

**KENYA EDUCATION NETWORK
SECOND SUPPLEMENTAL TRUST DEED**

Trust Deed Drawn By:

MOHAMMED MUIGAI MBOYA ADVOCATES
P. O. BOX 61323
NAIROBI

First Supplemental Trust Deed Drawn By:

WANJIRA AND COMPANY ADVOCATES
NO. B5, AMBASSADOR COURT
MILIMANI ROAD
P. O. BOX 53911-00200
NAIROBI

Second Supplemental Trust Deed Drawn By:

JACQUELINE OYUYO
PRACTICE NO. LSK/2020/00544
UMSIZI LLP
1ST FLOOR, DAYKIO PLAZA
NGONG LANE, OFF NGONG ROAD
P. O. BOX 993-00100
NAIROBI



THIS SECOND SUPPLEMENTAL TRUST DEED is made on the 30TH day of **MARCH 2020** BETWEEN

UNIVERSITY OF NAIROBI a university duly established and operating as such in the Republic of Kenya under The University of Nairobi Act Chapter 210 Laws of Kenya and Post Office Box 30197 Nairobi; and

UNITED STATES INTERNATIONAL UNIVERSITY AFRICA in Nairobi a university duly established and operating as such in the Republic of Kenya under The Universities Act Chapter 210B Laws of Kenya and Post Office Box 14634 Nairobi; and

JOMO KENYATTA UNIVERSITY OF AGRICULTURE AND TECHNOLOGY a university duly established and operating as such in the Republic of Kenya under The Universities Act Chapter 210B Laws of Kenya and of Post Office Box 62000 Nairobi; and

MOI UNIVERSITY a university duly established and operating as such in the Republic of Kenya under Moi University Act Chapter 210A Laws of Kenya and of Post Office Box 3900 Eldoret; and

DAYSTAR UNIVERSITY a university duly established and operating as such in the Republic of Kenya under The Universities Act Chapter 210B Laws of Kenya and of Post Office Box 44400 Nairobi; and (hereinafter together called "the Founders") and

- 1) PROF. PAUL TIYAMBE ZELEZA OF POST OFFICE BOX NUMBER 14634 - 00800 NAIROBI; and
- 2) PROF. ISAAC SANGA KOSGEY OF POST OFFICE BOX NUMBER 3900-30100 ELDORET; and
- 3) PROF. VICTORIA WAMBUI NGUMI OF POST OFFICE BOX NUMBER 62000 - 00200 NAIROBI; and
- 4) PROF. AYIRO PETER LABAN OF POST OFFICE BOX NUMBER 44400 - 00100 NAIROBI; and
- 5) PROF. STEPHEN KIAMA GITAHU OF POST OFFICE BOX NUMBER 30197 - 00100 NAIROBI
- 6) PROF. JOSEPH GALGALO OF POST OFFICE BOX NUMBER POST OFFICE PRIVATE BAG LIMURU- 00217; and
- 7) PROF. JAMES MURITHI JAPHET NJIRU OF POST OFFICE BOX NUMBER 81651-80100 MOMBASA; and
- 8) MS. SHEILA GATAKA MWIHIA OF POST OFFICE BOX NUMBER 44471-00100 NAIROBI

All in the Republic of Kenya and collectively hereinafter referred to as "**the Trustees**" which expression shall where the context so admits include the survivor or survivors of them and the Trustee or Trustees for the time being hereof whether original or substituted).

(hereinafter together called "**the Trustees**").

WHEREAS:

- A. This Second Supplemental Trust Deed is supplemental to the Trust Deed dated 9th November 2000 (hereinafter referred to as the "**Trust Deed**") made between the Founders and the original Trustees, and to the first Supplemental Trust Deed dated 9th September 2013 (hereinafter the "**First Supplemental Trust Deed**") which constituted the Kenya Education Network whose



Trustees were incorporated as the Kenya Education Network Registered Trustees on the 18th day of July 2012;

- B. **The Founders**, by the Trust Deed hereinabove referred to, resolved to establish the Kenya Education Network Trust ("**the Trust**") which Trust is duly recognised as the National Research and Education Network of the Republic of Kenya, and that shall be the operator of the National Research and Education Network of Kenya;
- C. The Trustees at a meeting held on **30th March 2020** duly convened with the requisite quorum present passed, by way of ordinary resolution, certain amendments (hereinafter referred to as "**the Amendments**") to the Trust Deed and to the First Supplemental Trust Deed and have obtained the consent of the Founders who have authorised the Trustees to execute this Second Supplemental Trust Deed;
- D. By this Second Supplemental Trust Deed, the Founders and the Trustees wish to amend those provisions of the Trust Deed and the first Supplemental Trust Deed as stipulated herein.

