Authority a quarterly record of contributions by the fifteenth (15<sup>th</sup>) day of the end of every third calendar month. The quarterly record of contributions will comply with the Act and shall show the total contributions which have not been remitted for a period of more than three months from the date they became due in addition to the un-remitted contributions for the current quarter.

(l) Contributions after Normal Retirement Date

If a Member remains in the service of the Sponsor after Normal Retirement Date, he shall continue to contribute to the Scheme at a rate to be agreed upon in writing between the Sponsor and the Member.

#### **RULE 7 – BENEFIT RESERVE ACCOUNT**

(a) The Trustees may create a reserve account with such sum as the Trustees shall in their discretion so determine and maintain the reserve account in accordance with the Act and the Income Tax Act Provided That the Authority may in writing require the Trustees to adjust the reserve fund to such levels as it may so determine.

(b) In the event that a Scheme maintains a reserve fund, a beneficiary shall receive a share of the reserve fund upon being awarded benefits in respect of retirement, disability or death, as the case may be, in proportion to the value that the funds allocated to the account of the beneficiary bears to the value of the funds allocated to the accounts of all beneficiaries of the Scheme at that time.

#### **RULE 8 – RETIREMENT BENEFITS**

(a) **Benefits Vesting in Members**

All the benefits derived from Contributions made by a Member and by the Sponsor in respect of the Member shall vest immediately in the Member on commencement of membership of the Scheme.

(b) **Circumstances in which retirement benefits may be granted**

Save as otherwise specifically provided under the Rules, no retirement benefit shall be payable to a Member except on retirement from service of the Sponsor in the following circumstances:

- (i) On or after attaining the Normal Retirement Date;
- (ii) On or after attaining Early Retirement Age of fifty (50) years with the consent of the Sponsor;
- (iii) On medical evidence to the satisfaction of the Trustees that a Member is incapable by reason of any infirmity of mind or body of discharging the duties of his office and that the infirmity would occasion his retirement, if he was in employment;
- (iv) Upon the emigration of a Member from Kenya to another country without the intention of returning to reside in Kenya. Trustees shall, fourteen days prior to effecting payment of retirement benefits to a Member submit their approval to do so, to the Authority.

Provided Always that upon his retirement from the Service of the Sponsor on any of the grounds set out above, namely, (i) at or after Normal Retirement Date or (ii) with the consent of the Sponsor before Normal Retirement Date and attaining Early Retirement Age, a Member shall be paid the value of his Scheme Credit in accordance with the provisions of Rule 8 (c) & (d) below or (iii) he is compelled to retire from Service on account of ill-health as certified by a qualified medical practitioner appointed by the Sponsor or (iv) he emigrates from Kenya to another country, a Member shall be paid the value of his Scheme Credit in accordance with the provisions of Rule 13 (d) and (g).

(c) **Annuity**

A pension which becomes payable in terms of Rule 8 (b) (i) and (ii) above may be purchased in the Member's name from a Registered Insurer of the Member's choice. The terms and conditions applicable to such Pension, including options elected by the Member and the determination of any benefits arising on his death, shall be agreed between the Member and the Registered Insurer and shall be set out in writing by the Registered Insurer, **PROVIDED THAT:**

- (i) The pension so purchased shall be compulsory, non-commutable, non-assignable and payable for life; and
- (ii) On purchase of a pension in terms of this Rule, the Scheme shall have no further liability in respect of the Member, such liability resting with the Registered Insurer (or Drawdown Fund) from whom the Pension is purchased.

(d) **Income Drawdown**

At the commencement date of retirement in terms of Rule 8 (b) (i) and (ii) above, a Member may opt to have their Scheme Credit applied to provide benefits on an income drawdown for a minimum drawdown period of ten (10) years from the date of commencement of the drawdown **PROVIDED ALWAYS THAT:**

- (i) Each year after retirement, the Member may select a specific regular amount or percentage of the scheme credit subject to a maximum of 15% from his Scheme Credit.
- (ii) Not later than ten (10) years after the date of commencement of the drawdown: the remaining fund may be used to purchase an annuity from an insurance company or converted into a cash lump sum for the Member to withdraw or the income drawdown plan can be continued.
- (iii) On the Death of the individual Member, the fund can be used to provide an income to the nominated beneficiaries by purchase of annuity or a continuation of the income draw down plan to the beneficiaries. If income is not taken in this way, the balance may be paid to the nominated beneficiaries in lump sum.
- (iv) Prior to the commencement of the drawdown, the Member is required to sign a Member consent form acknowledging that he/she understands the product design and associated risks.

#### **RULE 9 - COMMUTATION OF PENSION**

- (a) A Member who is due to receive pension in terms of Rule 8 (b) (i) and (ii) above, may have an amount not exceeding ten percent of his Scheme Credit transferred to a medical fund and not more than one third of the remaining Scheme Credit may be commuted for a lump sum.
- (b) The aggregate of benefits arising from Additional Contributions may be fully commuted.
- (c) If a Member is entitled to a pension which is of a Trivial Amount after commutation of the Pension, then a Member may elect to commute for a lump sum the total Accumulated Credit due to the Member.

#### **RULE 10 - DEATH BENEFITS**

##### **(a) Death of a Member**

- (i) Upon the death of a Member while in the Pensionable Service of the Sponsor there shall be payable a lump sum benefit equal to his Accumulated Credit at the date of his death.
- (ii) A lump sum payable by the Sponsor (in these rules called "the Life Assurance and Disability Benefit") equal to three (3) times of the Member's Pensionable Salary (if in force as at the date of death).

##### **(b) Payment of Benefit**

- (i) The benefit payable on the death of a Member shall be held by the Trustees upon trust with power to be exercised (if at all) before the expiration of the Trust Period and within one year after the date of death of the Member for the beneficiary or beneficiaries nominated by the Member and in such proportions as may have been stipulated by the Member for the absolute use and benefit of such beneficiary or beneficiaries, to pay the benefits due to such beneficiary or beneficiaries with all reasonable expedition once the funds representing the benefits are at hand and subject to the beneficiary or beneficiaries providing such evidence of identity as may reasonably be required by the Trustees in support of such person's claim.
- (ii) Notwithstanding the provisions of subparagraph (i) above, the Trustees may in their discretion refuse to pay a nominated beneficiary or beneficiaries **Provided That** the reasons for such refusal shall be recorded in writing by the Trustees. In such event the Trustees shall hold the benefits payable hereunder upon trust for such of the Member's Dependants in such proportions as the Trustees shall in their absolute discretion decide.
- (iii) Notwithstanding anything to the contrary contained in any contract or document, any benefit payable by the Scheme upon the death of a Member shall not form part of the assets in the estate of such Member but shall be dealt with in terms of the Rules.

#### **RULE 11 - BENEFIT ON DEATH OF A DEFERRED MEMBER**

On the death of a Deferred Member the Trustees shall pay the Member's Accumulated Credit at the date of the Member's death to the deceased Member's Nominated Beneficiary(s) or in the absence of such nomination of beneficiaries at the Trustees' discretion to the benefit of such Dependant or other Beneficiary as the Trustees may determine.

Without limitation to the generality of the foregoing the Trustees shall in determining to whom any lump sum benefit due upon the death of a Member shall be paid have due regard to any nomination by the Member in terms of these Rules and to the provisions of the Act.

