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**FIRST SUPPLEMENTAL TRUST DEED**  
**RELATING TO**  
**THE TRUST DEED DATED 9<sup>TH</sup> NOVEMBER 2000**  
**CONSTITUTING**  
**THE KENYA EDUCATION NETWORK**  
**REGISTERED TRUSTEES**

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**DRAWN BY:**  
**WANJIRA & COMPANY ADVOCATES**  
**NO. B5, AMBASSADOR COURT**  
**MILIMANI ROAD**  
**P.O. BOX 53911-00200**  
**NAIROBI**

**THIS SUPPLEMENTAL TRUST DEED** is made this                      day of                      2013  
**BETWEEN:**

- (1) **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 of Post Office Box 30197 Nairobi; and
  - (2) **UNITED STATES INTERNATIONAL UNIVERSITY 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 of Post Office Box 14634 Nairobi; and
  - (3) **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
  - (4) **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
  - (5) **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; (hereinafter together called "the Founders") **AND**
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- (1) Prof. Christian Borgemeister of Post Office Box Number 30772 Kasarani, Nairobi and
  - (2) Prof. Freida Brown of Post Office Box Number 14634 – 00800 Nairobi and
  - (3) Prof. Mabel Imbuga of Post Office Box Number 62000 – 00200 Nairobi and
  - (4) Prof. Crispus Kiamba of Post Office Box Number 9583 – 00200 Nairobi and
  - (5) Prof. George Magoha of Post Office Box Number 30197 – 00100 Nairobi and
  - (6) Prof. Richard K. Mibei of Post Office Box Number 3900 Eldoret and
  - (7) Dr. Timothy Wachira of Post Office Box Number 17 – 90145 Athi River and
  - (8) Mr. Francis Wangusi of Post Office Box Number 14448 – 00800 Nairobi

All in the Republic of Kenya and collectively hereinafter called **“the Trustees”** which expression refers to the current trustees of the Kenya Education Network.

**WHEREAS:**

- (A) This Supplemental Trust Deed is supplemental to the Trust Deed dated 9<sup>th</sup> November 2000 (hereinafter referred to as the **"Trust Deed"**) made between the Founders and the original Trustees which constituted the Kenya Education Network whose Trustees were incorporated as the Kenya Education Network Registered Trustees on the 18<sup>th</sup> day of July 2012;
- (B) The Trustees at a meeting held on 25th March 2013 duly convened with the requisite quorum present, passed by way of ordinary resolution certain amendments (hereinafter called **“the Amendments”**) to the Trust Deed and have obtained the consent of the Founders who have authorised the Trustees to execute this Supplemental Trust Deed.
- (C) By this Supplemental Trust Deed, the Founders and the Trustees wish to amend certain provisions of the Trust Deed as stipulated herein.

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

**1. DEFINITIONS AND INTERPRETATIONS**

Clause 1 (1) is amended as follows:

- a) Clause 1.1(1): By adding to the definition of the word Beneficiary at the end of the paragraph the words “and any Research Institutions”.
- b) Clause 1.1(2): By deleting the words “research institutions”.
- c) Clause 1.1(5): By deleting the word “Committee” and substituting it with the word “Board”.
- d) By inserting the following new clauses:
  - 1.1(7) “Research Institutions” means such public and private institutions carrying out research activities in and outside the Republic of Kenya”.
  - 1.1(8) “Rules” means the rules enacted by the Trustees pursuant to Clause 7 of



the Trust Deed.

- e) By re-numbering the succeeding sub-clauses to read 9, 10, 11, 12 and 13 respectively.

## **2. OBJECTS**

Clauses 4.1 (a), (b), (c), and (f) are amended by inserting at the end of each paragraph the words “and Research Institutions”.

Clause 4.1 (d) is amended to read as follows: “to support teaching and learning over the internet for Beneficiaries in Educational Institutions and Research Institutions both in and outside Kenya”.

## **3. FOUNDERS’ COVENANTS**

Clause 5 is amended by deleting all the words from “provided” in the third paragraph to the last word.

## **4. TRUSTEES’ COVENANTS**

Clause 6 is amended by adding a new sub-clause as follows:

- (5) To ensure the proper custody of the Common Seal, deeds, all documents, monies, securities and other property belonging to the Trust.

Clause 6(5) is renumbered to become 6(6).

