

DATED THE .....<sup>1<sup>st</sup></sup> DAY OF OCTOBER .....2014

**MURANG'A UNIVERSITY COLLEGE**

(the 'Founder' )

-and-

(the 'Trustees')

**Prof. Julius O. Nyabundi**

**Mr Anthony Milimu Lubulellah**

**Mrs Adelaide Mbaika Mbithi**

**Arch. Aidah N. Munano**

**Felister Wambugha Mvoi Makini**

**Gathogo George Mwangi**

**Benson Muchai Irungu**

**Wilson Mwangi Karuru**

**Ezra Kabuga Kihara**

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**TRUST DEED AND RULES**

-Establishing-

**MURANG'A UNIVERSITY COLLEGE STAFF PENSION SCHEME.**

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**Drawn By**

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**THIS TRUST DEED** is made the 1<sup>st</sup> day of OCTOBER Two Thousand and Fourteen, between **MURANG'A UNIVERSITY COLLEGE** of Post Office Box Number 75-10200 Murang'a Kenya (hereinafter referred to as "the founder") of the one part **Prof. Julius O. Nyabundi, Mr Anthony Milimu Lubulellah, Mrs Adelaide Mbaika Mbithi, Arch. Aidah N. Munano, Felister Wambugha Mvoi Makini, Gathogo George Mwangi, Benson Muchai Irungu, Wilson Mwangi Karuru and Ezra Kabuga Kihara** jointly as **TRUSTEES MURANG'A UNIVERSITY COLLEGE STAFF PENSION SCHEME** of (hereinafter together referred to as "the Trustees" which expression shall where the context so admits include the survivors of them or other Trustees for the time being hereof) all care of P.O Box 75-10200 Murang'a , Kenya, of the other part.

**WHEREAS:**

- (a) By virtue of the Charter through which Muranga' Univesrtity College was established, the Founder is empowered to provide for the Welfare of the staff , the Founder has decided to establish under irrevocable trusts the "**Murang'a University College Staff Pension Scheme**" (the "Scheme") for the purpose of providing pension and other benefits on retirement to such employees of the Founder as may be admitted as members of the Scheme ( the "Members") under the provision of the Rules of the Scheme set out in the Schedule hereto as duly amended from time to time (the "Rules") and;
- (b) The Trustees have consented to be Trustees of the Scheme hereby created and to be bound by and observe the trusts contained herein.
- (c) From the commencement Date (as hereinafter defined), the Founder desires to establish a Retirement Benefit Scheme to be known as the "**Murang'a University College Staff Pension Scheme**" hereinafter called the '**Scheme.**')

**NOW THIS DEED WITNESSETH AND IT IS HEREBY DECLARED** as follows:-

**1 Definitions**

In this Deed and in the Rules, which are contained in the Schedule hereto, the following words and expressions have the following meanings:

- 1.1 "Accumulated Credit"** means in relation to a particular Member as at a particular date the balance of the Member's Account and includes contributions payable under the National Social Security Fund Act, 2013;



- 1.2 "Act"** means the Retirement Benefits Act and the subsidiary legislation made thereunder;
- 1.3 Actuary** means a person who is a fellow of the Institute of Actuaries in England or the Faculty of Actuaries in Scotland or the Canadian Institute of Actuaries or the Society of Actuaries of the United States of America or the Institute of Actuaries of Australia or a person holding such equivalent qualification as the Authority may by notice in the gazette prescribe who has been appointed by the Trustees to be Actuary for the Scheme;
- 1.4 "Administrator"** means the person appointed under an instrument by the Trustees to manage the administrative affairs of the Scheme;
- 1.5 "Annuity"** means a monthly benefit purchase from a Registered Insurer or Approved Issuer and payable to a former Member or to another person who becomes entitled to receive an Annuity upon or at any time after the death of a former Member and the word "Pension" has the same meaning;
- 1.6 "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;
- 1.7 "Associated Organisation"** means any organisation which the Founder declares to be a parent, subsidiary or associated organisation and which is eligible to become a Sponsor by executing a Deed of Adherence;
- 1.8 "Auditor"** means such firm, person or persons as shall from time to time be appointed to hold office as auditor of the Scheme under the Rules and in compliance with the Act; **Provided That** the person appointed shall be a member of the Institute of Certified Public Accountants of Kenya and shall not be a Member, Trustee or Sponsor of the Scheme Act;
- 1.9 "Authority"** means the Retirement Benefits Authority established under the Act;
- 1.10 "Brother"** means brother by any law obtaining in Kenya and includes half-brother;
- 1.11 "Cabinet Secretary"** means the Cabinet Secretary for the time being responsible for matters relating to Social Security;
- 1.12 "Commencement Date"** means **1<sup>st</sup> January 2014**.
- 1.13 "Commissioner"** means the Commissioner-General of the Kenya Revenue Authority established under the Kenya Revenue Act;
- 1.14 "Continuous Service"** means the period during which an Employee has been continuously 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 nine (9) months shall not be uninterrupted.

- 1.15 "Contract of Service"** means an agreement whether entered into orally or in writing and whether express or implied, to employ or to serve as an employee for a period of time and includes a contract of apprenticeship or indentured learnership.
- 1.16 "Contracted-out Scheme"** means an occupational retirement benefits scheme including an umbrella retirement benefits scheme or an individual retirement benefit scheme which has been approved and registered by the Authority for purposes of receiving Tier II Contributions and, where applicable, Tier II Fund Credit Transfers from the National Social Security Fund.
- 1.17 "Custodian"** means a custodian registered by the Authority and appointed by instrument by the Trustees to be Custodian for the Scheme;
- 1.18 "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;
- 1.19 "Deferred Member"** means a Member who has left the Pensionable Service of the Sponsor and who has left all or part of his Accumulated Credit in the Scheme until attaining Early Retirement Age or Normal Retirement Age;
- 1.20 "Defined Contribution Scheme"** means a scheme in which members' and employers' 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;
- 1.21 "Dependants"** in relation to a particular Member means or includes the Member's Spouse who shall be the wife or husband to whom the Member is married to before his death by any ceremony (whether monogamous or not) which would be recognised by a Court of law in Kenya, children or adopted children living at the time of the Member's death and such other persons as were, in the opinion of the Trustees, immediately before the Member's death substantially dependent on the Member (whether alone or with others) for the provision of the necessaries of life provided that the class of



- Dependants shall be closed on the Member's death except that it shall include persons *en ventre sa mere* who if born before the Member's death would have been Dependents;
- 1.22 "Early Retirement"** means Retirement from the Pensionable Service of the Member at Fifty Years (50).
- 1.23 "Eligible Employee"** means a full time permanent employee of the Sponsor or a full time permanent employee of an any organization on a Contract of Service which has become a Sponsor by binding itself hereto by a Deed of Adherence;
- 1.24 "Employee"** means a person employed by the Sponsor under a Contract of Service;
- 1.25 "Entry Date"** means the first day of the calendar month immediately following the date of confirmation of appointment of a permanent staff to be an eligible employee of the Sponsor subject to a maximum of 12 months whichever is earlier.
- 1.26 "Financial Year"** means 30<sup>th</sup> June of each year;
- 1.27 "Founder"** means **Murang'a University College**;
- 1.28 "Income Draw Down Plan"** means an arrangement through which a Member after attaining the Early Retirement Age or Normal Retirement Age may defer taking an annuity and receive a lump sum benefit up to age seventy (75) after which the Member must take an annuity with an Approved Issuer.
- 1.29 "Income Tax Act"** means the Income Tax Act (Cap 470 of the Laws of Kenya) and any statutory amendments or additions thereto or substitutions therefore;
- 1.30 "Income Tax Rules"** means the Income Tax (Retirement Benefits) Rules 1994 and any statutory amendments or additions thereto or substitutions therefore;
- 1.31 "Investment Manager"** means a manager registered by the Retirement Benefits Authority and appointed by instrument by the Trustees to be the Investment Manager for the Scheme;
- 1.32 "Lower Earnings Limit"** means the amount gazetted by the Cabinet Secretary from time to time as the average statutory minimum monthly basic wage for the top urban centres, second tier urban centres and rural areas for the year;
- 1.33 "Member"** means a person who has been admitted as member of the Scheme
- 1.34 "Membership"** means the fact of having been admitted to membership of the Scheme upon or after becoming an Eligible Employee and a Member's period of Membership shall for the purposes of determining the Member's entitlement to access his Accumulated Credit upon resignation or termination of service be deemed to include his period of membership of other registered retirement benefits schemes in respect of which benefits have been transferred into the Scheme in accordance with the provisions of Clause 30 of this Deed;