#### **RULE 12 - TRUSTEES' DISCRETION IN PAYMENT OF DEATH BENEFITS**

The Trustees shall have power to pay or apply any benefit due from the Scheme on the death of a Member other than a benefit expressed to be payable to or in respect of the Spouse or child of such Member to or for the benefit of any other person who in the opinion of the Trustees is or was wholly or in part dependent upon the earnings of the Member or for whose maintenance and support the Member was legally liable immediately before his death in such amounts at such times and generally in such manner as the Trustees in their absolute discretion shall from time to time think fit.

Without limitation to the generality of the foregoing the Trustees shall in determining to whom any lump sum benefit due upon the death of a Member shall be paid have due regard to any nomination by the Member in terms hereof.

#### **RULE 13 - BENEFITS ON LEAVING SERVICE**

(a) **Benefit on Normal Retirement or Late Retirement**

Each Member who Retires from the Pensionable Service of the Sponsor from the Scheme on or after Normal Retirement Date shall on such Retirement be entitled to a one third cash lump sum benefit representing his total Accumulated Credit standing to the credit of his Member's Account at that date. The balance of the two thirds of benefits may be used to purchase an annuity in accordance with the immediate annuity rates available from the insurance company at the time of the purchase **Provided That** the Member will have the opportunity of selecting his preferred annuity provider.

The Member may alternatively opt for an Income Drawdown Plan.

(b) **Benefit on Early Retirement**

Each Member who Retires from the Pensionable Service of the Sponsor or from the Scheme on Early Retirement shall on such Retirement be entitled to a one third cash lump sum benefit representing his total Accumulated Credit standing to the credit of his Member's Account at that date. The balance of the two thirds of benefits may be used to purchase an annuity in accordance with the immediate annuity rates available from the insurance company at the time of the purchase **Provided That** the Member will have the opportunity of selecting his preferred annuity provider

The Member may alternatively opt for an Income Drawdown Plan.

(c) **Benefit on Normal Retirement or Early Retirement of a Deferred Member**

Each Deferred Member who attains the Normal Retirement Age or Early Retirement Age shall be entitled to a one third cash lump sum benefit representing his total Accumulated Credit standing to the credit of his Member's Account at that date. The balance of the two thirds of benefits may be used to purchase an annuity in accordance with the immediate annuity rates available from the insurance company at the time of the purchase **Provided That** the member will have the opportunity of selecting his preferred annuity provider, Every such Deferred Member must advise the Trustees of the Scheme to obtain their Consent before accessing his Early Retirement Benefit in the case of Early retirement.

The Member may alternatively opt for an Income Drawdown Plan.

(d) **Benefit on ill Health Retirement**

Each Member who Retires from the Pensionable Service of the Sponsor before Normal Retirement Date due to ill health as provided for in these Rules and in the retirement benefits regulations may opt for payment of his total Accumulated Credit standing to the credit of his Member's Account as at that date.

(e) **Benefit on ill Health Retirement for A Deferred Member**

Each Deferred Member who wishes to be paid his benefits due to ill health as provided for in these Rules may on such ill health Retirement as provided for in these Rules and as per the retirement benefits regulations opt to be paid his total Accumulated Credit standing to the credit of his Member's Account as at that date.

(f) **Benefit on Early Leaving**

(i) Shall be applicable to a Member of the scheme who leaves the service of the Sponsor before attaining Early Retirement Age.

(ii) In determining the Accumulated Credit of a member who has who has retired before attaining Early Retirement Age and having purchased a Residential House from a portion of the Member's accrued benefits, the funds applied to purchase the Residential House shall be deducted from the Member's accrued benefits; and shall be deemed to have been drawn from the Member's contribution together with the earned investment income and any balance shall be applied from the Sponsor's contribution and the Sponsor's earned investment income.

- (iii) Every such Member must prior to so leaving by written irrevocable notice elect one of the following options:

**Option 1**

Subject to Rule 13 (f) (ii) above, to transfer the whole Accumulated Credit in his Member's Account to another retirement benefits scheme registered under the Act and the Income Tax Rules and such transfer; shall be subject to the provisions of the Act and the Income Tax Rules. In such a case the Member shall first request the trustees of the other scheme to accept the transfer of his Member's Account and furnish to the Trustees such written acceptance. The Trustees shall then transfer the balance of his Member's Account to the trustees of the other scheme; or

**Option 2**

To leave his Member's Account in the Scheme as a Deferred Member's Account which the Member may access on or after attaining Early Retirement Age but not later than Normal Retirement Age whereupon the Deferred Member shall be entitled to a one third cash lump sum benefit representing his total Accumulated Credit standing to the credit of his Member's Account at that date. The balance of the two thirds of benefits shall be used to purchase an annuity in accordance with the immediate annuity rates available from the insurance company at the time of the purchase **Provided That** the Member will have the opportunity of selecting his preferred annuity provider Every such member must advise the Trustees of the Scheme to obtain their Consent before accessing his Early Retirement Benefit.

The Member may alternatively opt for an Income Drawdown Plan.

**Option 3**

Subject to Rule 13 (f) (ii) above, where a member leaves employment before attaining early retirement age, that member may opt for payment of not more than fifty (50) per cent of his total accrued benefits and the investment income that has accrued in respect of those contributions; The balance of the accrued benefits shall be retained in the Scheme until the Member prior to attaining Normal Retirement Age opts to apply the provisions of **Option 1** herein above or attains Early retirement age or Normal Retirement Age whereupon the provisions of Rule 13 (c) herein above shall apply or until he becomes entitled to the Sponsor's contributions as follows:

- (i) On medical evidence to the satisfaction of the Trustees that he is incapable by reason of any infirmity of mind or body of discharging the duties of his office and that the infirmity would occasion his retirement, if he was in employment;
- (ii) Upon the emigration of a Member from Kenya to another country without the intention of returning to reside in Kenya. Trustees shall, fourteen (14) days prior to effecting payment of retirement benefits to a member submit their approval to do so, to the Authority.

**(g) Benefit on Emigration of a Member from Kenya**

A Member may opt for payment to him, of the total amount of the vested accrued benefits before attaining the Early or Normal Retirement Age where a Member emigrates from Kenya to another country without the intention of returning to reside in Kenya. Trustees shall, fourteen (14) days prior to effecting payment of retirement benefits to a Member submit their approval to do so, to the Authority.

**RULE 14- POST-RETIREMENT MEDICAL FUND BENEFITS**

- (a) No Medical Fund benefits may be granted to a Member except on retirement from Service of the Sponsor in the following circumstances:
- (i) on or after attaining the Normal Retirement Date;
  - (ii) on or after attaining Early Retirement Age with the consent of the Sponsor;
  - (iii) on medical evidence of ill health to the satisfaction of the Trustees and the Sponsor that the Member is incapacitated and incapable by reason of any infirmity of mind or body of discharging the duties of his office;

- (iv) Upon the emigration of a Member from Kenya to another country without the intention of returning to reside in Kenya. Trustees shall, fourteen days prior to effecting payment of retirement benefits to a member submit their approval to do so, to the Authority.
- (b) Subject to the Medical Fund Rules, a Member may:
  - (i) before attaining Normal Retirement Age or Early Retirement Age, opt to have the funds transferred to another Medical Fund elected in writing by the Member and the Scheme shall transfer the funds within 60 days of such an election the medical funds to the medical fund elected by the Member.
  - (ii) within one year from the date of retirement of a Member from the employment of the Sponsor upon attainment of the Early Retirement Age or Normal Retirement Age, elect to access the medical funds in the form of medical benefits as provided in the Medical Fund Rules.
  - (iii) **NOT** utilize their post-retirement medical funds to determine their accrued retirement benefits or be used for the purchase of a Residential House.