## **5. POWER TO MAKE RULES AND REGULATIONS**

Clause 7 is deleted and substituted with a new clause to read: “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.

## **6. POWER CONFERRED BY LAW**

Clause 9 (1) is deleted and substituted with a new clause to read as follows:

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.

## **7. SECRETARY AND TREASURER**

Clause 11 is amended by deleting the words “secretary and one of the Trustees to be” and also by deleting “one year” at the end of the paragraph and inserting the words “two years but shall be eligible for re-appointment for only one further term provided that such persons shall be from Trustees appointed by the Founders”. A new paragraph is to be inserted as follows:

The Trustees shall appoint an Executive Director of the Trust who shall serve as Secretary to the Trustees in an ex-officio capacity and also Secretary to the Management Board.

## **8. PROCEEDINGS**

Clause 12 is amended as follows:

- a) Clause 12(1): by deleting the word Four at the beginning of the paragraph and inserting the words “One third (1/3) of the” and by inserting the following paragraph:

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.

- b) Clause 12(2): by inserting at the end of the paragraph the words “renewable once provided that such person shall be a Trustee appointed by a Founder”.
- c) Clause 12(3): by deleting the word “manage” and substituting it with the word “oversee”.
- d) by inserting a new sub-clause as follows:



(7) 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.

## **9. APPOINTMENT REMOVAL & RETIREMENT OF TRUSTEES**

Clause 14 is amended as follows:

a) By deleting clause 14(1) and substituting the following new clauses:

- 1) The number of Trustees shall be not less than nine (9) and not more than eleven (11).
- 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) One (1) Trustee from the Private Sector excluding private universities.
- 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) Clause 14(2) is re-numbered to read 14(4).
- 5) Clause 14(3) is deleted and a new clause 14(5) inserted as follows:

14(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 member institution and he ceases to hold that position;
  - d) he is deemed to be in breach of the corporate governance code of conduct and conflict of interest 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 a 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 three consecutive meetings of the Trustees;
  - (i) for good or sufficient reason three quarters of the Trustees 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.
- b) Clause 14(4) is re-numbered to read 14(6).
  - c) Clause 14(5) is re-numbered to read 14(7) and amended by deleting the word "five" wherever it appears and substitute it with the word "nine (9)".
  - d) By inserting a new clause 14(8) to read as follows:
 

14(8) Where a Trustee representing a Founder ceases to be a Trustee in accordance with any of the provisions herein, he shall be replaced for the remainder of his term by a person nominated by the Chancellor of the respective Founder, and such person shall either be a Deputy Vice-Chancellor or hold a position of equivalent rank.
  - e) Clause 14(6) is re-numbered as 14(9).

## 10. TERMINATION AND WINDING UP OF THE TRUST

Clause 18(2) is amended by deleting the words “educational institutions or”.

## 11. SCHEDULE – THE RULES OF THE KENYA EDUCATION NETWORK

The Rules in the Schedule to the Trust Deed are amended as follows:

### 1. Definitions

Clause 1 is amended as follows:

- a) By inserting as the first definition before that of “Entry date” the following paragraph:  
“**Affiliate Member**” shall mean an institution not being a Member of the Trust but one whose business the Trustees deem to have a relation to the objects of the Trust;
- b) By inserting after the definition of “Entry date” the following paragraph:  
“**Executive Director**” shall mean the person appointed by the Trustees to serve as the Chief Executive Officer of the Kenya Education Network;
- c) By inserting in the definition of “Member” immediately after the word “educational” the words “or Research”.

### 2. Membership

Clause 2 is amended as follows:

- a) By inserting in clause 2(1) immediately after the words “educational” the words “or Research”.
- b) By inserting a new clause 2(1)(a) as follows:  
2(1)(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.
- c) By deleting clause 2(2) and substituting it with the following:  
2(2) A Member may resign its membership by giving not less than six (6) months’ notice of its intention to do so.
- d) By inserting the following new clauses:



2(3) A Member who fails to pay the prescribed annual subscription fees for a period of two (2) consecutive years shall cease to be a Member.

2(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

Clause 3 is amended by deleting the words “of Kshs. 100,000/- and Kshs. 20,000/- annually each year thereafter” and substituting them with the words “an annual subscription fee as may be determined by the Trustees from time to time.