- 2.24 "Member's Account" means the account of each Member in which is recorded the contributions made by the Member and by a 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 and all amounts debited to the Member representing apportionment of investment loss;*
- 1.36 "National Average Earnings"** means for each financial year, the average wage earnings per employee as published by the Kenya National Bureau of Statistics in the Economic Survey for the prior year;
- 1.37 "Nominated Beneficiary"** means a person nominated in writing by a Member as the person or one of several persons who should receive the benefits payable under the Rules upon the death of the Member;
- 1.38 "Normal Retirement Date"** shall be deemed by the Sponsor to occur means the first day of the month next following the (60<sup>th</sup>) birthday for a non-teaching staff member and the (70<sup>th</sup>) birthday for a teaching staff member as the case may be in accordance with the member's letter of appointment or employment contract). The Normal Retirement Date for a Member with disability within the meaning of the Persons with Disabilities Act (Act No.14 of 2003) shall be his 65th birthday;
- 1.39 "Non-teaching Staff"** means Eligible Employees of the Sponsor who are not in the teaching staff category as shall be provided in employees employment contracts by the sponsor;
- 1.40 "Pensionable Salary"** means, all emoluments payable to an employee under a contract of service if no deductions were made, in pursuant to any law requiring or permitting the making of any deduction or otherwise excluding fluctuating emoluments;
- 1.41 "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 after completion of one year probationary period provided that temporary periods of absence of up to nine months shall be included as Pensionable Service. This definition of Pensionable Service shall not apply in any way to nor have any bearing on the other terms on which a Member has been employed by the Sponsor;
- 1.42 "Protected Rights"** means the benefits under a contracted out scheme which derive from Tier II Contributions and which must be provided in a specified form as a condition of contracting out **"Reference Scheme Test"** means the test of scheme quality which schemes have to meet in order to contract out of the of the State Scheme in relation to Tier II Contributions;



- 1.43 "Retirement"** means the event of leaving an Employer's service with entitlement to immediate payment of a member's Retirement Benefits in terms of these Rules and the term **"Retire"** shall be interpreted accordingly;
- 1.44 "Rules"** means the Rules set out in the Schedule hereto with any modifications thereof or additions thereto for the time being in force;
- 1.45 "Scheme"** means **Murang'a University College Staff Pension Scheme**;
- 1.46 "Scheme Fund"** means all monies from time to time held by or on account of the Trustees, including assets and liabilities transferred in from Retirement Benefits Schemes and subject to the terms and provisions of the Trust Deed and the Rules and the investments for the time being representing the same ;
- 1.47 "Sponsor"** means **Murang'a University College** and any other organisation that may adhere to the Scheme under the provisions hereof;
- 1.48 "Spouse"** means the wife or husband to whom the Member is married to before his death by any ceremony (whether monogamous or not) which would be recognised by a Court of Law in Kenya;
- 1.49 "State Scheme"** means the National Social Security Fund established in terms of the National Social Security Fund Act, Act No. 45 of 2013;
- 1.50 "Teaching Staff"** means Eligible Employees of the Sponsor who have been engaged to undertake research and teaching duties on a full time basis;
- 1.51 "Tier I Contributions"** means for any month, and in relation to the State Scheme, contributions in respect of Pensionable Earnings up to the Lower Earning Limit;
- 1.52 "Tier II Contributions"** means for any month, contributions in respect of Pensionable Earnings above the Lower Earning Limit;
- 1.53 "Tier I Pension Fund Credit"** means in relation to each NSSF Pension Fund Member, the portion of the of the NSSF Fund Credit at any particular date equal to the aggregate of the Tier I Contributions by and in respect of the Member less deduction for the estimated annual cost of minimum benefits on death and disability with interest thereon;
- 1.54 "Tier II Pension Fund Credit"** means the portion of the credit ,at any particular date equal to the aggregate of the Tier II Contributions by and in respect of the Member with interest thereon and any transfer payment received in respect of the Member with interest thereon;
- 1.55 "Trust Deed"** means this Trust Deed together with all subsequent deeds expressed to be supplemental or amendments hereto for the time being in force;



**1.56 "Trustees"** means the trustees for the time being of the Scheme appointed under the provisions of the Trust Deed, and in this Deed, where not inconsistent with the context, words denoting the singular number shall include the plural and vice versa, words denoting the masculine gender shall include the feminine and vice versa and words importing persons shall include firms and companies and vice versa.

**1.57 "Upper Earnings Limit"** means the level of earnings, equal to four times National Average Earnings;

*In this Trust Deed and the Rules the masculine gender shall include feminine gender and the plural shall include the singular.*

## **2 Name of the Scheme**

The name of the Scheme shall be **MURANG'A UNIVERSITY COLLEGE STAFF PENSION SCHEME.**

## **3 Effective Date of Establishment of the Scheme**

The Scheme shall be deemed to have been established in the Republic of Kenya with effect from **1<sup>st</sup> April 2013.**

## **4 Declaration of Trust, Trust Period and Determination of the Scheme**

### **4.1 Trust Declaration**

4.1.1 The Scheme is established under irrevocable trusts declared hereby.

4.1.2 The Trustees shall stand possessed of the moneys 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 pensions and other benefits payable under and in accordance with the Rules.

### **4.2 Trust Period and Determination of the Scheme**

The trusts hereof shall be irrevocable and shall only determine in any of the following events:

4.2.1 Upon the conclusion of a period of 80 years from the Commencement Date or of such further periods at the conclusion of the said period as may be lawful.

4.2.2 The participation of the Sponsor in the Scheme is ceasing and the Scheme being partially or wholly determined as provided for in this Trust Deed.



- 4.2.3 In the event the trusts hereof being so determined or of the Sponsor so ceasing to participate in the Scheme and the Scheme so being determined the provisions of this Trust Deed shall apply and the Trustees shall take all such action as may be necessary to give effect to such provisions.

## **5 Registered Office**

The registered office of the Scheme shall be the address for the time being of the Founder. The Founder's address at the present time is **Post Office Box Number 75-10200 Murang'a, Nairobi.**

## **6 Purpose and Composition of Scheme**

The Scheme is constituted as a Defined Contribution Pension Scheme from the Commencement Date under the irrevocable trusts hereby declared for the main purpose of providing retirement benefits for Members on Retirement at a specified age and relief for certain of the Dependants of Members who die while employed by the Sponsor and is vested in the Trustees and consists of:

- 6.1 The contributions made since the Commencement Date to the Scheme by the Sponsor and Sponsors and by the Members and the investments for the time being representing the same;
- 6.2 Tier II Contributions;
- 6.3 Amounts transferred to the Scheme from the State Scheme or any other registered retirement benefits scheme;
- 6.4 The investments for the time being representing such contributions and sums transferred; and
- 6.5 The 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 hereby covenant with the Trustees as follows:

- 7.1 To observe and perform the provisions of the Trust Deed and the Rules, all the laws generally without limiting, the Act, the National Social Security Fund Act and the Income Tax Rules and to indemnify and keep indemnified the Trustees as provided for herein.



- 7.2 To pay to the Custodian appointed by the Trustees the total of all contributions of the Members deducted by the Sponsor in accordance with the Rules together with the Sponsor's contributions payable under the Rules in accordance with the stipulations of the Act the National Social Security Fund Act and the Income Tax Rules provided that the Sponsor shall have the right to discontinue contributions to the Scheme as provided for herein.
- 7.3 To do all things required to be done by Sponsors of retirement benefits schemes and give to the Trustees all information in their power or possession that shall be necessary for the working of the Scheme.

## **8 Trustees' Covenants**

The Trustees hereby covenant with the Sponsor and the Sponsors as follows:-

- 8.1 To manage and administer the Scheme in the terms hereof;
- 8.2 To act with due care, diligence and good faith;
- 8.3 To avoid conflicts of interest;
- 8.4 To take all reasonable steps to ensure that the interests of Members in terms of the Rules and the Act are protected at all times;
- 8.5 To act with impartiality in respect of all Members and beneficiaries;
- 8.6 To comply with the provisions of this Deed and the Rules;
- 8.7 To comply with the provisions of the National Social Security Fund Act, Act No.45 of 2013;
- 8.8 To comply with the provisions of the Act, the Income Tax Rules, The Trustee Act (Cap 167 of the Laws of Kenya), and any other legislation that may be enacted from time to time by the Government of Kenya for the administration of trusts; and
- 8.9 Not to act or permit any of them or their servants or agents to act in any way which would jeopardize the Scheme's approved status under the provisions of the Act, the National Social Security Fund Act or its tax-exempt status under the provisions of the Income Tax Rules.

## **9 Appointment, Removal and Remuneration of Trustees**

- 9.1 Subject to the powers of the Sponsor to appoint a sole corporate trustee under the provisions hereof, the number of Trustees shall be not less than four, one half of whom (or if there are more than four Trustees, one half or the number nearest to but not less than one half) shall be appointed and may be removed by the Sponsor at its sole discretion (hereinafter called "the Sponsor-nominated Trustees"), and one-half



- of whom (or if there are more than four Trustees, one-half or the number nearest to but not more than one-half) (hereinafter called "the Member-nominated Trustees") shall be appointed by the Sponsor after having been nominated by the Members following a selection procedure which shall have been adopted by the Trustees and whose nomination may by the same procedure be revoked whereupon such Trustees shall be removed by the Sponsor as Trustees. All appointments and removals of Trustees shall be done by the Sponsor by deed;
- 9.2 Neither the Sponsor-nominated Trustees nor the Member-nominated Trustees shall be required to be Members of the Scheme;
- 9.3 The maximum number of Trustees shall at all times be nine and the Chief Executive Officer of the Sponsor, the Chairman of the Board of the Sponsor or the Scheme Administrator shall not be the chairman of the board of Trustees of the Scheme;
- 9.4 Upon removal of a Trustee by the Sponsor such Trustee shall forthwith do all things necessary for vesting in the continuing Trustees and any new Trustees all the Scheme Fund subject to the trusts hereof;
- 9.5 A person shall not be appointed as a Trustee if he:-
- 9.5.1 is convicted of a criminal offense and sentenced to imprisonment by a court of competent jurisdiction for a period exceeding six months without the option of a fine;
  - 9.5.2 is a member of a governing body of a political party;
  - 9.5.3 is currently disqualified under any written law to hold office of a director in a public company, corporation or similar organization;
  - 9.5.4 has been removed from public office for contravention of the provisions of the Constitution or any other written law;
  - 9.5.5 is adjudged bankrupt or enters into a composition or arrangement with his creditors;
  - 9.5.6 was previously involved in the management or administration of a scheme which was deregistered for any failure on the part of the management or the administration thereof;
  - 9.5.7 is disqualified under any other written law, or his holding office as such is deemed by the Authority as being, in any way, detrimental to the Scheme;
  - 9.5.8 is disqualified under chapter six and thirteen of the Constitution or any other provisions thereof or any written law.