A Member who is entitled to receive a benefit from the Scheme may elect to transfer a portion of the Member's benefits and the investment income that has accrued in respect of those benefits to a Medical Cover Provider for that purpose **Provided that** a Member (a) shall not transfer more than ten percent of the accrued benefits before commutation to the Medical Cover Provider and (b) may transfer all the accrued benefits from additional voluntary contributions to the Medical Cover Provider.

#### **RULE 15 - NOMINATION OF BENEFICIARY**

- (a) A Member may, during his lifetime, nominate a beneficiary or beneficiaries of the lump sum benefits payable by virtue of Rule 10 and 11, by properly and fully completing the relevant form prescribed by the Trustees from time to time and returning the same to the Trust Secretary at the registered office of the Scheme.
- (b) If a nominated beneficiary predeceases the Member, then the nomination in that person's favor will fail.
- (c) A Member is free to revoke the nomination of any beneficiary at any time or to amend the proportion of the benefits payable to such beneficiary but such revocation or amendment shall not be effective until express written notice of it on the form prescribed from time to time by the Trustees is received by the Trust Secretary at the registered office of the Scheme.
- (d) Such nomination of a Beneficiary together with any subsequent replacement thereto shall not be binding on the Trustees and shall be interpreted and applied by the Trustees in accordance with the provisions of the Act.

#### **RULE 16 - TRUSTEES' DECISION**

Subject to the provisions of the Act, if any doubt arises in any particular case as to which of these Rules shall apply in any particular case the decision of the Trustees shall be final.

#### **RULE 17 - EFFECT ON TERMS OF EMPLOYMENT**

- (a) Nothing in these Rules shall in any way restrict the right of the Sponsor to terminate the employment of a Member.
- (b) No person shall have any claim concerning the Scheme except in accordance with these Rules and the Trust Deed.
- (c) No benefit right or interest to which a member or his Dependants may claim to be entitled in terms of the Rules shall be used as a ground for damages in any action brought by such Member or his Dependants against the Sponsor.



#### **RULE 18 - TAXES AND DUTIES**

- (a) If upon the death of a Member or other person in receipt of benefits under the Scheme, any estate or other duty or taxes becomes payable by Trustees, the Trustees shall be entitled to recover any such amount paid (including any interest paid by them in respect of such payment and the cost of paying it) by deducting from any amount due or owing to such Members or other person benefiting from the Scheme.
- (b) In the event of the Trustees becoming accountable for tax or duty in respect of any payment under the Scheme the Trustees shall have the right to deduct such tax or duty from the amount payable to such Members or other person benefiting from the Scheme.

#### **RULE 19 - DISCRETIONARY BENEFITS**

If the Sponsor requests and pays any additional contributions that the Trustees consider prudent the Trustees may provide;

- (a) increased or additional benefits in respect of any Member or any other person entitled to a benefit under the Rules;
- (b) subject to the approval of the Sponsor, benefits in respect of any Member or any other person entitled to a benefit under these Rules different from those set out elsewhere in these Rules and may be of such amount as the Trustees may determine.

#### **RULE 20- INCAPACITY OF BENEFICIARY**

If a Member or Member's Dependant or beneficiary or other person to whom the Trustees are making payments or to whom any benefits have become payable shall be suffering from any physical or mental incapacity (as to which a certificate from a qualified medical practitioner to the effect that such Member or Dependant or beneficiary or other person suffering may be accepted by the Trustees as conclusive evidence) or is a minor the Trustees may, in their absolute discretion they think advisable, pay or apply the whole or part of such payments to any person or persons, association or corporate body on behalf of such Member, Dependant or other person without being bound to see to the application thereof, and the receipt of such person or persons, association or corporate body shall be a complete discharge of the Trustees obligation for such payment.

#### **RULE 21 - BENEFITS NON-ASSIGNABLE**

- (a) Any benefit payable or to be paid under the Rules is not assignable and shall cease to be paid or payable if the recipient or other person who would otherwise be entitled to such benefit under these Rules attempts to alienate, charge or anticipate the same or any part thereof.

Provided Always That an Eligible Member may assign a Prescribed Proportion of his or her benefits accruing under the Scheme to the Scheme in consideration for the Scheme furnishing a guarantee in favour of an Institution in respect of a loan granted or to be granted by the Institution to the Member on such terms as are prescribed in 21 (b) below and subject always to the Act.

- (b) A guarantee issued by the Trustees to a lending institution under these Rules shall not exceed:
  - (i) 60% of the Eligible Member's accumulated benefits at the time of the application of the said facility or;
  - (ii) Market value of the immovable property; whichever is less PROVIDED THAT the Trustees may provide a guarantee to cover the initial transaction fees including purchase deposit, applicable duties and taxes, valuation and legal fees for the acquisition of the house.
- (c) Trustees may issue a guarantee to a lending institution to enable the Eligible Member obtain a loan to do the following:-
  - (h) Acquire immovable property on which a house can be erected;
  - (ii) Erect a house on an immovable property in respect of which a Member has title to or is owned jointly together with his Spouse;

- (iii) Carry out repairs and renovations; and
  - (iv) Secure financing or waiver for the deposit, stamp duty, valuation fees, and legal fees (excluding arrangement and commitment fees) in the course of a transaction involving the purchase of a house.
- (d) A Member is eligible to get one guarantee at a time.
- (e) The lending institution in respect of which an Eligible Member can assign his benefits has to be :-
  - (i) A bank, mortgage or financial institution licensed under the Banking Act;
  - (ii) A building society under the Building Society Act;
  - (iii) A Micro finance institution established under the Finance Act, 2006 ;
  - (iv) The National Housing Corporation; and
  - (v) Any other institution including an issuer of a tenant purchase agreement that is specifically approved by the Authority.
- (f) The Trustees shall not issue a guarantee unless the loan facility is granted pursuant to the facility being secured by a first mortgage on the House in respect of which the loan is granted or where the house is in the rural areas, suitable security acceptable to the lender.
- (g) The Trustees shall consider a formal application by an Eligible Member for the furnishing of a guarantee by the Trustees in favour of an Institution in respect of a Facility to be granted by the Institution to the Eligible Member.
- (h) The Trustees shall have the absolute discretion to consider the application and shall either approve or disapprove the application within 30 days from the date of a duly completed application being presented to the Trustees, Provided That the Trustees shall give reasons for any disapproval and Provided Further That the applicant Eligible Member shall be allowed to remedy any issue which can be remedied and may thereafter reapply.
- (i) In the event of a reapplication, the Trustees shall communicate their decision within 14 days from the date of a duly re-completed and submitted application.
- (j) Once an application is approved, the Eligible Member shall assign the Prescribed Proportion to the Trustees.
- (k) The Trustees shall thereafter prepare a guarantee for the Guarantee Amount and forward the guarantee to the relevant Institution in exchange for Insurance Documentation from the Institution.
- (l) Upon repayment of the Facility in full by the Eligible Member, the said Eligible Member shall make a formal application to the Trustees requesting the Trustees to release the guarantee.
- (m) Upon repayment of the Facility in sub-rule (l) above, the Trustees shall issue a discharge of the assignment.
- (n) Where a Member defaults in payment, the Member shall make a formal application to the Trustees requesting the Trustees to redeem the guarantee Provided Always that (i) upon presentation of evidence of default and liability to the Trustees by an Institution, the guarantee shall be redeemable on demand in accordance with its terms and (ii) in the event of default by a Member arising on account of loss of employment, the Scheme Trustees shall settle the outstanding Facility with the Institution if the outstanding balance is less or equal to the Guarantee Amount Provided Further That where a dispute relating to a default arises, the Trustee shall give the Eligible Member an opportunity to be heard.