NOW THIS SECOND SUPPLEMENTAL TRUST DEED WITNESSES AND DECLARES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

In this Deed and in its Schedules the following words and expressions shall have the meanings hereinafter respectively ascribed to them unless the context otherwise requires:

- (1) "**Auditors**" shall mean such firm of Certified Public Accountants who shall be appointed as auditors of the Trust Fund pursuant to Clause 13 of this Deed;
- (2) "**Beneficiary**" shall mean and include in relation to a particular Member (as defined in the Schedule hereto) any student for the time being registered at the Member whether on a part time or full time basis and any teacher lecturer professor for the time being employed by the Member whether on apart time or full time basis and any Research Institutions;
- (3) "**Educational Institutions**" means public universities private universities polytechnics and all other institutions of tertiary education in the Republic of Kenya;
- (4) "**the Founders**" shall mean the **UNIVERSITY OF NAIROBI, UNITED STATES INTERNATIONAL UNIVERSITY AFRICA, JOMO KENYATTA UNIVERSITY OF AGRICULTURE AND TECHNOLOGY, MOI UNIVERSITY and DAYSTAR UNIVERSITY.**
- (5) "**Independent Trustee**" shall have the meaning ascribed in the KENET governance charter stipulated by the Trustees from time to time;
- (6) "**Investments**" means any immoveable property in the Republic of Kenya or elsewhere which shall include land whether covered by water or not and any estate right interest or easement over land

and things attached to land or permanently fastened to anything attached to land and cash or monies on current or deposit account and includes any meaning ascribed by clause 10 herein;

- (7) "**Management Board**" means such Management Board as defined in the Rules hereto;
- (8) "**National Research and Education Network (NREN)**" shall mean the private national broadband network that interconnects educational and research institutions and connects them to national community cloud infrastructures and a gateway to global research and education networks and Internet to support research and educational technology services;
- (9) "**the Original Sum**" means the sum of Kshs. 750,000.00 raised by the Founders;
- (10) "**Research Institutions**" means such public and private institutions carrying out research activities in and outside the Republic of Kenya;
- (11) "**Rules**" means the rules enacted by the Trustees pursuant to Clause 7 of the Trust Deed;
- (12) "**the Trust**" means the trust constituted by this Deed and to be known as the Kenya Education Network or by such other name as the Trustees may from time to time determine;
- (13) "**the Trust Fund**" means the Original Sum and all other money and property which may be paid or transferred to the Trustees for the said objects and the investments and property from time to time representing the same;
- (14) "**the Trustee Act**" means the Trustee Act Chapter 167 Laws of Kenya;
- (15) "**the Trustees (Perpetual Succession) Act**" means the Trustees (Perpetual Succession) Act Chapter 164 Laws of Kenya.
- (16) "**the Trustees**" means any such person or persons who shall from time to time be the trustee or trustees of the trusts of the Trust Deed.

In this Deed and in its Schedules unless the context otherwise requires:

- (1) Words importing the singular number include the plural and vice versa;
- (2) Words importing any gender include every gender;
- (3) Where a word or phrase is given a particular meaning other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

(4) Words importing persons include natural persons partnerships trusts associations and bodies corporate;

(5) The clause sub-clause paragraph or Schedule headings and bold print are included for ease of reference only and shall not affect the interpretation of this Deed;

A reference to any statute includes a reference to that statute as amended modified or replaced from time to time and includes orders ordinances regulations rules and by-laws made under or pursuant to that statute.

2. NAME

The trust hereby constituted shall be known as the Kenya Education Network.

3. COMMENCEMENT

The Trust shall be deemed to have been established in Kenya under irrevocable trusts declared hereby with effect from the November 9, 2000 ("the Commencement Date") and with effect from such date the Founders appoint the Trustees to be the first trustees hereof and the Founders and the Members shall participate in the trusts hereof from such date.

4. OBJECTS

(1) The objects of the Trust are:

- (a) To provide a sustainable and high-speed Internet connectivity to Educational Institutions and Research Institutions;
- (b) To facilitate electronic communication among Beneficiaries in Educational Institutions and Research Institutions
- (c) To support the sharing of teaching and learning resources among Educational Institutions and Research Institutions ;
- (d) To support teaching and learning over the Internet for Beneficiaries in Educational Institutions and Research Institutions both in and outside Kenya;
- (e) To collaborate in the development of relevant content of syllabi in Educational Institutions;
- (f) To collaborate in research in Educational Institutions and Research Institutions.

In furtherance of the above objects but not otherwise the Trustees shall have the following powers:

- (1) To employ and pay any person or persons (not being a trustee hereof) to supervise organise and carry on the work authorised by the Trustees;

- (2) To raise funds and invite and receive contributions from any person or persons whatsoever by way of loan, subscription, donation and otherwise **provided that** the Trustees shall not undertake any permanent trading activities in raising funds for the said objects;
- (3) To co-operate and collaborate with voluntary bodies and statutory authorities operating in similar charitable fields and to exchange information and advice;
- (4) To establish and operate both current accounts and deposit accounts with bankers in the name of the Trust. Any bank account in which any part of the Trust Fund is deposited shall be operated by the Trustees and shall be held in the name of the Trust. All cheques, orders and instructions for the payment of money from such accounts shall be issued by at least two persons authorised for that purpose by the Trustees;
- (5) To purchase take on lease or in exchange hire or otherwise acquire any property (moveable and immoveable) and any rights and privileges necessary for the attainment of the said objects and to construct maintain and alter any buildings or erections so necessary as aforesaid;
- (6) To make regulations for the management of any property which may be acquired;
- (7) To sell let mortgage dispose of or turn to account all or any of the property or assets of the Trust;
- (8) To invest Trust moneys not immediately required for the said objects in or upon such investments or securities or property as are authorised by the terms of this Deed and the Trustee Act;
- (9) To do all such other or lawful things as are necessary for the attainment of the said objects.