9.6 An existing Trustee shall cease to be a Trustee of the Scheme if such Trustee becomes guilty of any disqualifying conditions set out in the Act or any statutory amendment thereto or re-enactment thereof and in particular the Trustee:

- 9.6.1 Is adjudged bankrupt or makes an arrangement or composition with his creditors generally;
- 9.6.2 Becomes of unsound mind;
- 9.6.3 Fails to attend three consecutive Board of Trustees meetings.
- 9.6.4 Resigns by notice in writing;
- 9.6.5 Is forbidden to act as a Trustee pursuant to any law;
- 9.6.6 Is disqualified under any provisions of the Constitution from holding a public office;
- 9.6.7 Is incapacitated by prolonged physical or mental illness;
- 9.6.8 Is otherwise unable or unfit to discharge his responsibilities in accordance with Clause 8 hereof;
- 9.6.9 Is removed by the Sponsor pursuant to the provisions hereof;
- 9.6.10 His term of office expires.

#### **9.7 Term of Office**

- 9.7.1 The Sponsor-nominated Trustees shall (unless prevented by death or resignation) hold office for a period of three (3) years but shall be eligible for re-appointment by the Sponsor provided that the Sponsor may in its sole discretion remove any Sponsor-nominated Trustee before expiry of his term of office.
- 9.7.2 The Member-nominated Trustees shall (unless prevented by death or resignation) hold office for a period of three (3) years but shall be eligible for re-election for another term if nominated by the Members. The Members may revoke the nomination of any Member-nominated Trustee before expiry of his term of office in which case the Sponsor shall remove such Trustee.
- 9.7.3 If the appointment of any Sponsor-nominated Trustee is directly linked to that Trustee's tenure in an executive position with the Sponsor being a position of paid employment either full-time or part-time or a non-executive position with the Sponsor being a position of any other service relationship remunerated or otherwise such appointment as a Trustee



shall determine upon such Trustee's leaving such executive or non-executive position for any reason.

9.8 A Trustee may be remunerated out of the Scheme Fund in respect of his services at such rates as shall be approved by the Sponsor.

9.9 Any of the Trustees 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.

## **10 Trust Vacancy**

Whenever a vacancy arises in the number of Trustees a new Trustee shall be appointed as soon as possible thereafter in the manner set out in Clause 9 hereof, to fill the vacancy provided that all acts and proceedings of the continuing Trustees pending the filling of the vacancy shall be valid and binding.

## **11 Trustees' Powers and Duties**

11.1 In addition to having responsibility for the general and exclusive management and administration of the Scheme and for the specific duties mentioned herein, the Trustees shall have and be entitled to exercise all the powers, rights, discretions and privileges vested in them in accordance with the Trust Deed and the Rules. Such powers, rights, discretions and privileges shall be exercised in conformity with The Trustee Act, the Act, the National Social Security Fund Act and the Income Tax Rules and any other relevant legislation. In addition the Trustees shall:

- 11.1.1 Determine whether or not any person claiming a benefit from the Scheme is entitled thereto in accordance with the Rules;
- 11.1.2 Maintain bank account details for Members for purposes of payment of benefits;
- 11.1.3 Ensure the correctness of and pay or provide for the payment of the benefits prescribed by the Rules;
- 11.1.4 Ensure that proper control systems are employed by them or on their behalf by their agents;



- 11.1.5 Ensure that contributions are paid timeously to the Scheme Custodian in accordance with the Rules and the provisions of the Act, the National Social Security Fund Act and the Income Tax Rules;
  - 11.1.6 Ensure that adequate and appropriate information is communicated to Members informing them of their rights, benefits and obligations in respect of the Scheme and to arrange annual general meetings of the Members in accordance with the Act;
  - 11.1.7 Ensure that adequate and appropriate information relating to the Scheme's affairs is communicated to the Sponsor.
- 11.2 The Trustees may make regulations not being inconsistent with this Deed and the Rules for the conduct of the business and administration of the Scheme.

## **12 Trustees' Power to Invest**

- 12.1 Subject to being in conformity with the Act and the statement of investment policy agreed by the Trustees from time to time, the Trustees shall have power to invest any monies forming part of the Scheme Fund and not immediately required for the payment of benefits and other outgoings in or upon the security of such stocks shares debentures or other investments or property of whatsoever nature and whereso-ever situate and with the like power of varying such investments from time to time as the Trustees shall think fit to the intent that they shall have the same powers of investment and varying investments in all respects as if they were absolutely and beneficially entitled thereto.
- 12.2 The Trustees shall prepare, and after every three years or such shorter period as may be prescribed by the Act shall revise, a written statement of the principles governing decisions on investments for the purposes of the Scheme. The statement shall cover the policy of the Scheme in regard to the requirements of the investment guidelines set out in the Act and a copy shall be sent to the Authority.
- 12.3 The Investment Policy shall include *inter alia* asset liability matching and shall be prepared under considered written advise from a registered chartered Financial Analyst, Actuary, Investment Advisor or Fund Manager registered under the Capital Markets Act or Manager under the Act provided that the Manager is not the Scheme Manager, related company or employee of the Scheme Manager. It shall then be signed by the trustees and the investment advisor



### **13 Powers Conferred on Trustees by Law**

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

### **14 Liability of Trustees and Indemnity**

14.1 A Trustee shall not be responsible, chargeable or liable in any manner whatsoever, except:

14.1.1 In the case of a Trustee who holds himself out as providing professional trustee services to retirement benefits schemes, for any failure to exercise due care and diligence in the discharge of his functions in respect of the Scheme; and

14.1.2 In the case of a Trustee not within 14.1.1, for any act or omission in respect of the Scheme undertaken with a deliberate and culpable disregard of the interests of the Members (or any of them) or in personal conscious bad faith.

14.2 The Sponsor shall indemnify each of the Trustees against all liabilities incurred by them in the execution of the trusts of the Scheme and in the management and administration of the Scheme, other than liabilities arising from:

14.2.1 In the case of a Trustee who holds himself out as providing professional trustee services to retirement benefits schemes, for any failure to exercise due care and diligence in the discharge of his functions in respect of the Scheme; and

14.2.2 In the case of a Trustee not within 14.2.1, any act or omission in respect of the Scheme undertaken with a deliberate and culpable disregard of the interests of the Members (or any of them) or in personal conscious bad faith.

14.3 To the extent that the Sponsor fails to indemnify a Trustee as required by this Clause, the Trustee shall be indemnified to that extent directly out of the Scheme Fund.

### **15 Trustees' Meetings**

15.1 The Trustees shall from time to time appoint a Chairman from among themselves and a Secretary (hereinafter referred to as "the Trust Secretary"). The Trust Secretary may be a body corporate. If the Chairman is absent from any meeting, the Trustees present shall elect a Chairman for that meeting from the Trustees attending that meeting.



- 15.2 The Trustees shall meet together at least four times in each year at dates agreed in advance by them (provided that the interval between consecutive meetings shall not be greater than four months) for the dispatch of business and may adjourn and otherwise regulate their meetings. The Trust Secretary on being requested at any time by any Trustee shall convene a meeting of the Trustees upon seven days written notice to the Trustees.
- 15.3 The quorum necessary for the transaction of business shall be three quarters of the Trustees (or if there are more than four Trustees, at least three quarters or the number nearest but not greater than three quarters ) provided that where the meeting is convened to discuss and decide upon the exercise of the Trustees' power to make or amend the Scheme's investment policy, or dispose any of the Scheme's assets when winding up or amend the Trust Deed the quorum for the meeting shall be the full number Trustees.
- 15.4 The Trustees may act by a majority of votes on a show of hands of those present and voting so that the majority shall bind the minority and in any equality of votes the Chairman shall have a second or casting vote in addition to his deliberative vote.
- 15.5 A resolution in writing signed by all of the Trustees shall be as valid and effectual as a resolution properly passed at a duly convened meeting of the Trustees and may consist of one or more documents in similar form each signed by one or more of the Trustees.
- 15.6 The Trust Secretary shall cause to be made and kept minutes of all meetings of the Trustees and of the exercise by the Trustees of all powers and discretions vested in them and the passing of resolutions shall be recorded in such minutes and signed by the Chairman as a true record. A document certified by the Trust Secretary or the Chairman to be a true copy of a resolution of the Trustees shall be sufficient evidence thereof.
- 15.7 The Trustees shall update the Sponsor at least quarterly during each Financial Year on matters regarding the Scheme.

## **16 Power to Delegate and Trustees Administrative Arrangements**

### **16.1 Power to Delegate**

The Trustees may, in addition to the powers conferred upon them by law, but without power to delegate any of their discretionary powers, delegate any of their functions or any business relating to the Scheme to any one or more of their number and may



delegate any matters relating to the administrative affairs of the Scheme to such administrators, advisers, custodians and managers (whether remunerated or not) as they may decide.