### 4. Management Board

Clause 4 is amended as follows:

a) By deleting, in the heading and wherever else in the Rules it appears, the word “Committee” and substituting it with the word “Board”.

b) By deleting clause 4(1) and 4(2) in their entirety and substituting them as follows:

4(1) In order to assist the Trustees in carrying out their duties there shall be a Management Board comprising of not less than **nine (9)** and not more than **eleven (11)** members.

4(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.

c) By inserting a new clause as follows:

4(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) Two (2) representatives 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 objectives of the Trust and,
- e) The Executive Director of the Trust duly appointed as such by the

Trustees and who shall be the Secretary to the Management Board.

d) By inserting a new clause as follows:

4(4) The Role of the Management Board shall be as follows:

- a) to develop Policy and strategy in furtherance of the objectives of the Trust;
- b) to approve all capital projects of the Trust;
- c) to review budgets and financial reports;
- d) to recommend to the Trustees the recruitment and termination of the Executive Director;
- e) other than the Executive Director, to recruit and terminate all senior and line management staff;
- f) to set job descriptions, salary and remuneration structures for the executive Director, senior and line management staff;
- g) to carry out periodic performance management evaluation of the Executive Director and all senior management staff;
- 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.

e) By inserting a new clause as follows:

4(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.

f) By inserting a new clause as follows:

4(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 or unfit to discharge the functions of a Member;
- c) he was appointed by virtue of the position he held in a member institution and he ceases to hold that position;



- d) he is deemed to be in breach of the corporate governance code of conduct and conflict of interest charter stipulated by the Trustees from time to time;
- a) he is adjudged bankrupt or enters into a scheme of composition or a scheme of arrangement with his creditors;
- b) he is convicted of an offence involving dishonesty, fraud or moral turpitude;
- (f) he is absent without the permission of the Board from three consecutive meetings of the Management Board.
- (g) for good or sufficient reason three quarters of the Members of the Management Board pass a resolution that a Member shall be removed from 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.
- (h) 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 nine (9) Members of the Management Board;
- g) By deleting Clauses 4.3 and 4.4 and substituting them with a new clause as follows:

4.7 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;



- b) 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;
- c) 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.
- d) 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 maybe contained in one (1) document or electronic communication or in several documents or electronic communications.
- e) 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.
- f) 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.
- g) 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.
- h) By re-numbering clause 4(5) as 4(8) and by deleting the words "other than the election of a chairman thereof".
- i) By re-numbering clauses 4(6), 4(7) and 4(8) as 4(9), 4(10) and 4(11) and respectively.
- j) By re-numbering clause 4(9) as 4(12) and amending it by inserting at the start of the clause the words " Subject to Clause 4(3)".

## **5. Representation of Founders**

Clause 5 is deleted in its entirety.

## **13. CONSTRUCTION**

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

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

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

REBECCA WAIGWE NGONDO  
ADVOCATE  
P. O. Box 63518 - 00619, NAIROBI.

*[Signature]*

PROF. G. A. C. MAGOHA

SEALED with the Common Seal  
of **UNITED STATES INTERNATIONAL  
UNIVERSITY**

and delivered in the presence of:

HELEN P. AMBASA  
ADVOCATE &  
COMMISSIONER FOR OATHS  
P. O. Box 8368 - 00100  
NAIROBI.

*[Signature]*

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

*[Signature]*  
PAUL LILAN  
ADVOCATE  
COMMISSIONER  
FOR OATHS  
P. O. Box 5766 - 00100, NAIROBI

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

*[Signature]*

VIVIAN N. WAITHAKA  
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:

*[Signature]*

*[Signature]*  
Legal




**Registered Trustees**

**SIGNED** as a Deed by the said  
**PROF. GEORGE MAGOHA**  
in the presence of:

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**SIGNED** as a Deed by the said  
**PROF. FREIDA A. BROWN**  
in the presence of:

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**SIGNED** as a Deed by the said  
**DR. TIMOTHY WACHIRA**  
in the presence of:

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**SIGNED** as a Deed by the said  
**PROF. MABEL IMBUGA**  
in the presence of:

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**SIGNED** as a Deed by the said  
**PROF. RICHARD K. MIBEY**  
in the presence of:

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**SIGNED** as a Deed by the said  
**PROF. CRISPUS KIAMBA**  
in the presence of:

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**SIGNED** as a Deed by the said  
**MR. FRANCIS WANGUSI**  
in the presence of:

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