5. FOUNDERS' COVENANTS

The Founders hereby covenant with the Trustees as follows:

- (1) To observe the provisions of and perform their obligations under this Deed and the Rules
- (2) To pay all contributions (under the Rules hereto) incurred and required in connection with the formation, management and administration of the Trust and the execution of the trusts hereof.

6. TRUSTEES' COVENANTS

The Trustees hereby covenant with the Founders as follows:

- (1) To manage and administer the Trust on behalf of the Founders and for the sole benefit of the Beneficiaries in accordance with this Deed and the Rules;

- (2) To collect all sums contributed by the Members in accordance with the Rules together with its own funds raised and other such payments as are to be made hereunder or under the Rules;
- (3) To apply for incorporation under the Trustees (Perpetual Succession) Act immediately upon execution of this Deed;
- (4) To ensure the proper custody of the Common Seal, deeds, all documents, monies, securities and other property belonging to the Trust;
- (5) To comply with the provisions of this Deed.

7. POWER TO MAKE RULES AND REGULATIONS

Within the limits imposed by this Deed the Trustees shall have power to make, vary and revoke Rules and Regulations for the administration and management of the Trust and for the attainment of the objects of the Trust.

8. AMENDMENT

The Trustees may at any time and from time to time with the consent of the Founders amend by deed or deeds stated to be supplemental hereto vary any of the provisions of this Deed other than those in clause 4 and this clause **provided that** no amendments be made which:

- (1) Would cause the Trust to cease to be a trust at law; or
- (2) Would vary the objects of the Trust; or
- (3) Would authorise the payment of any part of the Trust Fund to any other person subject always to clause 18(2).

9. POWER CONFERRED BY LAW

- (1) In addition to other powers conferred by law, the Trustees may engage any duly qualified persons to manage, administer and transact any or all business within the scope of their expertise required to be done in furthering the objects of the Trust and on such terms and remuneration as may be determined by the Trustees or anybody duly authorized by the Trustees, **provided that** all acts and proceedings of such persons to whom powers are so delegated shall be reported back to the Trustees in the manner and period specified by the Trustees from time to time and **provided further that** the Trustees shall exercise reasonable supervision over such persons.
- (2) The Trustees may undertake the following in furtherance of the Objects of the Trust:

(a) Invite Subscriptions

At any time to raise funds and invite and with or without such invitations receive contributions from any person or persons whomsoever either by way of donation or annual or other subscription or legacy or otherwise for the support or otherwise for the benefit or purposes of the charitable trusts declared or constituted hereunder;

(b) National Agenda

At any time to undertake such services as shall be requested by the Government of the Republic of Kenya in furtherance of the national agenda relating to the information and communications sector and in support or otherwise for the benefit or purposes of the charitable trusts declared or constituted hereunder;

(c) Carry on Businesses

Carry on or manage such business or commercial enterprise whether for profit or otherwise as the Trustees determine should be carried on or managed in connection with the trusts hereinbefore declared;

(d) Incorporation

Promote and procure the incorporation or registration of any company or companies with or without limitation of the liability of the members thereof to facilitate the carrying out of the charitable trust purposes declared hereunder;

(e) Purchase or otherwise acquire Chattels

Purchase hire or otherwise acquire any chattels required or likely to be required for the purposes of or in connection with any charitable works for the time being carried on by the Trustees and authorised hereby and to sell or otherwise deal with any such chattels;

(f) Make By-laws or Rules

At any time and from time to time to make such arrangements draw up such schemes and make and frame such by-laws and rules as they shall in their uncontrolled discretion think fit for the administration of the charitable trusts declared herein and for the management of the Trust Fund or any part thereof and at any time or times to amend alter or repeal any of the said arrangements schemes bye-laws or rules as they shall think fit

10. AUTHORISED INVESTMENT

- (1) Trust monies requiring investment under the Trusts hereof may be invested in the purchase of or at interest upon the security of such stocks funds shares securities or other investments of whatsoever nature as the Trustees shall in their absolute discretion think fit to the intent that the Trustees shall have the same full and unrestricted powers of investing and transposing investments in all respects as if they were absolutely entitled to the Trust Fund beneficially.

- (2) Money may be left uninvited on deposit at a bank on such terms in such amount and for such period as shall for the time being be permitted in law.
- (3) The Trustees may permit any investments to be held by any trust corporation as Custodian Trustee hereof and may also permit any securities transferable by delivery to be held on the account of the Trustees by any bank and the Trustees may make such arrangements as they think fit for the collection of the income of such investments or securities.

11. SECRETARY AND TREASURER

- (1) The Trustees may from time to time appoint one of the Trustees to be treasurer of the Trust which persons shall act in such position for a period not exceeding two years but shall be eligible for re-appointment **provided that** such persons shall be from among the Trustees appointed by the Founders.
- (2) The Executive Director of the Trust shall serve as Secretary to the Trustees, in an ex-officio capacity, and shall also serve as Secretary to the Management Board.

12. PROCEEDINGS

- (1) One third (1/3) of the Trustees shall form a quorum and subject to clause 12(3) hereof a meeting of Trustees at which a quorum is present shall be competent to exercise all or any of the powers and discretions vested in the Trustees.