#### **16.2 Trustees' Administrative Arrangements**

16.2.1 In the event of there being more than one trustee the following provisions shall apply.

16.2.1.1 The Trustees shall appoint a Secretary (the "Trust Secretary") and shall meet together for the transaction of business, adjourn and otherwise regulate their meetings as they shall decide and the Trustees may determine the quorum necessary for the transaction of business, and in the absence of any such determination, any five (5) of the Trustees shall constitute a quorum.

16.2.1.2 The Trust Secretary on being requested by a Trustee or Trustees at any time shall convene a meeting of the Trustees upon seven days' written notice to the Trustees Provided That the Trustees shall meet at least four (4) times every calendar year and not more than four (4) months shall elapse between the date of one meeting and the next.

#### **16.3 The Trustees shall have the following additional powers and functions:-**

16.3.1 The Trustees may, in addition to the powers conferred upon them by law, from time to time delegate any of their functions or any business relating to the Scheme (including the receipt or payment of money) to any one or more of their number 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 THAT the Trustees shall not delegate any matter requiring the exercise of their discretion to any person other than one or more of their number.



16.3.2 No decision or exercise of a power by the Trustees shall be invalidated or questioned on the ground that any of the Trustees (or in the case of the Trustees or one of the Trustees being an incorporated body any member or members of the Trustees of directors of such body) had a direct or personal interest in the result of any such decision or in the exercising of any such power.

16.3.3 The Trustees shall have power to act notwithstanding any vacancy in their number.

16.3.4 The Trustees shall have power to make such by-laws or regulations for the smooth administration and management of the Scheme as the Trustees may from time to time determine.

16.3.5 The Trustees shall make such banking arrangements as they shall determine and set out in the Trust Deed.

16.3.6 Contracts and other documents shall be signed by all the Trustees (unless resolved otherwise by a resolution of the Trustees) or by a Trust Corporation if it shall be a sole trustee.

16.3.7 The Trustees shall convene an annual meeting of the Members to enable Members to discuss the Scheme.

16.3.8 The procedures for convening and conducting the meeting shall be laid down by the Trustees and notified to the Members from time to time Provided That the business of the annual meeting shall include but not limited to:-

- a) the giving of reports to the Members on any changes to the benefit or contribution structure of the Scheme;
- b) audited accounts;
- c) investments;
- d) remuneration of trustees; and
- e) Questions by Members.

## **17 Appointment of an Investment Manager**

The Trustees shall appoint in writing an Investment Manager, to advise on investment decisions, to assist them to formulate a prudent investment policy, to be responsible for acquiring and for disposing of investment assets, to prepare quarterly reports on the investment performance of the scheme and to perform such other functions as are required under the Act. The terms and conditions of appointment and removal shall be set out in the



relevant written instrument. The Trustees shall inform the Authority of the appointment and removal of the Investment Manager and the appointment of a new Investment Manager.

#### **18 Appointment of a Custodian**

The Trustees shall appoint in writing a Custodian to receive and keep in safe custody the title documents, securities and cash of the Scheme Fund, to transfer, exchange or deliver, in the prescribed form, securities held by the Custodian upon receipt of proper instructions from the Investment Manager and to perform such other functions as are required to be performed by a Custodian. The terms and conditions of appointment and removal shall be set out in the relevant written instrument. The Trustees shall advise the Authority of the appointment and removal of the Custodian and the appointment of a new Custodian.

#### **19 Appointment of an Auditor**

The Trustees shall appoint in writing an Auditor to carry out an audit of the Scheme's books of account and financial records at the end of every Financial Year. The Auditor shall perform the audit in compliance with the relevant auditing standards and with the requirements of the Act, the Income Tax Rules and any other statutory requirements. The Auditor shall report in writing to the Trustees and copies of the audited Financial Statements together with the Auditors' report thereon shall be sent to the Authority and shall be made available for inspection by the Members. The terms and conditions of the appointment of the auditor shall be set out in the relevant written instrument.

#### **20 Appointment of an Administrator**

The Trustees shall appoint in writing an Administrator to manage on their behalf the administrative affairs of the Scheme, in particular the maintenance of Members' Accounts and Records and the determination and payment of benefits within the powers delegated to the Administrator from time to time by the Trustees. The terms and conditions of appointment and removal of the Administrator shall be set out in the relevant written instrument. The Trustees shall advise the Authority of the appointment and removal of the Administrator and the appointment of a new Administrator.

#### **21 Appointment of Other Providers of Professional Services**

21.1 The Trustees shall appoint:-



- 21.1.1 An Accountant (who may be the Administrator) to keep the books of account recording the financial position of the Scheme and who shall prepare Financial Statements as described in Clause 23 hereof;
- 21.1.2 As necessary legal advisers, professional advisers, consultants, and other appropriate providers of professional or expert services.
- 21.1.3 The terms and conditions for each appointment shall be set out in the relevant written instrument and shall conform to the requirements of the Retirement Benefits Act and Regulations.
- 21.1.4 The Trustees may remove any adviser appointed under this Clause and on the removal of the Administrator shall appoint a replacement and shall advise the Authority accordingly.

## **22 Accounting Books, Records and Audit of Financial Statements**

- 22.1 The books of account recording the financial position of the Scheme shall be kept by the Accountant appointed by the Trustees. The books of account shall record all the financial transactions of the Scheme and shall be kept in accordance with the relevant Accounting Standards and the prescriptions of the Act and the Income Tax Rules. As soon as possible after the end of every Financial Year the Accountant shall prepare Financial Statements, which shall include a Statement of Income and Expenditure and a Statement of Assets and Liabilities reflecting current market values of assets and shall cause these to be audited by the Auditor.
- 22.2 The audited Financial Statements shall be sent to the Authority within six months of the end of the Scheme financial year or such other period as may be prescribed by the Authority and shall also be sent to the Commissioner of Income Tax and the Commissioner of Insurance, and all Members shall be notified of their availability for inspection at the offices of the Trustees not later than thirty days from the date of approval by the Trustees of the audited accounts.
- 22.3 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 together with a summary of the audited accounts.



### **23 Disposition of Surplus or Deficit**

The Trustees shall dispose of any surplus in the Scheme's funding not arising from retention of any amounts which are deemed not to vest in Members who leave the Scheme or make arrangements for the treatment of any deficit in the Scheme's funding by credit to or charge against the Members' Accounts.

### **24 Principal Officer**

The Sponsor with the consent of the Trustees may from time to time appoint in writing a Principal Officer who may be an individual or a firm or body corporate and the Sponsor and the Trustees shall also have power to revoke such appointment and appoint a replacement. The duties of the Principal Officer shall be set out in the deed of appointment and shall include assisting the Trustees in the discharge of their duties. The remuneration of a Principal Officer appointed by the Sponsor shall be paid by the Sponsor.

### **25 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 (wilful or otherwise) of the Scheme's Trustees, officers, administrator, manager or custodian or other professional advisers by way of such insurance in such amount as the Trustees shall determine.

### **26 Contributions**

26.1 The Sponsor and Sponsors and each Member shall be liable to make the contributions to the Scheme provided for herein and in the Rules and in determining the amounts to be paid in respect of such contributions the Sponsor and Sponsors and the Members may reduce the amounts of such contributions by the amounts of their respective contributions to the State Scheme.

26.2 Notwithstanding anything else contained herein and subject to such consents as are required in the Act and the National Social Security Fund Act, the Sponsor may at any time after giving the Trustees three months notice in writing vary the rates of contributions specified in the Rules.

The contributions made by the Sponsor and the Members shall comprise Tier II Contributions which shall be 6% of the employees pensionable earnings between



the lower earning limits and the upper earning limits as may be prescribed under the National Social Security Fund Act from time to time.

## **27 Costs of Administration**

Except as otherwise agreed with the Sponsor, the Trustees shall pay from the scheme 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, Trustees remuneration (where applicable), Custodian, Actuary, Administrator, Accountant and any other providers of professional services and all levies imposed on the Scheme by the Retirement Benefits Act and Regulations.

## **28 Adherence by Associated Organisations**

Upon application to join the Scheme being made by an any organisation and upon such Organisation binding itself by a Deed of Adherence to be bound by this Deed and the Rules with effect from a date specified in the Deed of Adherence then, subject to the consent of the Sponsor, the Trustees shall admit to membership of the Scheme with effect from the date so specified such of the employees of the Adhering Organisation as are eligible under the Rules and thereupon such Organisation shall become a Sponsor for all purposes of the Scheme and be included within the definition of the term "the Sponsor" and be bound to observe all the covenants of this Trust Deed and Rules.

## **29 Transfers to the Scheme**

29.1 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 and the National Social Security Fund 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.

29.2 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.

The portion of the amount transferred into the Scheme deriving from Member contributions shall be recorded in the Member's Account.

If any person is transferred to the Pensionable Service of the Sponsor or a Sponsor 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 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 a Member ceasing to be a Member and becoming a member of any other fund, scheme or arrangement, which has been registered under the Act and the Income Tax Rules, the Trustees shall at the request of the Member and subject to such consents as may be stipulated in the Act, the National Social Security Fund Act and the Income Tax Rules instead of fully refunding the Accumulated Credit to the Member, transfer to such other fund, scheme or arrangement 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 them.