- (o) Any costs arising from suits against the Trustees by an Institution or any other party in respect of an Eligible Member shall not be paid from the assets of the Scheme save for the Prescribed Proportion assigned by the concerned Eligible Member.
- (p) Upon receipt of a notification from the Eligible Member authorizing the redemption of the guarantee, the Trustees shall by a resolution agree to the release of payment Provided Always That the Trustees shall ensure that the Guarantee Amount is sufficient to clear the full outstanding balance of the Facility and Provided Further That there shall be no consolidation of the debts owned by the Eligible Member to the Institution for the purposes of redemption.
- (q) In the event of an Eligible Member ceasing to be a Member of the Scheme and on becoming a member of any other Scheme/fund, which Scheme/fund rules permit, and the Eligible Member wishes to apply, for a guarantee to be issued by the new Scheme/fund, the Eligible Member may request the Trustees to return the guarantee issued by the Trustees.
- (r) In that case, the Trustees will issue a notice of revocation to the relevant Institution provided however, the transferring Eligible Member shall ensure that the new Scheme/Trustees of the new Scheme/fund of which he is becoming a member shall issue to the Trustees an indemnity.
- (s) Upon receipt of the indemnity, the Trustees shall issue to the Eligible Member a discharge of assignment.
- (t) In the event that an Eligible Member ceases to be a Member of the Scheme and becomes a member of any other Scheme/fund whose rules do not permit its members to assign their benefits to the Scheme/Trustees for purposes of furnishing of a guarantee, the Eligible Member may make an application, within a period not exceeding sixty days from the date of retirement or of giving a notice of withdrawal, to the Trustees for purposes of the Trustees maintaining or redeeming the guarantee.
- (u) In the event of an Eligible Member transferring a Facility from one Institution to another Institution, the Eligible Member shall make an application to the Trustees for purposes of the Trustees furnishing a guarantee in favour of the new Institution in respect of a loan to be transferred and granted by the said new Institution.
- (v) The Trustees shall again have the absolute discretion to consider the application and shall either approve or disapprove the application within 30 days from the date of a duly completed application being presented to the Trustees Provided That the Trustees shall give reasons for any such disapproval and Provided Further That the applicant Member shall be allowed to remedy any issue which can be remedied and may thereafter reapply.
- (w) In the event of any reapplication, the Trustees shall communicate their decision within 14 days from the date of the duly re-completed and re-submitted application.
- (x) Upon approval of the application in sub-rule (v) or sub-rule (w), the Trustees shall issue a notice of revocation to the former Institution and issue a guarantee in respect of the amount approved by the Trustees in accordance with the approved application to the latter Institution.

Provided Always That to enable the Trustees carry out the provisions of this Rule 21 (b) the Trustees may delegate any of their powers discretions functions or any business relating to or under this Rule 21 to any one or more of their number, or to any committee composed of the board of Trustees, as the Trustees may decide on such terms as the Trustees think fit and the Trustees may at any time revoke any delegation made by them.

#### **RULE 22 – PURCHASE OF A RESIDENTIAL HOUSE**

- (a) A Member who wishes to utilize a portion of their member's accrued benefits to purchase a Residential House shall apply in writing to the Trustees and the Trustees shall determine the application within ninety (90) days of the application being lodged and where an application is not granted, the Trustees shall notify the Member in writing of the reasons thereof.

- (b) The portion of an Eligible Member's accrued benefit available for the purchase of a Residential House shall be an amount not exceeding 40% of the member's accrued benefits or Kenya shillings seven million (KShs. 7,000,000/=) whichever is lower.
- (c) The purchase price of a Residential House shall not exceed the market value of the Residential House.
- (d) Where an Eligible Member is a member of more than one scheme established by the same Sponsor the Trustee shall upon application by a Member combine the member's accrued benefits in determining the proportion available to the member.
- (e) The Residential House to be purchased by an Eligible Member shall be a house that is certified fit for occupation before the intended purchase.
- (f) The Rules and Procedures for purchase of a residential house to be followed when a Member wishes to utilize a portion of their accrued benefits for the purchase a residential house shall be as prescribed in the Scheme's Mortgage Policy.

#### **RULE 23 – REGISTER**

- (a) The Trustees shall maintain a register in which will be entered the names and dates of birth of all Members and their marital status, i.e. single, married or widowed. A Member shall advise the Trustees forthwith of any change in his marital status and supply the following information as relevant for the registration of potential beneficiaries:
  - (i) The name, address and the date of birth of the Spouse;
  - (ii) The name and date of birth of any child born to him or his wife;
  - (iii) The adoption of any child by him or his Spouse;
  - (iv) The death of any Dependant; and
  - (v) The annulment or dissolution of the member's marriage.
- (b) The Trustees may require a Member to make a declaration that there are no persons dependent on him, other than those who have already been registered as Dependants.
- (c) The Trustees shall also have registers and records kept that will enable an Actuary to conduct an actuarial review of the Scheme at any time, if necessary.

#### **RULE 24 - OTHER PROVISIONS**

In case of the occurrence of any event not expressly provided for in these Rules the appropriate share of the moneys held under the Scheme shall be paid in trust by the Trustees for either the Member or his Dependents or his Personal Representatives as the Trustees may think fit according to the circumstances then applicable.

#### **RULE 25 - AMENDMENT OF RULES**

The Trustees may amend the Rules in accordance with the provisions of the Trust Deed.

#### **RULE 26 - LIMITATION OF SCHEME TRUSTEES' LIABILITY**

The Trustees shall not be required to effect any payment or perform any obligation under the Scheme unless the Trustees shall have been notified by the Sponsor or by the Member or beneficiary concerned of all events giving rise to or affecting the incidence of such liability or obligation.

#### **RULE 27- PROHIBITED PAYMENTS AND BENEFITS**

- (a) No payment shall be made hereunder to a Member while he remains in the service of the Sponsor.
- (b) No payment shall be made to the Sponsor from the Scheme without the prior written consent of the Authority and the Commissioner.

- (c) Subject always to the provisions of Rule 21 and 22, no loan, advance or other similar benefit or payment shall be provided out of the Scheme to a Member or any other person.
- (d) Subject always to the provisions of Rule 21, no warranty shall be provided by the Scheme to a third party by way of guarantee of repayment of a loan to a Member.

**RULE 28 - PERIOD OF BENEFIT PAYMENT**

- (a) Any benefit payable or to be paid under the Rules shall be made to the Member or other person entitled to such benefit on retirement or withdrawal and the period upon which a Member or their personal representative may receive the benefits shall not exceed thirty (30) days from the date of retirement or of giving notice of withdrawal as the case may be, the Trustees shall pay Interest on the delayed instalment or benefit PROVIDED THAT such Interest shall not be less than the investment interest declared in respect of the Scheme in the year the payment to the Member was due.
- (b) Any benefit payable or to be paid under the Rules shall be subject always to a reconciliation of accounts with respect to the relevant Member's Facility account in accordance with the provisions of Rule 21 and 22 above.