For the purposes of this Clause, a Trustee shall be deemed to be present at any meeting if he is able to hear and understand all of the proceedings of the meeting and be heard and understood by all present or those deemed present by way of telephone, video call or other suitable electronic means of communication and such Trustee indicates his willingness to participate in the meeting on that basis.

- (2) The Trustees shall elect one (1) of their number as Chair who shall serve in such position for a further period of two years renewable once **provided that** such person shall be a Trustee appointed by a Founder.
- (3) The Chair shall oversee the day today affairs of the Trust.
- (4) The Trustees shall elect one (1) of their number as Vice-Chair **provided that** such person shall be a Trustee appointed by a Founder.
- (5) To the extent permissible by law, the Trustees may delegate such of the powers authorities and discretions by these presents or by law conferred on them as the Trustees to the Chair of the Trust as shall be necessary for the dispensation of urgent matters and affairs of the Trust **provided that**

the Chair shall keep the Trustees fully apprised of all powers so exercised and shall procure that all such actions are duly ratified by the Trustees.

- (6) The Trustees may delegate such of the powers authorities and discretions, by these presents or by law conferred on them, as the Trustees shall see fit to any committee or committees constituting two or more persons appointed by the Trustees, but at least one member of every committee must be a Trustee and all proceedings of committees must be reported promptly to the Trustees.
- (7) The Trustees shall establish a governance charter outlining and describing the roles and responsibilities of the Trustees. The charter shall be complementary to the legal and regulatory requirements relating to the Trust and to the Board of Trustees and shall promote the annual evaluation of Trustees.
- (8) On being requested by anyone of the Trustees any time the Secretary shall for convene a meeting of the Trustees upon ten days written *notice* to each Trustee (other than a Trustee for the time being not in the Republic of Kenya). Any notice posted ten days before the date of meeting shall be deemed to have been duly served.
- (9) The Chair shall preside at all meetings of the Trustees save that if at any meeting the Chair is not present within ten minutes after the time appointed for the same the Trustees may choose one of their number to be Chair of that meeting.
- (10) Questions arising at any meeting shall be decided by a majority of votes (each Trustee present having one vote) and in case of an equality of votes the Chair shall have a second or casting vote.
- (11) A resolution in writing signed or approved by letter or by electronic means by all the Trustees shall be as valid and effectual as a resolution passed at a meeting of the Trustees duly called and constituted. Such resolution may be contained in one (1) document or electronic communication or in several documents or electronic communications.
- (12) The majority shall be a simple majority.
- (13) Every notice of a meeting shall state the place day and hour of the meeting and the business to be transacted thereat.

13. RECORDS AND ACCOUNTS

- (1) The Secretary shall cause proper minutes to be kept and entered in a book provided for the purpose of all their resolutions and proceedings and any such minutes of any meeting of the Trustees purporting to be signed by the Chair of such meetings or by the Chair of the next succeeding meeting shall be conclusive evidence of the matters stated in such minutes.

- (2) The Trustees shall with due diligence cause to be done:
 - (a) The keeping of accounting records for the Trust;
 - (b) The preparation of annual statements of account for the Trust;
 - (c) The auditing or independent examination of statements of account of statements of account of the Trust.
- (3) The Trustees shall:
 - (a) Appoint a firm of Certified Public Accountants of credible repute to be the Auditors of the Trust Fund who shall audit the Trust Fund not less than once in each calendar year.
 - (b) Deliver to the Founders a certified copy of the Audited Accounts forthwith upon their being issued by the Auditors.
 - (c) Upon request by any Member of the Trust, make available for inspection the Audited Accounts in respect of the immediately preceding financial year of the Trust Fund

14. APPOINTMENT REMOVAL & RETIREMENT OF TRUSTEES

- (1) The number of Trustees shall be not less than seven (7) and not more than thirteen (13).
- (2) The Board of Trustees shall comprise of the following:
 - (a) Five (5) Trustees who are Vice Chancellors of the Founders or a person appointed to replace a Trustee of the Founder;
 - (b) One (1) Trustee who is a Vice Chancellor or the equivalent of a Vice Chancellor in a private university;
 - (c) One (1) Trustee who is a Vice Chancellor of a public university;
 - (d) One (1) Trustee who is a Chief Executive Officer of a member Research Institution;
 - (e) One (1) Trustee being the Principal Secretary for the time being responsible for higher education in Kenya;
 - (f) One (1) Trustee who is the head of the institution responsible for ICT regulatory affairs in Kenya; and
 - (g) Two (2) Trustees from the Private Sector excluding private universities
 - (h) One Trustee who is a Principal or equivalent of a Principal of a tertiary college that is a member of KENET
- (3) New Trustees shall be appointed by a resolution of the Trustees and, except for the Trustees representing the Founders, the Principal Secretary for higher education and the ICT regulatory institution, they shall serve for a period of three years and shall be eligible for re-appointment for only one further term.