### **31 Power to Amend**

31.1 With the consent in writing of the Sponsor, and such other consents as are required under the Act, the National Social Security Fund Act and the Income Tax Rules and under any other relevant law, the Trustees may at any time by deed amend all or any of the provisions of the Trust Deed or of the Rules provided always that no amendment may be made which would:

31.1.1 result in the payment to the Sponsor or a Sponsor of any money or other benefits from the Scheme except as provided for in the Act and the Income Tax Rules;

31.1.2 reduces or invalidates the accrued rights or interests of any person already a Member or Sponsor at the date of such amendment but provided also that no amendment shall be deemed to prejudice such accrued rights or interests of such a Member which is made to take account of changes in the provisions governing the State Scheme;

31.1.3 alter the main purpose of the Scheme;

31.1.4 purport to affect any right of a creditor of the Scheme other than as a Member;



- 31.1.5 contravene the provisions of the NSSF Act, Act No.45 of 2013 in relation to Tier II Contributions;
- 31.1.6 unless it has been approved by the Authority and registered as provided for in the Act and the Income Tax Rules; or
- 31.1.7 reduce the accrued rights of a Member.

### **32 Full or Partial Determination Occasioned by the Sponsor**

32.1 The participation of the Sponsor or a Sponsor in the Scheme shall cease upon the happening of one or more of the following events:-

- 32.1.1 If the Trustees receive from the Sponsor or a Sponsor not less than three calendar months' notice in writing of its intention to cease to contribute to the Scheme, on the expiry of such notice;
- 32.1.2 If the Sponsor or any Sponsor fails to perform and observe the covenants agreements and provisions laid down in this Deed and the Deed of Adherence executed by such Sponsor;

32.2 In the event of the Sponsor ceasing to participate in the Scheme the Trustees shall resolve to wind up the Scheme in accordance with Clause 34 hereof.

32.3 In the event of a Sponsor other than the Sponsor ceasing to participate in the Scheme the Trustees shall resolve that the Scheme shall become a closed scheme solely in so far as it relates to the Members employed by such Sponsor but shall continue to operate as a normal scheme in respect of the Members employed by the Sponsor.

32.4 In the case of a partial closure 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 Deed the Act and the Income Tax Rules including agreeing that the Members affected by such partial determination may opt to transfer their benefits to another properly registered scheme in accordance with Clause 31 hereof and subject to such consents as are required.

### **33 Voluntary Dissolution Occasioned by the Trustees**

33.1 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:-



- 33.1.1 It appearing to the Trustees that the Scheme is in such an unsound financial condition as to warrant dissolution or that its funding is below the minimum funding level and the Trustees thereupon with the agreement of the Sponsor deciding to determine the Scheme; or
  - 33.1.2 The Sponsor terminating its liability to contribute to the Scheme; or
  - 33.1.3 The expiration of the Trust Period.
- 33.2 The Trustees shall upon resolving to dissolve the Scheme appoint a - Liquidator to liquidate the Scheme in the manner provided for in the Act.
- 33.3 The appointed Liquidator shall:-
- 33.3.1 not be a person who has provided service to the scheme in the previous five years;
  - 33.3.2 not have been imprisoned;
  - 33.3.3 not have been adjudged bankrupt; or
  - 33.3.4 not have been involved in a scheme that has been deregistered.

#### **34 Consequences of Voluntary Dissolution of Scheme**

- 34.1 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.
- 34.2 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.
- 34.3 Thereafter the Liquidator shall apply the moneys held under the Scheme:-
- 34.3.1 Firstly 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;
  - 34.3.2 Secondly secure and provide return to the State Scheme all the contributions and benefits purchased or comprising the Tie II



contributions in the Scheme or transfer the same to any Contracted-out scheme as the case may be upon the Scheme being wound-up;

34.3.3 Thirdly 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:-

34.3.3.1 In the case of any such Member who upon determination as aforesaid is within ten years of Normal Retirement Date, immediately or at the Member's Normal Retirement Date, at the discretion of the Liquidator; or

34.3.3.2 In the case of any such Member who is not then within ten years of Normal Retirement Date, at Normal Retirement Date or within ten years before Normal Retirement Date.

34.3.4 In respect of the balance, if any, of moneys held in the Scheme the Liquidator shall have power to augment the benefits under this Clause in such amounts as the Liquidator shall decide;

34.3.5 In respect of any moneys held in the Scheme then remaining unexpended the Liquidator shall, subject to the agreement of the Authority and such other consents as may be required refund such balance to the Sponsor and subject to reserving such amount of any such balance as the Liquidator may require to meet any liability which he may incur by reason of such payment.

34.4 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.

34.5 On winding up of the Scheme, the protected Rights shall either be transferred to an alternative contracted-out scheme or to the National Social Security Fund as Tier II Credit.

### **35 Claims only in Accordance with this Deed**

No person whether a Member or otherwise shall have any claim right or interest upon, to 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.

### **36 Notices**

Any notice which under the provisions of this Trust Deed or the Rules is required to be given or served upon the Trustees shall be given in writing and delivered or addressed to the Trustees at the registered address of the Scheme.

### **37 Arbitration**

Save where by this Deed and the Rules the decision of the Sponsor, the Sponsor or the Trustees is made final, if at any time hereafter any dispute, difference or question shall arise among or between the Sponsor, any Sponsor, the Trustees, the Members 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 shall be referred for arbitration by a single arbitrator to be appointed by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators of the United Kingdom the result of which 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).

### **38 Continuation after Transfer of Undertaking of Sponsor**

If upon any transfer of all or part of the undertaking of the Sponsor, the Sponsor shall enter into an agreement for the purchasing or continuing employer to undertake all or part of the Sponsor's rights and obligations under this Deed and the purchasing or continuing employer shall bind itself by deed to assume those rights and obligations then, subject to all changes as may be necessary and all consents as may be required, the trusts of this Deed shall continue to have effect as though the new employer had been a party to this Deed and the Sponsor shall be released from such obligations under this Deed and the Rules.

### **39 Execution of Documents**

Documents or instruments for contracts entered into by the Scheme shall be executed by all the Trustees or a Corporate Trustee if it shall be the sole Trustee.







Witness:.....

Name: PERCIVAL A. MWENE.....

Address: P.O. Box 75-10200.....

MUDANGA RD  
P.O. BOX 2646-50200  
BUNGOMA

SIGNED AND DELIVERED

By **Mr. Anthony Milimu Lubulella**



.....  
*[Handwritten signature]*

in the presence of:

Witness:.....

Name: PERCIVAL A. MWENE.....

Address: P.O. Box 75-10200.....

MUDANGA RD  
P.O. BOX 2646-50200  
BUNGOMA

SIGNED AND DELIVERED

By **Mrs Adelaide Mbaika Mbithi**



.....  
*[Handwritten signature]*

in the presence of:

Witness:.....

Name: PERCIVAL A. MWENE.....

Address: P.O. Box 75-10200.....

MUDANGA RD  
P.O. BOX 2646-50200  
BUNGOMA

SIGNED AND DELIVERED

By **Arch. Aidah N. Munano**



.....

in the presence of:

Witness:.....

Name: PERCIVAL A. MWENE.....

Address: P.O. Box 75-10200.....

MUDANGA RD  
P.O. BOX 2646-50200  
BUNGOMA

SIGNED AND DELIVERED

By **Felister Wambugha Mvoi Makini**



.....







Name: PERDUMAH A. MWANGI  
Address: P.O. BOX 75-10200  
MURANGA DD  
P O BOX 2646 -50200  
BUNGOMA

)  
)

SIGNED AND DELIVERED

By **Wilson Mwangi Karuru**

in the presence of:

)  
) Wilson Mwangi Karuru

Witness:.....

Name: PERDUMAH A. MWANGI

Address: P.O. BOX 75-10200

MURANGA DD

P O BOX 2646 -50200

BUNGOMA

SIGNED AND DELIVERED

By **Evans Kabuga Kihara**

in the presence of:

)  
) Evans Kabuga Kihara

Witness:.....

Name: PERDUMAH A. MWANGI

Address: P.O. BOX 75-10200

MURANGA DD

P O BOX 2646 -50200

BUNGOMA

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**THE SCHEDULE**  
**TO MURANG'A UNIVERSITY COLLEGE STAFF PENSION SCHEME**

**THE RULES**

**1. Membership**

- 1.1. All persons falling within the definition of Eligible Employee as at the Commencement Date shall be deemed to have become Members of the Scheme from the Commencement Date.
- 1.2. Every other person who subsequently becomes an Eligible Employee shall become a Member on the Entry Date coincident with or immediately following the date upon which a member becomes an Eligible Employee.
- 1.3. The Trustees may in their absolute discretion and subject only to the consent of the Sponsor permit any person employed by a Sponsor who is not an Eligible Employee to become a Member.
- 1.4. A Member shall not thereafter cease to be a Member whilst he remains an Eligible Employee.
- 1.5. If a former Member, having ceased for any reason to be an Eligible Employee, again becomes an Eligible Employee, he may again become a Member on the Entry Date coincident with or immediately following the date on which he again becomes an Eligible Employee.
- 1.6. Every Member upon joining the Scheme shall be required to complete an application and particulars form in a format determined by the Trustees in which he shall acknowledge that the Rules are binding on him and on every person whose claim upon the Scheme is derived from him and to produce satisfactory evidence of age and in the absence of such evidence the respective Sponsor may determine the age of a Member for the purposes of the Scheme.

**2. Contributions**

**2.1 Member Contributions**

- 2.1.1 Subject to the rights reserved to the Sponsor by the Trust Deed from the date upon which a Member becomes an Eligible Employee of the Sponsor shall contribute to the Scheme an amount equal to **10%** of his Pensionable Salary



which shall be inclusive of Tier II Contributions;

2.1.2 Member contributions shall be deducted by the respective Employer in monthly instalments from the Member's Wages and paid to the Scheme and shall be credited to the Member's Account in the books of the Scheme.