**RULE 29- ACCOUNTS, ANNUAL REPORTS AND ACTUARIAL VALUATION**

- (a) The Trustees will prepare annual accounts of the Scheme and have them audited by the Auditor and submit to the Authority. The audited accounts will comply with the Act and any other law.
- (b) Within a period of three months after the end of each Financial Year, the Trustees will prepare annual reports in respect of the Scheme which will take the format provided for in the Act and will contain:-
  - (i) A copy of the audited accounts;
  - (ii) Trustees' and Investment reports; and
  - (iii) such other information or document as required by the Act, including but not limited to information on assignments, undertakings and guarantees issued by the Trustees and the Institutions to which guarantees have been furnished, Contributions made to the Post-Retirement Medical Fund and the Income for the period under consideration and the Scheme's governance disclosure or a remedial action plan in the case of non-compliance with the good corporate governance practices and the details of the remuneration and benefits of Scheme Trustees.
- (c) The annual audited accounts including and reports described in Rule 29 (a) and (b) above will be submitted by the Trustees to the Chief Executive Officer within three (3) months after the end of the Financial Year to which they relate or such other period as is prescribed under the Act. Failure to submit the accounts within the stipulated timeline shall attract a penalty as prescribed in the Act.
- (d) The annual audited accounts including the trustees' and investments report shall be submitted together with a certificate signed by the Scheme Chairman or any authorized Trustee certifying that to the best of their knowledge and belief the information furnished to the auditor for the purpose of audit was correct and complete in every respect.
- (e) The Trustees shall within six (6) months from the end of the financial year:-
  - (i) conspicuously display in the office of the scheme a notice notifying the members that the audited accounts together with the trustees' and investments reports are available for inspection; or
  - (ii) send to the Members a summary of the audited accounts together with the Members' benefit statements.
- (f) The Trustees may obtain actuarial reviews of the Scheme from an Actuary from time to time and as the Authority may specify to determine inter alia whether the Scheme is sufficient to meet its liabilities. The actuarial reviews and statements must comply with the Act and will be presented to the Chief Executive Officer at such

regular intervals as the Authority may specify. A Medical Fund with guarantees shall be required to conduct actuarial valuations of the fund at least once in every three years.

- (g) The Scheme Trustees shall submit to the Authority, in respect of pension backed mortgages on a quarterly basis a return indicating the number and amount of guarantees issued, as well as details of loans repaid and guarantees redeemed.
- (h) The Scheme Trustees shall disclose the contributions made to the Medical Fund and the investment income for the period under consideration in the annual scheme benefit statement.
- (i) The Scheme Trustees shall establish, document and maintain effective audit, assurance and risk management policies, procedures and guidelines and the maintaining of a risk register.
- (j) The Scheme Trustees shall in the Scheme's audited financial statements report the extent to which the board of Trustees has adhered to the principles of good governance. The report shall be prepared, and a declaration made as prescribed by the Authority and reported to the Members at the annual general meeting and further submitted to the Authority. Provided Always that, the Scheme Trustees may be required by the Authority to conduct a governance audit (by a person certified to do so), of the Scheme to ensure that the Scheme conforms to the highest standards of governance.

#### **RULE 30 -ALTERATIONS TO STATUTORY FUNDS**

The Sponsor and the Trustees reserve the right to amend the terms of the Trust Deed and these Rules to take account of changes in Contributions or benefits under the National Social Security Fund or any statutory retirement arrangement set up in Kenya.

#### **RULE 31 - HEADINGS AND MARGINAL NOTES**

The headings and marginal notes to these Rules are for convenience of reference only and are not to be construed as part of the Rules.

#### **RULE 32- EXECUTION OF CONTRACTS AND OTHER DOCUMENTS BINDING THE SCHEME**

Unless otherwise provided, all documents binding the Scheme shall be effected by all the Trustees executing a deed or the document.

IN WITNESS WHEREOF the Common Seal of the Sponsor has been hereunto affixed and the Trustees have hereunto set their hands and seals the date and year first above written.

SEALED with the Common Seal of  
**KENYA SCHOOL OF GOVERNMENT**

in the presence of:

Council Chairperson.....

Affix Seal

Director General.....

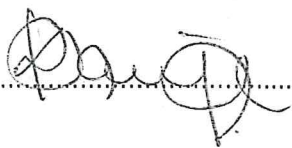
SIGNED AND DELIVERED by the said  
**JOSEPH MUSYOKI MUSENGYA**  
 TRUSTEE in the presence of:

Name  
 Address  
 Occupation  
 Signature



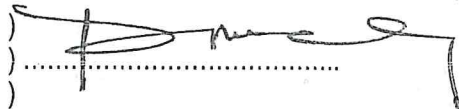
SIGNED AND DELIVERED by the said  
**ISHMAEL KAMONJO MAINGI**  
 TRUSTEE in the presence of:

Name  
 Address  
 Occupation  
 Signature



SIGNED AND DELIVERED by the said  
**PROF. PETER NGATIA**  
 TRUSTEE in the presence of:

Name  
 Address  
 Occupation  
 Signature



SIGNED AND DELIVERED by the said  
**ACHIENG SARAH BUKACHI**  
TRUSTEE in the presence of:

Name  
Address  
Occupation  
Signature

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) *Sukachi*  
.....  
)  
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)

SIGNED AND DELIVERED by the said  
**MOHAMED KALMEY MUHUMED**  
TRUSTEE in the presence of:

Name  
Address  
Occupation  
Signature

)  
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**THE THIRD SCHEDULE**  
**THE POST-RETIREMENT MEDICAL FUND RULES**

**RULE 1- ELIGIBILITY FOR PARTICIPATION**

Any Eligible Employee shall be entitled to participate in the MEDICAL FUND immediately he becomes a Member of the Scheme. Before admission to Membership of the Scheme, an Eligible Employee shall be required to complete an application in the form prescribed by the Trustees. A Member shall cease to participate in the Medical Fund on the date on which he withdraws all his benefits from the Scheme, should a Member cease to be an Employee of the Sponsor no further contributions will be made by him.

**RULE 2- CONTRIBUTIONS**

- (a) A Member may make additional voluntary contributions in respect of funding of a Medical Fund to be accessed at retirement and the contributions to the Scheme may be made in such monthly installments to be agreed upon by the Trustees.
- (b) The Trustees should seek, in writing, the professional advice of an actuary when determining the design and funding of the Medical Fund, including advice on contribution levels that shall be expected to be made in order to meet the target set for the medical benefits of members upon retirement.
- (c) Member contribution shall be deducted from members pensionable salary.
- (d) A Sponsor may contribute singly or jointly into the Scheme on behalf of a Member **PROVIDED THAT** any contribution by the Sponsor shall be supported by the Sponsor's resolution in writing, which shall be submitted to the Authority.
- (e) Contributions by or on behalf of a Member together with interest and other accrued income thereon shall constitute the Medical Fund and shall vest fully in the member immediately.
- (f) The Medical Fund shall be segregated from the Funds of the Scheme.
- (g) A Member may vary the rate of contribution upon giving reasonable notice to the Trustees.
- (h) The contributions into the Medical Fund shall either be a fixed percentage of the Member's pensionable emoluments, including other employment-related emoluments or a shilling amount.
- (i) The contribution amount or rates may be based on a target level of the medical benefits.
- (j) The contributions made into the Medical Fund shall be invested in accordance with the investment policy of the Scheme **PROVIDED THAT** the Scheme shall be required to prepare a separate investment strategy for the Medical Fund in the event the value of the medical fund exceeds fifty million shillings.
- (k) All contributions and the income derived therefrom shall be subject to the Income Tax Act.