- (4) Subject to clause 14(1) a new Trustee may be appointed by a resolution of the trustees recorded in the minutes and signed by the new Trustee and such record shall be conclusive evidence of his appointment.
- (5) A Trustee shall cease to hold office if:-
- (a) He is incapacitated by mental or physical illness or is otherwise unable or unfit to discharge the functions of a Trustee;
 - (b) He delivers to the Chairman a written notice of his resignation from office;
 - (c) He was appointed by virtue of the position he held in a nominating institution and he ceases to hold that position;
 - (d) he is deemed to be in breach of the KENET governance charter stipulated by the Trustees from time to time;
 - (e) He is adjudged bankrupt or enters into a scheme of composition or a scheme of arrangement with his creditors;
 - (f) He is removed by court of law pursuant to the Trustee Act or under any other laws of Kenya;
 - (g) He is convicted of an offence involving dishonesty, fraud or moral turpitude;
 - (h) He is absent without the permission of the Trustees from two consecutive meetings of the Trustees **provided that** a Trustee who is faced with removal shall have the right to be heard by the other Trustees before a vote is taken;
 - (i) For good or sufficient reason three quarters of the Trustees present at the meeting pass a resolution that a Trustee shall be removed from office provided that a Trustee who is faced with removal shall have the right to be heard by the other Trustees before a vote is taken.
- (6) A Trustee may retire at any time (whether or not any other person has been appointed or otherwise continues as trustee of the Trust in his place) upon giving to the Chair (or if there be no Chair for the time being to each of the Trustees) not less than three (3) months' notice in writing of his intention to do so **provided that** such retirement may with the consent (if there be a Chair for the time being) of the Chair take effect prior to the expiry of such three (3) month period if either:
- (a) Some other person (or persons) shall have been appointed to act as trustee of the Trust in place of the Trustee; or

- (b) If there be more than one Trustee who wishes to retire there will remain at least five other Trustees as trustees of the Trust;
- (c) Such earlier retirement is approved by a resolution.
- (7) The number of Trustees shall not be less than seven in the event of their number falling below seven such additional Trustees or Trustee shall forthwith be appointed as shall be necessary to make their number up to seven so that the Trustees may while their number is below seven only act for the purpose of appointing additional trustees or trustee and for no other purpose.
- (8) Where a Trustee representing a Founder ceases to be a Trustee in accordance with any of the provisions herein, the Founder shall substantively replace such Trustee, and pending substantive replacement the Founder shall in the interim appoint the person designated as acting Vice Chancellor to represent the Founder on the Board of Trustees in an *ex officio* capacity until a substantive Vice Chancellor is appointed.
- (9) Any retiring Trustee or any Trustee who shall have been removed shall take all such action execute all such documents and generally do all such things as shall be necessary or be reasonably required to vest the Trust Fund in or place it under the control of any new Trustee or any continuing Trustee (as the case may be).

15. COSTS AND CHARGES

- (1) Save as hereinbefore expressly provided the Trust Fund and the income thereof shall be applicable solely towards the purposes of the Trust and no Trustee shall take or hold any interest therein save in his capacity as a Trustee or receive any remuneration or be interested in the supply of goods or services at the cost of the Trust in any circumstances whatsoever **provided that** this sub-clause shall not prevent a Trustee from holding office or being a shareholder in a public company shares in which are held upon the trust hereof or from obtaining the repayment of reasonable and proper out-of-pocket expenses incurred in connection with the trusts hereof and **provided further that** neither the Trustees nor any of them shall concur in exercising any voting rights in respect of any shares stock or debentures or other securities comprised in the Trust Fund in such a way that a personal benefit is thereby secured to the Trustees or any of them and also **provided further that** the Trustees shall be entitled to effect policies of insurance or indemnity and pay any premiums thereon to cover the liability of the Trustees (or any of them) which by virtue of any rule of law would otherwise attach to them in respect of any negligence default breach of duty or breach of trust of which they may be guilty in relation to the Trust **provided that** any such insurance or indemnity shall not extend to any claim arising from wilful fraud or wrong doing or wilful neglect or default on the part of the Trustee (or any of them).

16. LIABILITY OF TRUSTEES

- (1) No Trustee shall incur any liability by reason of any error or any matter or thing done suffered or omitted to be done by it in good faith under this Deed **provided always** that nothing contained in this clause or in any provision of this Deed shall exempt a Trustee from or indemnify them against any liability for breach of trust where the Trustee fails to show the degree of care and diligence required of them as Trustee having regard to the provisions of this Deed conferring on the Trustees any trusts rights powers authorities or discretions and **provided further that** nothing contained in this clause or in any provision of this Deed shall exempt the Trustee from liability for wilful and individual fraud or wrongdoing or wrongful omission on his part.
- (2) Any statement in writing signed by the Trustees or any two of them to the effect that any contract deed or act signed executed or done by the Trustees is signed executed or done in accordance with and is authorised by the Trust's powers and provisions herein declared and contained shall in favour of any purchaser or other person dealing with the Trustees be conclusive evidence of the fact.

17. REORGANISATION AND RECONSTRUCTION OF THE FOUNDERS

If on reorganisation or reconstruction of any of the Founders such Founder shall enter into an arrangement for the continuing Founder to undertake the Founder=s rights and obligations under this Deed, the new Founder shall bind itself by deed to assume such rights and obligations then subject to such changes as may be necessary the trusts hereby created shall continue to have effect as though the new Founder had been a party hereto from the date hereof and the Founder shall be released from all obligations under this Deed and Rules.