**2.1.3 Additional Voluntary Contributions**

Subject to such terms and conditions as the Trustees may specify from time to time each Member may elect in writing addressed to the Trustees to make voluntary contributions ("Additional Voluntary Contributions") to the Scheme in addition to the compulsory contributions prescribed above. The Member shall specify in writing the amount of such Additional Voluntary Contributions, to be expressed as a percentage of his Pensionable Salary. The Members' Additional Voluntary Contributions will be invested together with all the other assets of the Scheme. The proceeds will be used to provide additional benefits for, or in respect of, the Member and these additional benefits will for all purposes including compliance with any relevant provisions of the Income Tax Act, the National Social Security Fund Act, Act No.45 of 2013 and the Act be deemed to be derived from Member contributions.

**2.2 Employer Contributions**

2.2.1 Subject to the rights reserved to the Sponsor and the Sponsors by the Trust Deed, the Sponsor shall be liable to contribute to the Scheme in respect of each Member in its employ an amount equal to **20%** of the Member's Pensionable Salary which shall be inclusive of Tier II Contributions of 6% of the Member's Pensionable Wages;

2.2.2 Sponsor contributions shall be paid to the Scheme in monthly instalments and shall thereupon be credited to the respective Member's Account in the books of the Scheme.

**2.3** Notwithstanding any other provisions of these Rules all benefits accrued from Membership of the Scheme and derived from contributions made by the Members shall vest fully in the Members immediately.

**2.4** Notwithstanding any other provisions of these Rules all benefits accrued from Membership of the Scheme and derived from contributions made by the Sponsors shall vest in the Members in accordance with these Rules.

**2.5** Notwithstanding any other provisions of these Rules the Sponsor may on giving



three months' written notice to the Trustees vary the rates of contributions to be made by or in respect of the Members provided that the variation does not contravene the provisions of the National Social Security Fund Act, Act No.45 of 2013.

- 2.6** If a Member is absent either on leave or due to incapacity with full pay, contributions payable by the Member and the Sponsor shall continue to be made at the rates specified herein based on his full Pensionable Wages immediately before such leave.
- 2.7** If a Member is absent either on leave or due to incapacity and his Pensionable Wages 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 Employer on the Member's reduced Pensionable Salary.
- 2.8** If a Member is absent either on leave or due to incapacity without pay for a period authorized by the Employer and deemed to be Pensionable Service he may with the consent of the Trustees and the Employer continue to contribute to the Scheme at the rates specified herein based on his full Pensionable Salary immediately before such absence and in such case the arrears of the Member's contributions due in respect of such leave shall be paid to the Scheme by the Member within a period determined by the Trustees following the Member's return to work and with the permission of the Trustees the Employer may also contribute on the basis of the Member's Pensionable Wages immediately before such leave and in such case the arrears of the Employer's contributions due in respect of such leave shall be paid to the Scheme by the Employer within a period determined by the Trustees.
- 2.9** The Sponsor may upon giving not less than three months written notice to the Trustees of its intention so to do discontinue its contributions to the Scheme whereupon the same will be dealt with in accordance with the terms of the Trust Deed and Rules.
- 2.10** The Sponsor and Member contributions to the Scheme shall be paid to the Scheme not later than ten days after the last day of the calendar month to which the contributions relate.
- 2.11** Any Sponsor or Member contributions not paid to the Scheme by the Sponsor within ten days after the last day of the calendar month to which the contributions relate shall attract interest during the period they remain unpaid at a rate equivalent to the average 91 days treasury bill rate last published immediately before the date



on which the contributions should have been paid. Such unpaid contributions shall constitute a civil debt of the Sponsor and shall be recoverable summarily by the Trustees as provided for by law.

**2.12** All contributions and the income derived there-from shall be subject to the Income Tax Act.

**2.13** Secondment to Another Organization

If a Member is seconded or otherwise temporarily transferred by the Sponsor to the service of another organization he may be deemed at the discretion of the Sponsor, but subject to the consent of the Trustees and such consents as may be required under the provisions of the Act, to continue to be a Member and either the Member and the Sponsor may pay contributions accordingly or the Member may elect that his temporary secondment shall be treated in the same manner as absence on leave without pay. If the Member and/or the Sponsor elect to continue such contributions during such secondment the Pensionable Salary on which such contributions are to be based shall be determined by the Sponsor with the agreement of the Sponsor taking into account the actual salary to be paid to the Member during such secondment.



### 3. Protected Rights

For the avoidance of doubt, the benefits in respect of Protected Rights are in respect of the retirement pension; invalidity pension, survivors' benefit and emigration benefit as set out hereunder and do not extend to the funeral grant or any other benefit that may subsequently be introduced under the National Social Security Fund Act.

#### 3.1 Retirement Pension

- 3.1.1 A retirement pension shall be payable to a person who:-
- 3.1.1.1 Has attained pensionable age; or
  - 3.1.1.2 Has opted for early retirement having attained the age of fifty years but not having attained pensionable age.
- 3.1.2 The pension payable to a member on his retirement under this Rule shall be of such an amount as can be purchased by his Pension Fund Credit at the date of his retirement;
- 3.1.3 A Pension which becomes payable under this Rule may be purchased in the member's name from a Registered Insurer of the Member's choice;
- 3.1.4 Where the Pension is purchased from a Registered Insurer, 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.
- 3.1.5 The Pension purchased pursuant to Sub Rule (3.1.4):-
- 3.1.5.1 Shall be compulsory, non-commutable, on assignable and payable for life;
  - 3.1.5.2 Shall be subject to a minimum of ten year guarantee period;
  - 3.1.5.3 Upon purchase, the Scheme shall have no further liability in respect of the Member, such liability having moved, from the date of the purchase, to the Registered Insurer from whom the pension is purchased.
- 3.1.6 A Member who is entitled to receive a pension may:-
- 3.1.6.1 Elect to receive part of his or her Pension Fund Credit as a lump sum but the option under this Rule shall not extend to more than one third of Tier II Pension Fund Credit;



- 3.1.6.2 If entitled to receive benefits in respect of Protected Rights from a Contracted-Out Scheme, combine benefits from the Pension Fund Credit with the Protected Rights in a Contracted-Out Scheme for the purposes of securing a pension from the Fund or Registered Insurer of the Member's choice;
- 3.1.6.3 If entitled to a pension which is of Trivial Amount after electing to take any part of the pension as a lump sum under Sub Rule 3.6.1 and after allowing for benefits in respect of Protected Rights from a Contracted-Out Scheme, the Member may elect to commute for a lump sum the total Pension Fund Credit due to him and that in determining the pension, the annuity rate applicable shall be for a non-increasing pension with a provision for a ten year guarantee;
- 3.1.6.4 Elect to take his Tier II Pension Fund Credit in form of an income drawdown as provided for under Rule 27 herein;
- 3.1.6.5 Elect to delay receiving benefits which will harmonise with a higher retirement age in the Contracted-Out Scheme in which case the Member's Pension Fund Credit shall continue to accrue interest in the Fund until payment.

### **3.2 Emigration Benefit**

A Member shall be entitled to an emigration benefit which shall be equal to the Member's Pension Fund Credit, if the Member migrates from Kenya to a country, other than a country with which a reciprocal agreement is made pursuant to section 64 of the National Social Security Fund Act, 2013, without any present intention of returning to reside in Kenya

## **4. Retirement**

- 4.1** For the purposes of these Rules and in determining a Member's entitlement to benefits and the manner and timing of payment of such benefits the term Retirement shall mean the occasion of a Member leaving the Pensionable Service of the Sponsor or a Sponsor at Normal Retirement Date or upon Ill Health Retirement or upon Early Retirement as provided for herein or upon Late Retirement as provided for herein and upon such



Retirement payment of his Retirement Benefits as provided for in these Rules shall commence immediately and the word Retire shall be interpreted accordingly.

- 4.2 Every Member shall, unless otherwise provided for herein, retire upon attaining his Normal Retirement Age.
- 4.3 A Member may request Early Retirement at any time ten years within the Normal Retirement Age and the Trustees shall approve such Early Retirement provided that the Sponsor or the Sponsor by whom the Member is employed consents to such Early Retirement and such consent may be given with immediate or future effect.
- 4.4 A Member may with the agreement of the Employer remain in Pensionable Service beyond Normal Retirement Age for a period agreed with the Employer and in such case the Member shall remain a Member of the Scheme and liable to contribute in accordance with the Rules as the Trustees shall agree to such Late Retirement.
- 4.5 If a Member who is ten years within Normal Retirement Age requests Early Retirement the Trustees shall approve such request subject to the consent of the Sponsor or the Sponsor by whom the Member is employed.

#### **5. 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 lump sum benefits payable in the event of his death to be paid. 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 Retirement Benefits Act and the Regulations.

#### **6. Members' Register and Accounts.**

- 6.1. The Trustees shall cause to be maintained a register of all Members 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 and the Sponsor's contributions in respect of the Member.
- 6.2. Balances from time to time in the Member's Account deriving from contributions made by the Member together with any amounts transferred into the Scheme in respect of the Member deemed to be Member contributions and accumulated investment income attributed thereto shall be known as the Member Portion of the Member's Account.



- 6.3. Balances from time to time in the Member's Account deriving from contributions made by a Sponsor together with any amounts transferred into the Scheme in respect of the Member deemed to be Sponsor contributions and accumulated investment income attributed thereto shall be known as the Sponsor Portion of the Member's Account.
- 6.4. Balances from time to time in the Member's Account deriving from Tier II contributions
- 6.5. Each Member's Account shall be credited or charged with the positive or negative net investment income arising from the Scheme's investments as described in these Rules.
- 6.6. 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.
- 6.7. The Trustees shall within six months from the end of each financial year issue to each Member a summary of the audited Financial Statements of the Fund.
- 6.8. 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 reasonable notice.