**RULE 3- ACCESS TO MEDICAL BENEFITS**

- a) For the purposes of these Rules no Member shall be permitted to access their benefits while the Member remains in the service of the Sponsor.
- b) The provisions of Rule 3(a) above notwithstanding, a Member who remains in the service of the Sponsor and not having reached Early Retirement Age or Normal Retirement Age may, upon production of medical evidence of ill health to the satisfaction of the Trustees and the Sponsor that the Member is incapacitated and incapable by reason of any infirmity of mind or body of discharging the duties of his office to the extent that it would occasion the Member's retirement be allowed to access the medical benefits on the ground of ill health.
- c) On exit from the employment of the Sponsor before the attainment of Early or Normal retirement age, the post-retirement medical funds shall be treated in the following manner

- (i) the funds may be transferred to another post-retirement medical fund elected in writing by the Member and the scheme shall, within sixty days from the date of the election, transfer the medical funds to the medical fund elected by the Member;
  - (ii) defer access to the benefits by the Member until the Member attains Early Retirement Age or Normal Retirement Age; or
  - (iii) the Member may opt for the payment of the total accrued benefit from the post-retirement medical fund on ground of emigrating from Kenya without the intention of returning to reside in Kenya and the Trustees having approved the payment of the retirement benefits to that Member shall submit their approval to the Authority, at least fourteen days before the payment of the benefits to the Member.
- d) Members will be allowed a period of one year from the date of retirement to exercise their option on how they would prefer to access their medical benefits.
- e) Members may access their medical benefits in any of the following ways
- (i) by retaining the funds within a post-retirement medical fund for the purpose of purchasing a medical cover;
  - (ii) retaining the funds within a post-retirement medical fund for the purpose of offsetting any medical expenses incurred as and when they fall due;
  - (iii) transferring the accrued amount to a medical cover provider other than another post-retirement medical fund for the purpose of purchasing a medical cover or offsetting any medical expenses incurred as and when they fall due;
  - (iv) purchasing an annuity for the purpose of paying annual medical cover premiums.
- f) The benefits contemplated in Rule 3 (e) i, iii) and iv) above may be accessed by a Spouse at the option of the Member.

#### **RULE 4- NOMINATION OF BENEFICIARY**

Every Member shall be required to complete a nomination form in which he shall indicate the Nominated Beneficiary or Nominated Beneficiaries to whom he wishes the medical benefit payable in the event of his death but which shall in any event be paid in accordance with these Rules. Such nomination of a Beneficiary may be replaced from time to time and together with any subsequent replacement thereto shall not be binding on the Trustee and shall be interpreted and applied by the Trustees in accordance with the provisions of the Act.

#### **RULE 5- MEMBERS' REGISTER AND ACCOUNTS**

- (a) The Trustee shall cause to be maintained a register of all Members of the Medical Fund in which register shall be maintained in respect of each Member an account (to be known as the "Member's Account") to which shall be credited forthwith upon receipt the Member's contributions.
- (b) Contributions made by a Member and/or Sponsor together with any amounts transferred into the Scheme in respect of a Member and accumulated investment income attributed thereto shall be credited into the Member's Account.
- (c) Each Member's Account shall be credited or charged with the positive or negative net investment income arising from the Fund's investments as described in these Rules.
- (d) The Trustees shall within six months from the end of each financial year issue to each Member a statement giving details of his Member's Account.
- (e) Every Member of the Scheme shall have a right to inspect his own Member's Account in the said register during usual business hours on giving 14 days' notice to the Trustees
- (f) Income and Other Taxes

- i. If on the payment of any benefit from the Medical Fund, any income or other tax or estate or other duty is payable by the Trustee, it shall be entitled to recover from such benefit such duty or tax (including any interest payable in respect thereof and the costs of paying it) as if it were an amount due or owing by such Member or other person to the Medical Fund;
- ii. In the event of the Trustees becoming accountable for any tax or duty in respect of any payment under the Medical Fund the Trustees shall have the right to deduct such tax or duty from the amount payable.

(g) Payment of Benefits

- (i) All medical benefits payable under these Rules shall be payable within thirty (30) days from the date on which they fall due for payment.
- (ii) Upon the death of a Member, the benefit payable from the Medical Fund shall not form part of the estate of a member for the purpose of administration or execution and shall be paid out by the Trustees in accordance with these scheme rules.
- (iii) Immediately, following the transfer of the accrued benefits by the Trustees to another medical cover provider as provided in Rule 3(e)(iii), the Member shall have no further rights or claims against the Medical Fund and the Trustees.

(h) Restrictions upon Payments from the Scheme

Notwithstanding anything contained herein to the contrary, the following shall apply to payments from the Medical Fund:

- (i) No loan or other benefit shall be provided out of the Medical Fund to any Member or to any other persons except as specifically provided for in these Rules and in the Retirement Benefits Act and Regulations.
- (ii) No warranty shall be provided by the Trustees against the Medical Fund to an Institution or any third party by way of guarantee of repayment of a loan issued to a Member.
- (iii) No payment under the Medical Fund shall be made to the Sponsor without the written consent of the Authority and Commissioner of Income Tax.

(i) Evidence of Existence

Before paying or otherwise making provision for any payment of benefit from the Medical Fund, the Trustees may request and receive such evidence as they deem necessary regarding the continued existence or death of the persons entitled to the benefit and if such evidence shall not be forthcoming the Trustees may suspend payments of the benefit until such evidence is produced.

(j) Benefit on Early Retirement or Normal Retirement

Each Member who Retires upon attaining Early Retirement Age or Normal Retirement Age shall on such Retirement be entitled to access their benefit and deal with such benefit representing his total Accumulated Credit standing to the credit of his Member's Account at that date in accordance with Rule 3(e) of these Rules.

(k) Death of a Member

On death of a Member, the Medical Fund shall be used to provide a medical benefit to the nominated Spouse(s) and/or dependant children in the manner provided for under Rule 3(e).

(l) Duties of the Trustees

- (i) The Trustees shall ensure that the Scheme has the technical and systems capacity to segregate medical funds and the administrative capacity of handling the Medical Fund and advisory functions to Members.

- (ii) Trustees shall act in a responsible manner by putting in place standards that will help to mitigate the risk of the Medical Fund from being exhausted during the lifetime of an individual Member.
- (m) Actuarial Valuation

Where the Sponsor also contributes to the Medical Fund and the Medical Fund's design provides for guarantees regarding the level of medical benefits a member shall be entitled to, the consent of the Sponsor shall be required in determining the level and design of the guarantees, including before amending the level and design of the guarantees PROVIDED THAT in the event the Medical Fund provides for guarantees regarding the level of medical benefits a Member shall be entitled to, the Scheme Trustees shall be required to conduct actuarial valuations of the Medical Fund at least once every three years.

#### **RULE 6- GUARANTEE ON THE LEVEL OF MEDICAL BENEFITS**

In the event the Medical Fund provides guarantees on the level of medical benefits, any deficits or surpluses arising from actuarial reviews will be offset or utilized as per the provisions of these Rules. In the case of deficits, additional contributions would be required from either the Sponsor, Members, or both or the level of benefits may be reduced. Surpluses in the Medical Fund may be used to enhance the level of benefits or reduce the amount of contributions. Actuarial advice and recommendations will be required to advise on the utilization of surpluses and offsetting the deficits.