18. TERMINATION AND WINDING UP OF THE TRUST

- (1) The Trust shall commence on the date hereof and shall terminate on the happening of any of the following events:
 - (a) Upon the expiry of at least six (6) months' notice given by the Chair to the Trustees that a law has been passed which renders it illegal or in the opinion of the Chair impracticable inadvisable or contrary to the interests of the Trustees to continue the Trust or that by virtue of the terms of any official licence or authorisation it is in the opinion of the Chair impracticable inadvisable or contrary to the interest of the Trustees to continue the Trust;
 - (b) In accordance with the terms of any resolution of the Trustees so determining subject always to the provisions of clause 14(2).
- (2) If the Trustees at any time unanimously decide that it is expedient to discontinue the Trust any assets remaining after the satisfaction of all its debts and liabilities shall not be paid to or

distributed among the Trustees but shall be given to such other institutions having similar objects to the Trust as the Trustees shall decide.

19. GOVERNING LAW

This Deed shall in all respects be governed by and construed in accordance with the laws of Kenya.

20. ARBITRATION

Save where by this Deed the decision of the Trustees is made final if at any time hereafter any dispute difference or question shall arise between the Founders the Trustees the Members or other persons or their personal representatives or any of them respectively touching the construction meaning or effect of this Deed or any cause or thing therein contained or the rights or liabilities of the said parties respectively or any of them under this Deed or otherwise howsoever in relation to the Trust then every such dispute or question shall be referred to arbitration by a single arbitrator appointed by agreement between the parties and in default of such agreement by the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch) in accordance with and subject to the provisions of the Arbitration Act (Chapter 49) Laws of Kenya or any statutory modification or re-enactment thereof for the time being in force.

21. NOTICES

Any notice which under the provisions of this Deed is required to be given to or served upon the Trustees shall be served in writing delivered or addressed to the Trustees care of the addresses given in the descriptive clause of this Deed.

22. CONSTRUCTION

With effect from the date hereof, the Trust Deed as amended and supplemented by the First Supplemental Trust Deed, shall henceforth be read and construed in conjunction with the First Supplemental Trust Deed and with this Second Supplemental Trust Deed as one document. The Trust Deed remains in full force and effect other than as provided by the First Supplemental Trust Deed and this Second Supplemental Trust Deed

SCHEDULE
The Rules of the Kenya Education Network Trust

1. Definitions

In these Rules where consistent with the context the words and expressions defined in the Trust Deed shall have the meanings assigned thereto and in addition the following words and expressions shall in these Rules and where applicable in the Trust Deed have the following meanings:

"Affiliate Member" shall mean an institution not being an Educational or Research Institution but one whose business the Trustees deem to have a relation to the objects of the Trust;

"Entry Date" shall mean the Commencement Date or the first day of each calendar month thereafter;

"Executive Director" shall mean the person appointed by the Trustees to serve as the Chief Executive Officer of the Kenya Education Network;

"Member" shall mean an Educational or Research Institution which has been admitted as a Member of the Trust in accordance with Rule 2;

"Trust Deed" shall mean the Trust Deed constituting the Trust and to which these Rules constitute the Schedule (being an integral part of the Trust Deed) and any deed expressed to be supplemental thereto; references to the "Trust Deed" or to "this Deed" shall be deemed to include the Rules.

The singular includes the plural and vice versa.

The masculine includes the feminine and vice versa.

2. Membership

- (1) All persons falling within the definition of "Educational or Research Institution" on the Commencement Date and every other person who becomes an Educational Institution shall be eligible to become a Member of the Trust upon the Commencement Date or (as the case may be) the Entry Date **provided that** the Trustees shall have an overriding discretion to determine without assigning any reasons therefore who may or may not become a Member of the Trust.
 - (a) The Trustees may in their sole discretion admit an institution as an affiliate member of the Trust and such affiliate member may access such member services as the Trustees may in their discretion permit.
- (2) A Member may resign its membership by giving not less than six (6) months' notice of its intention to do so.
- (3) A Member who fails to pay the prescribed annual subscription fees for a period of two (2) consecutive years may, in the first instance, be suspended from membership for such period as the

Trustees shall determine and shall, as a final resort, have their membership revoked by the Trustees and thus cease to be a Member.

- (4) The Trustees may at their sole discretion remove a Member from the Trust **provided that** a Member who is faced with removal shall have the right to be heard by the Trustees before a vote is taken.

3. Contributions

Subject to the provisions of the Trust Deed and as a condition precedent to becoming a Member under the Trust on the Member's Entry Date it shall contribute a non-refundable annual subscription fee as may be determined by the Trustees from time to time.