**7. Manner of Determining Gross Investment Yield Arising from the Scheme's Investments.**

The gross investment yield from the Scheme's investments shall comprise all income received and/or accrued by way of interest, discount and dividends and all realised and unrealised gains or losses on the capital or book values of investments provided that the Trustees shall have discretion in determining the timing of recognition of unrealised capital gains or losses.

**8. Determination of Net Investment Income and Crediting and Charging to Members' Accounts**

The net investment income available for distribution or apportionment to Members shall be the gross investment yield reduced by all investment related, administration, and other expenses payable out of the Scheme including the Retirement Benefits Authority levy. The net investment income shall, if it is positive, be credited pro-rata to the Members' Accounts and, if it is negative, be apportioned among the Members and charged pro-rata to the Members' Accounts. The manner and timing of distribution or apportionment of positive or negative net investment income shall be in accordance with the investment income



distribution policy adopted by the Trustees provided that such distributions or apportionments shall be at intervals of not more than twelve months.

For the purposes of this Rule the Members' Accounts of Deferred Members shall be treated in the same manner as Members' Accounts of other Members.

## **9. Assignment of Benefits**

No Scheme funds shall be used to make direct or indirect loan to any Person or investment contrary to any guidelines prescribed for that purpose; or invested with a bank, non-banking financial institutions, insurance company, building society or other similar institution with a view to securing loans at a preferential rate of interest or for any other consideration to the Sponsor, Trustee, Member or the Investment Manager of the Scheme, PROVIDED THAT:

### **9.1 Proportion and Purpose of Assignable Benefits**

A Member may, subject to the Act, assign up to sixty percent (60%) of his accrued benefits to a Scheme for consideration for the purposes of furnishing a guarantee, by the scheme, in favour of an institution, in respect of a loan granted or to be granted by the institution to a member to enable the Member to:-

- 9.1.1 Acquire immovable property on which a house has been erected;
- 9.1.2 Erect a house on immovable property in respect of which, the member has, or the member and his spouse have obtained ownership or have the right to ownership through a right of occupation;
- 9.1.3 Add, alter or carry out repairs to a house of which ownership or the right to ownership was obtained through acquisition or a right of occupation by either the member or the member and his Spouse;
- 9.1.4 Secure financing or waiver, as the case may be, for deposits, stamp duty, valuation fees and legal fees, (but excluding arrangement and commitment fees), and any other transaction costs required in the course of acquisition of the immoveable property on which a house has been erected.

9.2 A member shall make a formal application to the Trustees' consideration before assigning any such Benefits

9.3 A member who has a mortgage in existence may upon formal application in the manner



prescribed in the Trust Deed and Rules transfer the mortgage by way of assignment of benefits to an institution.

9.4 The Scheme shall not issue more than one guarantee at a time in respect of an eligible member.

**9.5 Security for a Facility:**

The Scheme shall not furnish a guarantee under these Rules unless the loan granted pursuant to the facility is secured by:-

9.5.1 First mortgage on a house in respect of which the loan is granted, or in the case of a rural house, where a first mortgage may not be secured, the guarantee shall be considered as the primary security acceptable to the institution; and

9.5.2 An assignment to the Scheme, by the member concerned, or a proportion of benefits to which the member is entitled to under the Rules of the Scheme.

**9.6 A guarantee under this Rule shall not exceed, at the time it is furnished:-**

9.6.1 Sixty percent (60%) of the accrued benefit which the member would be entitled to under the scheme rules at the time of the application for the facility; or

9.6.2 The 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.

**9.7 Transfers to another Scheme or Institution**

9.7.1 A transfer by a Member from one registered scheme to another shall not violate the assignment under this Rule and the Member may apply for the issuance of a new guarantee from the scheme which he has transferred to and a surrender of the guarantee issued by the scheme from which he transferred; PROVIDED THAT the Trustees of the Scheme to which the Transfer has been made may, with the approval of all the parties, indemnify the Trustees of the Scheme from which the transfer is being made to the extent of the guarantee.

9.7.2 A transfer by a Member of a facility granted under guarantee from one



institution to another shall not vitiate the assignment and the Trustee of the Scheme shall upon the authorization of the Member, establish mechanisms of the issuance of a new guarantee to the institution that the Member has transferred to and a surrender of the guarantee issued to the institution that the Member transferred from.

9.7.3 Where the Scheme to which a member has transferred to does not provide in its Scheme Rules for the issuance of guarantees under the Retirement Benefits Act and Regulations, the member shall make appropriate arrangements for the redemption of the guarantee, and shall inform the Scheme he has transferred from of these arrangements within a period not exceeding sixty (60) days from the date of retirement or of giving notice of withdrawal from the Scheme.

9.7.4 In the event of winding up of a Scheme which has issued a guarantee under this Rule on behalf of a Member, the Member may apply for the issuance of a new guarantee from a Scheme that he has transferred to and surrender the guarantee issued by the Scheme which is being wound up.

9.8 The furnishing of the guarantee shall be considered by the Trustees of the Scheme upon formal application by the Member, in the manner prescribed in the Rules of the Scheme;

#### **9.9 Duties of Trustees;**

The Trustees shall;

9.9.1 Prior to considering the assign ability of the members benefit, ensure that the agreements made between its members and institutions, in respect of any facility contemplated under this Rule, comply with the Act and the Scheme Rules;

9.9.2 Consider applications for approval for assignment from the Members;

9.9.3 Verify that the institutions to which the assignments are to be made have complied with the Act and are registered with Banking Act Cap 488;

9.9.4 After approval and prior to furnishing the guarantee to an institution, ensure the proper execution of the agreements and any other assignment of documents;

9.9.5 Monitor the repayment by each member to whom a facility has been issued and ensure that the assignment is discharged once the facility has been paid in full;

9.9.6 Keep a record of the assignments and indemnities granted;



- 9.9.7 Ensure the disclosure ,in the amounts assigned and the institutions to which guarantees have been furnished
- 9.9.8 Where a dispute relating to a default arises, the Trustees of a guaranteeing Scheme shall give the concerned Member an opportunity to prove that a default has not arisen
- 9.9.9 Upon the receipt of a notification from a Member authorizing the redemption of a guarantee, ensure that the proportion of funds assigned to guarantee the facility is sufficient to clear the outstanding balance of the guaranteed loan; PROVIDED THAT there shall be no consolidation of debts owed by the Member to the institution for the purpose of redemption.
- 9.9.10 By resolution, agree on the release of any payment in redemption of a guarantee;
- 9.9.11 Submit to the Authority, on a quarterly basis, a return indicating the number and amount of guarantees issued, as well as details of loans repaid and guarantees redeemed.

#### **9.10 Redemption of a Guarantee.**

- 9.10.1 Upon presentation of evidence of default and liability arising to Trustees by an institution, the guarantee shall be redeemable on demand in accordance with its terms; and
- 9.10.2 In the event of default by a member arising on account of loss of employment, the Trustees shall settle the outstanding mortgage with the institution if the outstanding loan is less or equal to the permitted guarantee under Clause 9.5.1.

#### **9.11 Invalid Agreements.**

Notwithstanding the provisions of these Rules, an Agreement entered into between parties in respect of a facility and any assignment documents that may be signed or issued shall be valid where;

- 9.11.1 The agreement or assignment document does not comply with the Act or
- 9.11.2 The facility is granted for any other purpose other than was intended in these Rules.

#### **9.12 Suits against Trustees**



In the event of a dispute regarding a facility, the cost of any suit against Trustees by an institution or any other party shall not be paid from the assets of the Scheme, save for the portion assigned by a Member, under this Rule, that is the subject of the dispute.

#### **10. Incapacity**

If a Member's Nominated Beneficiary (ies) 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 payment of benefits.

#### **11. Income and Other Taxes**

11.1. If on the payment of any benefit from the Scheme any income or other tax or estate or other duty is payable by the Trustees they 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 Scheme;

11.2. In the event of the Sponsor or the Trustees becoming accountable for any tax or duty in respect of any payment under the Scheme the Sponsor or the Trustees as the case may be shall have the right to deduct such tax or duty from the amount payable.

#### **12. Payment of Benefits**

12.1. All benefits payable under these Rules shall be payable within thirty days of the date on which they fall due for payment and shall be paid in Kenya.

12.2. Immediately following the payment by the Trustees to the Member of the amount of the Member's Accumulated Credit as a lump sum the Member shall forthwith cease to be a Member of the Scheme and shall have no further rights therein or claims against the Scheme and the Trustees.

#### **13. Treatment of Death Benefits**

Upon the death of a member of a scheme, the benefit payable from the scheme shall not form part of the Estate of a member for the purpose of administration and shall be paid out by the Trustees in accordance with the Scheme rules.



#### **14. Reinsurance**

The Trustees may at the expense of the Scheme and in the name of the Scheme reinsure wholly or in part any benefit under the Rules in such manner as they may think fit.

#### **15. Employer's Rights Relating to Determination of Employment**

Nothing herein contained shall in any way fetter or restrict the right of an Employer to determine the employment of a Member who thereafter shall only be entitled to such benefits as shall have accrued to him in terms of these Rules nor shall any benefit which might otherwise have arisen under the Rules if the Member's employment had not been determined be used as grounds for any damages or any increase of damages in any action which may be brought by or in respect of a Member against the Employer.