#### **RULE 7-TRANSFER OF MEMBER'S SCHEME CREDIT**

Members who have attained Early Retirement Age or Normal Retirement Age shall on such Retirement be allowed to transfer a portion of their Scheme Credit to a medical cover provider: **PROVIDED THAT:**

- (a) a Member shall not transfer more than ten percent of his Scheme Credit before commutation to a medical cover provider; and
- (b) Member may transfer all the Member's Portion from additional voluntary contributions to the medical cover provider.

#### **RULE 8-TRUSTEES' DISCRETION IN PAYMENT OF DEATH BENEFITS**

- (a) The Trustee shall have power to pay or apply any medical benefit due from Medical Fund on the death of a Member other than a medical benefit expressed to be payable to or in respect of the Spouse or Child of such Member or for the benefit of any other person who in the opinion of the Trustees is or was wholly or in part dependent upon the earnings of the Member or for whose maintenance and support the Member was legally liable immediately before his death or to the personal representatives of such deceased Member in such amounts at such times and generally in such manner as the Trustees in their absolute discretion shall from time to time think fit.
- (b) Any benefit due from the Medical Fund on death of a Member shall not form part of the estate of the Member and shall be paid out by the scheme Trustees as per the Medical Fund Rules.
- (c) Without limitation to the generality of the foregoing the Trustees shall in determining to whom any medical benefit due upon the death of a Member shall be paid have due regard to any nomination by the Member in terms hereof.

#### **RULE 9-TRUSTEES' DECISION**

Subject to the provisions of the Retirement Benefits Act and Regulations, if any doubt arises in any particular case as to which of these Rules shall apply in any particular case the decision of the Trustees shall be final.

#### **RULE 10-TRUSTEES' DISCRETION RELATING TO OTHER CIRCUMSTANCES**

In any event not provided for expressly in the Rules the appropriate share of the monies held under the Medical Fund shall be held in trust by the Trustees for such of the Member or his Nominated Beneficiary(s) or his Dependants as the Trustees shall think fit according to the circumstances then applicable

#### **RULE 11-INCAPACITY**

If a Member's Nominated Beneficiary(s) or any other person to whom payments are being made or to whom any Retirement benefit has become payable suffers from any physical or mental incapacity (as to which a certificate from a qualified Medical Practitioner to that effect may be accepted by the Trustees as conclusive evidence) or is a minor child, the Trustees shall exercise their discretionary powers in determining the rightful beneficiary for the purpose of payment of medical benefits.

**RULE 12-MEMBER'S RIGHT TO DOCUMENTS**

Every Member shall have the right to inspect a copy of the Trust Deed and the Rules and any amendments thereto upon giving the Trustees reasonable notice of his wish to do so. Every Member shall have a right to obtain a copy or to inspect his own Member's Account in the register and accounts of the whole Scheme during usual business hours upon giving the Trustees reasonable notice of his wish to do so.

**RULE 13. ALTERATIONS TO STATUTORY SCHEME**

The Sponsor and the Trustees reserve the right to amend the terms of the Trust Deed and these Rules to take account of changes in statutory contributions or benefits under the National Hospital Insurance Fund or any Statutory Scheme.

**RULE 14-HEADINGS**

The headings in these Rules are for convenience of reference only and are not to be construed as part of the Rules.



SIGNED AND DELIVERED by the said  
**ACHIENG SARAH BUKACHI**  
TRUSTEE in the presence of:

)  
)  
) Bukachi  
.....

Name  
Address  
Occupation  
Signature

SIGNED AND DELIVERED by the said  
**MOHAMED KALMEY MUHUMED**  
TRUSTEE in the presence of:

)  
)  
) Muhammed  
.....

Name  
Address  
Occupation  
Signature

## THE FOURTH SCHEDULE- PURCHASE OF A RESIDENTIAL HOUSE RULES

### RULE 1- ELIGIBILITY FOR PARTICIPATION

A Member may utilize a portion of their accrued benefits to purchase a Residential House upon successful application to the Trustees. A Member who wishes to utilize a portion of their accrued benefits to purchase a residential house shall be required to complete an application in the form prescribed by the Trustees. Upon receipt of a Member's Application form, the Trustees shall first ascertain if the Member is Eligible.

For the Purpose of these rules an Eligible Member is one who;

- (a) has not previously utilized his accrued benefits to purchase a residential house;
- (b) has not attained Normal Retirement Age;
- (c) has not taken Early Retirement; or
- (d) is not being paid a pension.

### RULE 2- PORTION OF BENEFIT

- (a) The portion of an Eligible Member's accrued benefit available for the purchase of a residential house shall be an amount not exceeding 40% of the member's accrued benefits or Kenya shillings seven million (KShs. 7,000,000/=) whichever is lower.
- (b) An Eligible Member may access their additional voluntary contributions to top up the portion of benefits available to the Member for the purchase of a Residential House.
- (c) An Eligible Member's funds contained in the post- retirement medical fund shall not be used to determine the accrued retirement benefits of the Member or be used for the purchase of a Residential House.
- (d) Where the Applicant Member is an Eligible Member of more than one Scheme established by the same Sponsor, the Trustees shall upon written application by the Eligible Member, combine the member' accrued benefits in determining the proportion available to the Eligible Member.
- (e) In determining the amount available to an Eligible Member, the Trustees shall take into account the proportion of remitted contributions.

### RULE 3 - APPLICATION FOR APPROVAL

- (a) A Member who wishes to purchase a Residential House shall apply in writing to the Trustees and shall enclose copies of the following documents in support of their application:
  - (i) Title document for the Residential House or Head Title where a sub-lease is to be registered;
  - (ii) Architect's certificate of practical completion and occupation certificate (issued by the relevant County Government) for the Residential house, if newly constructed;
  - (iii) Certificate of incorporation or registration of the Institution selling the Residential House;
  - (iv) Letter of offer from the Institution or Sale Agreement executed by the Eligible Member and the Institution;
  - (v) Evidence of payment of all outgoings (if any) for the Residential House by the Institution;
  - (vi) Evidence of availability of funds for any amount required for the purchase of the Residential House over and above the portion of benefits available to the Member for the purchase of a Residential House, including transaction costs and taxes relating to the purchase;
  - (vii) Any other additional document as the Scheme Trustees may require.
- (b) The Trustees shall prior to approving the Member's written application for the purchase a Residential House undertake their independent due diligence by:
  - (i) verifying if the Applicant Member is an Eligible Member;
  - (ii) carrying out due diligence of the title document to the Residential House or the Head Title where a sub-lease is to be registered for the Residential House;
  - (iii) ensuring valuation of the Residential House is undertaken by a Valuer in order to ascertain that the market value of the Residential House does not exceed the purchase price;



- (iv) ensuring that the terms of the sale between the Eligible Member and the Institution are properly documented;
- (v) verifying the authenticity of the Institution selling the Residential House to the Eligible Member
- (vi) confirm availability of funds for any shortfall amount required for the purchase of the Residential House over and above the portion of benefits available to the Member for the purchase of a Residential House, including transaction costs and taxes relating to the purchase; and
- (vii) taking any other necessary measure(s) that is expedient in securing the transaction and the Eligible Member's accrued benefits.

PROVIDED ALWAYS THAT to enable the Trustees carry out the provisions of Rule 3 (b) hereinabove the Trustees may delegate any of their powers discretions functions or any business relating to or under this Rule 3 (b) above to any one or more of their number, or to any committee composed of the board of Trustees and may at any time revoke any delegation made by them. The Trustees may also appoint and obtain advice from any professional adviser including legal advisers and Valuers upon terms as they shall so deem fit.

- (c) The Trustees shall within Ninety (90) days of a Member lodging their written application, determine the application and where an application is not granted, the Trustees shall notify the Member of the reasons thereof in writing.