4. Management Board

- (1) In order to assist the Trustees in carrying out their duties there shall be a Management Board comprising of not less than **seven (7)** and not more than **thirteen (13)**.
- (2) All the members of the Management Board shall be appointed by the Trustees and shall serve for a period of three (3) years and be eligible for re-appointment for only one further term.
- (3) The Trustees shall ensure that the Management Board comprises the following:
 - (a) Five (5) Members appointed by each Founder Member;
 - (b) Two (2) senior faculty persons each from a private and public university;
 - (c) One (1) representative of Research Institutions;
 - (d) Three (3) Independent Management Board members who by virtue of their professional qualifications and personal standing the Trustees deem fit that they will make a positive contribution in the pursuit of the of the objectives of the Trust;
 - (e) One (1) representative from member university librarians; and
 - (f) The Executive Director of the Trust duly appointed as such by the Trustees and who shall be the Secretary to the Management Board
- (4) The Role of the Management Board shall be as follows:
 - (a) To develop Policy and strategy recommendations in furtherance of the objectives of the Trust for approval by the Board of Trustees;
 - (b) To review all budgeted capital projects of the Trust for approval by the Trustees;
 - (c) To review budgets and financial reports for approval by the Trustees;
 - (d) To recommend to the Trustees the recruitment and termination of the Executive Director
 - (e) To review and recommend a competitive job description for the Executive Director for approval by the Trustees
 - (f) To review and recommend the salary and remuneration structures for the Executive Director and all staff for approval by the Trustees;
 - (g) To undertake annual performance evaluation of the Executive Director for consideration by the Board of Trustees;

- (h) To recommend to the Trustees such resolutions as they may deem conducive to the furtherance of the objects of the Trust;
 - (i) To carry out such other duties as the Trustees may delegate from time to time.
- (5) The Trustees shall appoint from among the Members of the Management Board, one Member to serve as Chairman of the Board for a period of two (2) years and he shall be eligible for re-appointment for only one further term.
- (6) A person shall cease to be a Member of the Management Board if:
- (a) The Trustees remove him by a simple majority vote **provided that** a Member who is faced with such removal shall have the right to be heard by the Trustees before a vote is taken;
 - (b) He is incapacitated by mental or physical illness or is otherwise unable to unfit to discharge the functions of a Member;
 - (c) He was appointed by virtue of the position he held in the nominating institution' and he ceases to hold that position;
 - (d) He is deemed to be in breach of the KENET governance charter stipulated by the Trustees from time to time';
 - (e) He is adjudged bankrupt or enters into a scheme of composition or a scheme of arrangement with his creditors;
 - (f) He is convicted of an offence involving dishonesty, fraud or moral turpitude
 - (g) He is absent without the permission of the Board from two consecutive meetings of the Management Board.
 - (h) For good or sufficient reason three quarters of the Members of the Management Board present at the meeting pass a resolution to recommend to the Board of Trustees that a Member shall be removed from the office **provided that** a Member who is faced with such removal shall have the right to be heard by the other Members before a vote is taken.
 - (i) He delivers to the Chairman a written notice of his resignation giving not less than three (3) months' notice of his intention to do so **provided that** such resignation may take effect prior to the expiry of the three (3) months if either some other person shall have been appointed in his place or if there be two Members who wish to resign at the same time, there will remain at least the minimum number of seven (7) Members of the Management Board;
- (7) The Management Board may meet for dispatch of business, adjourn and otherwise regulate their proceedings as they think fit subject to the following:

- (a) The Secretary shall in consultation with the Chairman convene meetings of the Management Board by giving 14 days' notice to all Members such meeting to be held at such place in Kenya as may be convenient;
 - (b) The quorum for all meetings shall be more than fifty (50%) per cent of all Members;
 - (c) The Chairman shall preside at all meetings but if he is not present within ten (10) minutes of the time set for the meeting, the Members present shall elect one of them to be the Chairman of that meeting;
 - (d) A Member shall be deemed to be present at any meeting if he is able to hear and understand all of the proceedings of the meeting and be heard and understood by all present or those deemed present by way of telephone, video call or other suitable electronic means of communication and such Member indicates his willingness to participate in the meeting on that basis.
 - (e) A resolution in writing signed or approved by letter or by electronic means by all the Members shall be as valid and effectual as a resolution passed at a meeting of the Members duly called and constituted. Such resolution may be contained in one (1) document or electronic communication or in several documents or electronic communications.
 - (f) On receiving a written requisition for a meeting by any member of the Management Board the Secretary shall upon issuing seven days' written notice to the Members convene a meeting of the Management Board.
 - (g) Matters arising at any meeting shall be decided by a simple majority of votes each Member present having one vote and in case of an equality of votes the Chair shall have a casting vote.
 - (h) The Management Board may constitute such committees as may be deemed necessary for the expedient furtherance of its business with powers and duties as the Board may think fit.
- (8) Questions arising at any meeting of the Management Board shall be decided by majority of votes on a show of hands of those present and voting thereon so that the majority voting shall bind the remaining members of the Management Board whether voting or not and in the case of any equality of votes the chairman shall have a second or casting vote.
- (9) Any resolutions passed by the Management Board shall only be recommendations to the Trustees and will not be binding on the Trustees unless ratified and adopted by the Trustees.
- (10) On being requested by any member of the Management Board at any time the Management Board Secretary shall convene a meeting of the Management Board upon seven days' written notice to the members the Management Board. Any member not for the time being in Kenya shall not be entitled to receive notice of a meeting.

- (11)The Management Board Secretary shall keep minutes of all the meetings of the Management Board and the passing of resolutions shall be recorded in such minutes. A document certified by the Management Board Secretary to be a true copy of a resolution of the Management Board shall be sufficient evidence thereof.
- (12)Subject to Clause 4(3), the remaining members of the Management Board shall have power to act notwithstanding any vacancy in their number.
- (13)The Trustees shall establish a governance charter outlining and describing the roles and responsibilities of the Management Board and promoting the annual evaluation of members of the Management Board

IN WITNESS WHEREOF the Founders have caused their respective Common Seals to be affixed and the Trustees have set their hands on Memorandum of Amendments to the Trust Deed and the First Supplemental Trust Deed on the day and year above written.