#### **16. Restrictions upon Payments from the Scheme**

Notwithstanding anything contained herein to the contrary, the following shall apply to payments from the Scheme: -

- 16.1. No loan or other benefit shall be provided out of the Scheme to any Member or to any other persons except as specifically provided for in these Rules and in the Retirement Benefits Act and Regulations.
- 16.2. No warranty shall be provided by the Scheme to a third party by way of guarantee of repayment of a loan to a Member.
- 16.3. No payment under the Scheme shall be made to the Sponsor or any Sponsor without the written consent of the Authority and Commissioner of Income Tax.
- 16.4. No payment shall be made to or in respect of a Member whilst he is in the Pensionable Service of the Sponsor or a Sponsor.

#### **17. Evidence of Existence**

Before paying or otherwise making provision for any payment of benefit from the Scheme 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.

#### **18. Benefit on Normal Retirement or Late Retirement**

Each Member who Retires from the Pensionable Service of the Sponsor or a Sponsor or 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 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.

The Member may alternatively opt for an Income Drawdown Plan.

#### **19. 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 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. The Member may alternatively opt for an Income Drawdown Plan.

#### **20. Benefit on Ill Health Retirement**

Each Member who Retires from the Pensionable Service of the Sponsor or a Sponsor before Normal Retirement Date due to Ill health as provided for in these Rules shall on such Ill health 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 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. The Member may alternatively opt for an Income Drawdown Plan.

#### **21. Benefit on Ill Health Retirement for a Deferred Member**

- 21.1. Each Deferred Member who wishes to be paid his benefits due to Ill health as provided for in these Rules shall on such Ill health 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 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.

21.2. Every such member must advise the Trustees to obtain their consent.

21.3. The Member may alternatively opt for an income Drawdown Plan.

## **22. Benefit on Early Retirement for a Deferred Member**

22.1. Each Deferred Member who attains the 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 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.

22.2. Every such member must advise the Trustees of the Scheme to obtain their Consent before accessing his Early Retirement Benefit.

22.3. The Member may alternatively opt for an Income Drawdown Plan.

## **23. Benefit on Early Leaving**

23.1. Every Member who has been in membership of the scheme and who leaves the service of the Sponsor or a Sponsor before Normal Retirement Age shall be entitled to a benefit representing his total Accumulated Credit standing to the credit of his Member's Account at that date.

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

### **Option 1**

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 furnishes 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 paid the balance of his Accumulated Credit in the form of a cash lump sum; or

**Option 3**

To withdraw from the Scheme in cash the value of his Member Portion of his Member's Account representing the aggregate of all his Member contributions to the Scheme plus fifty percent of Sponsor contributions plus interest credited thereon and request the Trustees to apply the residual balance representing the remaining fifty percent Sponsor Portion of his Member's Account in the manner described in either Option 1 or Option 2.

23.3. A Deferred Member may at any time prior to attaining Normal Retirement Age request the Trustees to apply the provisions of Option 1 to his Deferred Member's Account.

23.4. When a Member who has been in Membership of the scheme for less than one year resigns from the Pensionable Service of the Sponsor or a Sponsor or if a Member's service with the Sponsor or a Sponsor is terminated for any reason during his Pensionable Service he shall be entitled to receive a lump sum benefit of an amount equal to:-

23.4.1. The value of all his Member contributions to the Scheme including Additional Voluntary Contributions plus interest, if any thereon at such rates as the Trustees shall determine from time to time; plus

23.4.2. The value of deemed Sponsor contributions plus interest thereon at such rates as the Trustees shall from time to time determine.

23.5. Where a member leaves employment after one year of membership but before attaining the Early Retirement Age, the Member may opt for payment of:

23.5.1. His own contributions and fifty percent of the Employer's contributions and the investment income that has accrued in respect of those contributions;

**23.6 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 Retirement Age where a member emigrates from Kenya to another country without the intention of returning to reside in Kenya. Trustees shall, fourteen days prior to effecting such a payment to a member submit their approval to do so to the Retirement Benefits Authority.

#### **24. Benefits on Death in Pensionable Service of a Member**

Upon the death of a Member while in the Pensionable Service of the Sponsor or a Sponsor the Trustees shall pay his Accumulated Credit at the date of the Member's death to his Nominated Beneficiary or in the absence of such at the Trustees' discretion to the benefit of such Dependant or otherwise in accordance with these Rules as the Trustees may determine.

#### **25. Benefit on Death of a Deferred Member**

- 25.1. 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 at the Trustees' discretion to the benefit of such Dependant or other Beneficiary as the Trustees may determine.
- 25.2. 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 Retirement Benefits Act and Regulations
- 25.3. All benefits payable hereunder shall be paid within thirty days of the date on which they are due.

#### **26. Commutation of Pension.**

- 26.1 **A member who is due to receive pension from the Scheme may commute a** portion (not exceeding one third) of his pension for a lump sum.
- 26.2 The Trustees may exercise their discretion to allow a Member commute the whole of his pension if it is trivial. The minimum basis for determination by the Authority of the threshold for a pension to be declared trivial and thus commutable into a lump sum shall be fifty per cent (50%) of the average minimum wage.



## **27 Income Drawdown Plan Rules**

Where a Member opts for the Income Drawdown Plan as an option for receiving retirement benefits, at Retirement the following Rules shall apply:

27.1 The Income Drawdown shall be paid out of a special fund of the scheme or from another scheme registered by the Authority for purposes of receiving accrued benefits and paying Income Drawdown to Members who upon attaining Retirement Age have transferred their accrued benefits to such a Scheme.

27.2 The minimum Drawdown period shall be ten years

### **27.3 Structure of the Income Drawdown Plan**

27.3.1 Each Individual Income Drawdown shall entail setting out the frequency of disinvestment and payment of income which will be payable either monthly, quarterly or bi-annually in a financial year;

27.3.2 The Individual Member shall select a specific regular amount or percentage of the Investment fund value as the selection shall be within the rates prescribed by the Scheme from time to time to afford the selected regular payments for the minimum period prescribed by the law;

27.3.3 The Member may draw an Income from his/her drawdown fund subject to a maximum of 120% of the life annuity that can be purchased based on the table that will have been produced by the Retirement Benefits Authority in consultation with The Actuarial Society of Kenya and which shall be linked to the prevailing interest rates;

27.3.4 At least once in every three years, the maximum income that may be taken shall be recalculated to reflect the amount remaining in the fund and the latest tables produced by the Retirement Benefits Authority

27.3.5 The Administrator of the Drawdown Plan shall reduce the maximum drawdown rate whenever the underlying capital becomes insufficient to guarantee a life Annuity;

27.3.6 Not later than on attainment of Age Seventy Five (75 years), the remaining fund shall be used to purchase an Annuity from an Approved Issuer unless the Drawdown Plan is adjusted such that the maximum income that may be taken shall not be higher than seventy five per cent (75%) of the Income payable by a standard level annuity for a seventy five year old. These limits shall be recalculated every year and shall continue to be based by reference to an annuity at age seventy five (75).



#### 27.3.7 Death of a Member

On death of a Member, the fund shall be used to provide an income to the nominated spouse(s) and/or dependent children either by purchase of an annuity or a continuation of an Income drawdown plan to the dependant(s). Where income shall not be applied in the foregoing manner, it shall be paid to the nominated beneficiaries or the Member's dependant(s).

#### 27.4 Duties of the Trustees

- 27.4.1 The Trustees shall ensure that the Scheme has the technical and systems capacity to segregate individual drawdown funds and the administrative capacity of handling the drawdown and advisory functions to Members.
- 27.4.2 Trustees shall act in a responsible manner by putting in place standards that will help to mitigate the risk of Drawdown funds from being exhausted during the lifetime of an individual Member.

#### 26.7 Advise structuring the Drawdown Plan

Advice to Members opting for income drawdown in terms of structuring and tailoring their drawdown plan within the constraints of these Rules shall only be provided by an Actuary, A Chartered Financial Analyst, a Fund Manager or an investment advisor approved by the Capital Markets Authority. The advice shall be consistent with the relevant statutory provisions and any Practice Note issued by the Retirement Benefits Authority.

#### 28 Trustees' Discretion in Payment of Death Benefits

- 27.1 The Trustees shall have power to pay or apply any benefit due from 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.
- 27.2 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.



### **29 Trustees' Decision Final**

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.

### **30 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 Scheme shall be held in trust by the Trustees for such of the Member or his Nominated Beneficiary (ies) or Dependants as the Trustees shall think fit according to the circumstances then applicable or may at the discretion of the Trustees and with the consent of the Authority where required be transferred to any other scheme or similar arrangement or paid to the Sponsor.

### **31 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.

### **32 Annual General Meetings**

31.1 The Trustees shall each year convene an annual general meeting of the Members of the Scheme. The timing of such annual general meetings and the numbers of Members' representatives to attend shall be determined by agreement between the Sponsor and the Trustees taking into account the requirements of the business operations of the Sponsor and the Sponsors.

31.2 As a minimum, the agenda for the annual general meeting shall include:

31.2.1 a report on any changes to the benefits and contribution structure;

31.2.2 a report on audited accounts;

31.2.3 a report on investments;

31.2.4 a report on remuneration of trustees; and

31.2.5 Questions from members.



### **33 Alterations to State 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 State Scheme.

### **33 Limitation of 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 Sponsors or by the Member or beneficiary concerned of all events giving rise to or affecting the incidence of such liability or obligations.

### **34 Headings**

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

#### **Drawn By**

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