#### **RULE 4- DISBURSEMENTS OF FUNDS FOR THE PURCHASE OF A RESIDENTIAL HOUSE**

The Scheme Trustees shall prior to disbursing the portion of benefits available to an Eligible Member for the purchase of a Residential House ensure that:

- (a) The Residential House has been transferred to the Eligible Member;
- (b) A copy of the title document to the Residential House is deposited with the Trustees;
- (c) All records of the transaction relating to the purchase of the Residential House are kept and well maintained;
- (d) The title to the Residential House is encumbered in favour of the Scheme to prevent transfer of the title to any other person.

PROVIDED ALWAYS THAT to enable the Transfer of a Residential House in favour of an Eligible Member and encumbrance of the Residential House in favour of the Scheme prior to disbursement of funds, Scheme Trustees may issue undertakings and/or authorize their legal professional advisers to issue undertakings on their behalf in favour of the Institution selling the Residential House in order to secure the transaction.

#### **RULE 5- GENERAL REQUIREMENTS**

- (a) An Eligible Member shall only be permitted to utilize the member's accrued benefits only once for the purchase of a residential house.
- (b) A Residential House to be purchased by an Eligible member shall be a house that has been certified fit for occupation.
- (c) Where Member and the Member's Spouse are both members of the same scheme or different schemes, they may combine their accrued benefits and utilize the total amount for the purchase of a Residential House provided, that they are both Eligible Members.
- (d) An Eligible Member who already has a mortgage facility from any Institution shall not be allowed to utilize the member's accrued benefits to offset the balance on that mortgage facility.
- (e) Where a Member is financed to raise the shortfall amount for the purchase of a Residential House and the Member subsequently defaults to pay the financing institution, if the financing institution elects to exercise their right of Statutory power of sale and the Residential House is sold to a third party, the proceeds of the sale:
  - i) Shall be used to settle the outstanding Member's loan and accrued interest owing to the financing institution and
  - ii) any balance of the sale proceeds after deducting the amount in Rule 5(e)(i) above shall be transferred to the Members account in the Scheme.

#### **RULE 6- ELIGIBLE MEMBER'S TITLE TO THE RESIDENTIAL HOUSE**

The Board Trustees shall cause the Eligible Member's title to the Residential house to be encumbered so as to prevent transfer of the house to any other person until and unless any of the following occurs;

- (a) the Eligible Member retires upon attaining the Normal Retirement Age;
- (b) the Eligible Member retires on or after attaining Early Retirement Age with the consent of the Sponsor;
- (c) the Eligible Member retires before attaining Early Retirement Age;
- (d) the Eligible Member dies;
- (e) on medical evidence of ill health to the satisfaction of the Trustees and the Sponsor that the Eligible Member is incapacitated and incapable by reason of any infirmity of mind or body of discharging the duties of his office to the extent that it would occasion the Eligible Member's retirement before attaining Early or Normal Retirement Age;
- (f) the Eligible Member is emigrating from Kenya to another country without the intention of returning to reside in Kenya and approval has been granted by the Authority for the encumbrance to be removed.
- (g) The Residential House is sold by a financing entity (that financed the shortfall amount) in exercise of its Statutory power of sale following a Member having defaulted to pay the loan facility, the portion funds that remain (if any) after the financier exercises its power of statutory sale and settles the outstanding loan, shall be returned to the Scheme as unregistered portion if the member is still in service or paid to the member if no longer in service.

#### **RULE 7- REPORT**

The Scheme Trustees shall submit to the Authority, a report of assignment of benefits and purchase of Residential Houses by members at least once in every three months from the date of commencement of the financial year of the Scheme.

#### **RULE 8-TRUSTEES' DECISION**

Subject to the provisions of the Retirement Benefits Act and Regulations, if any doubt arises in any particular case as to which of these Rules shall apply in any particular case, the decision of the Trustees shall be final.

#### **RULE 9- APPEALS**

A Member who is dissatisfied with a decision of the Trustees in relation to the purchase of a Residential House may request that such decision be reviewed by the Chief Executive Officer of the Authority. A Member aggrieved by a decision of the said Chief Executive Officer of the Authority or of the Authority may appeal to the Appeals Tribunal established under the Act.

#### **RULE 10- LIABILITY BY TRUSTEES**

Where an Eligible Member utilises a portion of the member's accrued benefits for the purchase of a Residential House, the Trustees shall be liable to the Eligible member for the portion of the member's accrued benefits that remain unutilised.

#### **RULE 11-MEMBER'S RIGHT TO DOCUMENTS**

Every Member shall have the right to inspect a copy of the Trust Deed and the Rules and any amendments thereto upon giving the Trustees reasonable notice of his wish to do so. Every Member shall have a right to obtain a copy or to inspect his own Member's Account in the register and accounts of the whole Scheme during usual business hours upon giving the Trustees reasonable notice of his wish to do so.

#### **RULE 12. AMENDMENT OF RULES**

The Trustees reserve the right to amend Rules in accordance with the provisions of the Trust Deed.

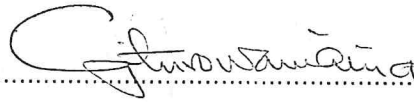
#### **RULE 13-HEADINGS**

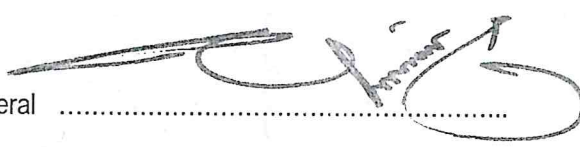
The headings in these Rules are for convenience of reference only and are not to be construed as part of the Rules.

IN WITNESS WHEREOF the Common Seal of the Sponsor has been hereunto affixed and the Trustees have hereunto set their hands and seals the date and year first above written.

SEALED with the Common Seal of  
KENYA SCHOOL OF GOVERNMENT

in the presence of:

Council Chairperson.....

Director General .....

Affix Seal

SIGNED AND DELIVERED by the said  
**JOSEPH MUSYOKI MUSENGYA**  
TRUSTEE in the presence of:

Name  
Address  
Occupation  
Signature

.....

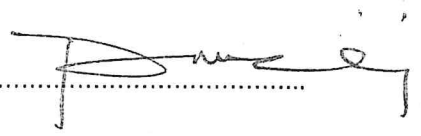
SIGNED AND DELIVERED by the said  
**ISHMAEL KAMONJO MAINGI**  
TRUSTEE in the presence of:

Name  
Address  
Occupation  
Signature

.....

SIGNED AND DELIVERED by the said  
**PROF. PETER NGATIA**  
TRUSTEE in the presence of:

Name  
Address  
Occupation  
Signature

.....

SIGNED AND DELIVERED by the said  
**ACHIENG SARAH BUKACHI**  
TRUSTEE in the presence of:

Name  
Address  
Occupation  
Signature

)  
)  
) *bukachi* )  
) )  
) )  
) )  
) )

SIGNED AND DELIVERED by the said  
**MOHAMED KALMEY MUHUMED**  
TRUSTEE in the presence of:

Name  
Address  
Occupation  
Signature

)  
)  
) *Mohamed* )  
) )  
) )  
) )  
) )

**DRAWN BY**

GIKERA & VADGAMA  
ADVOCATES  
56 MUTHITHI ROAD  
BEHIND TRV OFFICE PLAZA  
WESTLANDS  
P.O. BOX 720-00621  
**NAIROBI**