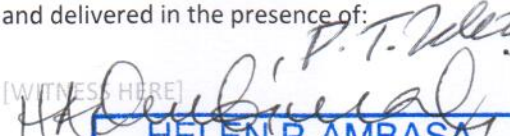
SEALED with the Common Seal)
of UNIVERSITY OF NAIROBI)
and delivered in the presence of:)

[UON SEAL]

[WITNESS HERE])
)
FREDERICK COLLINS OMONDI)
ADVOCATE)
& COMMISSIONER FOR OATHS)
P. O. Box 34982 - 00100, NAIROBI)

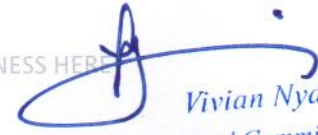
SEALED with the Common Seal)
of UNITED STATES INTERNATIONAL)
UNIVERSITY AFRICA)
and delivered in the presence of:)

[USIU SEAL]

[WITNESS HERE])
)
HELEN P. AMBASA)
ADVOCATE, COMMISSIONER FOR OATHS)
& NOTARY PUBLIC)
P. O. Box 8369 - 00100,)
NAIROBI)

SEALED with the Common Seal)
of JOMO KENYATTA UNIVERSITY OF)
AGRICULTURE AND TECHNOLOGY)
and delivered in the presence of:)

[JKUAT SEAL]

[WITNESS HERE])
)
Vivian Nyambura)
Advocate and Commissioner for Oaths)
P.O. Box 17368-00100)
Nairobi)

SEALED with the Common Seal)
of MOI UNIVERSITY)
and delivered in the presence of:)

[MU SEAL]

[WITNESS HERE])
)
PETROLINA CHEPKWONY)
Advocate and Commissioner)
for Oaths)
P O Box 102057-00101, NAIROBI)

SEALED with the Common Seal
of DAYSTAR UNIVERSITY
and delivered in the presence of:



[WITNESS SIGN HERE]
MUENI-NYOKABI
ADVOCATE &
COMMISSIONER FOR OATHS
P.105/10496/14
P. O. Box 54410 - 00200
NAIROBI, KENYA

REGISTERED TRUSTEES.

SIGNED as a Deed by the said
PROF. PAUL TIYAMBE ZELEZA
in the presence of:

[ADVOCATE WITNESS HERE]
HELEN P. AMBASA
ADVOCATE, COMMISSIONER FOR OATHS
& NOTARY PUBLIC
P. O. Box 8369 - 00100
NAIROBI

SIGNED as a Deed by the said
PROF. STEPHEN KIAMA GITAHU
in the presence of:

[ADVOCATE WITNESS HERE]
FREDERICK COLLINS OMONDI
ADVOCATE
& COMMISSIONER FOR OATHS
P. O. Box 34892 - 00100, NAIROBI

SIGNED as a Deed by the said
PROF. VICTORIA WAMBUI NGUMI
in the presence of:

Vivian Nyamathi
Advocate and Commissioner for Oaths
[ADVOCATE WITNESS SIGN HERE] P.O. Box 17368-00100
Nairobi

SIGNED as a Deed by the said
PROF. ISAAC SANGA KOSGEY
in the presence of:

[ADVOCATE WITNESS HERE]

PETROLINA CHEPKWONY
Advocate and Commissioner
for Oaths
P O Box 102057-00101, NAIROBI

[DAYSTAR SEAL]

[PROF. ZELEZA SIGN HERE]

[PROF. KIAMA SIGN HERE]

[PROF. NGUMI SIGN HERE]

[PROF. KOSGEY SIGN HERE]

SIGNED as a Deed by the said

PROF. AYIRO PETER LABAN

in the presence of:

[ADVOCATE WITH
MUENI-NYOKABI
ADVOCATE &
COMMISSIONER FOR OATHS
P.105/10496/14
P. O. Box 54410 - 00200
NAIROBI, KENYA

[PROF. AYIRO SIGN HERE]

SIGNED as a Deed by the said

PROF. JOSEPH GALGALO

in the presence of:

[ADVOCATE WITH
JACQUELINE L. OYUYO
P.O. BOX 993 - 00100 GPO
NAIROBI, KENYA
Commissioner for Oaths & Notary Public

[PROF. GALGALO SIGN HERE]

SIGNED as a Deed by the said

PROF. JAMES MURITHI JAPHET NJIRU

in the presence of:

[ADVOCATE WITH
JACQUELINE L. OYUYO
P.O. BOX 993 - 00100 GPO
NAIROBI, KENYA
Commissioner for Oaths & Notary Public

[PROF. NJIRU SIGN HERE]

SIGNED as a Deed by the said

MS. SHEILA GATAKA MWIHIA

in the presence of:

[ADVOCATE WITH
JACQUELINE L. OYUYO
P.O. BOX 993 - 00100 GPO
NAIROBI, KENYA
Commissioner for Oaths & Notary Public

[MS. MWIHIA SIGN HERE]

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