



UNIVERSITY OF NAIROBI PENSION SCHEME 2007

TRUST DEED AND RULES



**TRUST DEED
AND
RULES OF
UNIVERSITY OF
NAIROBI
PENSION SCHEME 2007**

TRUST DEED AND RULES

DATED _____ 2007

UNIVERSITY OF NAIROBI
(the “Sponsor”)

- AND -

PROFESSOR GEORGE ALBERT OMORE MAGOHA
PROFESSOR PETER MULWA FELIX MBITHI
ISAAC ODUNDO AWUONDO
DR FRANK GITAU NJENGA
PROFESSOR CLEMENT MESHACK PETER ONIANG’O
PROFESSOR LUCY WACHUHI IRUNGU
GERISHON PETER MBUGUA
NAFTALI ARODI OYUGI
PROFESSOR PATRICK OBONYO OCHIENG’ DIGOLO
DR JOHN MWANGI
TOM OWANO KONGERE
SAMUEL NGUMI KIRUMBA
(the “Trustees”)

**TRUST DEED AND RULES OF
UNIVERSITY OF NAIROBI PENSION SCHEME 2007**

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THIS TRUST DEED is made on

2007 between:

1. **UNIVERSITY OF NAIROBI** (the “**Sponsor**”) a body corporate established under the University of Nairobi Act (Cap 210, Laws of Kenya) and of P.O. Box 30197, Nairobi, Kenya; and
2. **PROFESSOR GEORGE ALBERT OMORE MAGOHA, PROFESSOR PETER MULWA FELIX MBITHI, ISAAC ODUNDO AWUONDO, DR FRANK GITAU NJENGA, PROFESSOR CLEMENT MESHACK PETER ONIANG’O, PROFESSOR LUCY WACHUHI IRUNGU, GERISHON PETER MBUGUA, NAFTALI ARODI OYUGI, PROFESSOR PATRICK OB-ONYO OCHIENG’ DIGOLO, DR JOHN MWANGI, TOM OWANO KONGERE and SAMUEL NGUMI KIRUMBA** (the “**Trustees**”) all care of P.O. Box 30197, Nairobi, Kenya.

WHEREAS:

- A. By virtue of section 15(2)(c) of the University of Nairobi Act, the Council of the University of Nairobi (the “**University**”) is empowered to provide for the welfare of the staff and students of the University and pursuant thereto, the Sponsor has decided to establish under irrevocable trusts the “**University of Nairobi Pension Scheme 2007**” (the “**Scheme**”) for the purpose of providing pensions and other benefits on retirement to such employees of the Sponsor as may be admitted as members of the Scheme (the “**Members**”) under the provisions of the Rules of the Scheme set out in the Schedule hereto as duly amended from time to time (the “**Rules**”).
- B. The Trustees have agreed to act as the trustees of the Scheme.

NOW THIS DEED WITNESSES as follows:—

1. DEFINITIONS

In this Trust Deed and the Rules, the following words and expressions shall have the following meanings:-

“**Academic Staff**” means Eligible Employees of the Sponsor who have been engaged to undertake research and teaching duties on a full time basis.

“Actuary”	means a fellow of the Institute of Actuaries of England or of the Faculty of Actuaries of Scotland, or of the Canadian Institute of Actuaries, or the Society of Actuaries of the United States of America or the Institute of Actuaries of Japan or the Institute of Actuaries of Australia or a person holding such equivalent qualification as the Authority may by notice in the Gazette prescribe.
“Administrator”	means a person appointed as such by the Trustees pursuant to the provisions of the RBA for the purpose of administering the Scheme.
“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 RBA 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.
“Authority”	means the Retirement Benefits Authority established under the RBA.
“Board”	means the Board of Trustees of the Scheme.
“By-Laws”	means the by-laws or other regulations made by the Trustees pursuant to clause 12(b)(iv) including any alterations or amendments thereto from time to time.
“Closed Scheme”	means a pension scheme which is closed to new members but which otherwise functions as a normal scheme for its continuing members notwithstanding that the employer or the members have ceased payment of contributions to the scheme.
“Commencement Date”	means 1st March 2007 when the Scheme commenced to operate.

“Commissioner”	means the Commissioner-General appointed under section 11(1) of the Kenya Revenue Authority Act (Cap 469) or the Commissioner to whom the administration and collection of income tax under the Income Tax Act is delegated by the Commissioner-General pursuant to section 11(4) of the Kenya Revenue Authority Act.
“Continuous Service”	means uninterrupted service with the Sponsor for the specified period without taking into account any temporary interruptions for periods of nine months or less.
“Contribution Year”	means any period of one year commencing on 1st July of every year.
“Corporation”	means a trust corporation within the meaning of section 2 of the RBA or other corporate trustee.
“Council”	means the Council of the University established under section 14 of the University of Nairobi Act.
“Custodian”	means a person appointed as such by the Trustees pursuant to the provisions of the RBA.
“Dependant”	means and includes the Member's s Spouse, sons, daughters, grandsons, grand-daughters, adopted children, parents, grand-parents, brothers and sisters living at the time of the Member's death and such other person or persons as were, in the opinion of the Trustees, immediately before the Member's death substantially dependent upon the Member (whether alone or with others) for the provision of the necessaries of life and such other person or persons as may be entitled to any beneficial interest in the Member's estate under any testamentary disposition made by the Member provided that the class of Dependants shall be closed at the death of a Member except that it shall include persons en ventre sa mere who if born would have been Dependants.

“Eligible Employee”	means an employee of the Sponsor who has attained the age of eighteen (18) years, has completed any probationary period of employment or a maximum of one year of Continuous Service (whichever is the shorter), and has been appointed to the permanent service of the Sponsor in the Senior Clerical, Administration and Technical Staff Grades A – F or the Academic, Senior Library and Administrative Staff Grades of the Sponsor.
“Entry Date”	means the day of the month in each year in which the Member commences employment in accordance with his letter of appointment or employment contract.
“Financial Year”	means the period of twelve calendar months ending on 30th June of every year.
“Fund Credit”	means in respect of each Member, the aggregate of the Member’s Portion and the Sponsor’s Portion at any particular date.
“Fund Manager”	means a person appointed as such by the Trustees pursuant to the provisions for appointment of a “manager” under the RBA.
“Guaranteed Fund”	shall have the meaning ascribed thereto under the RBA.
“Income Tax Act”	means and include Chapter 470 of the Laws of Kenya or any statutory modification or re-enactment thereof or any rules or regulations made thereunder.
“Interest”	means interest at the rate from time to time determined by the Trustees on the advice of the Actuary or the Fund Manager (or such other qualified person as the Trustees may determine) after taking into account such relevant factors as may be considered appropriate for such determination.
“Member”	means an Eligible Employee who has been admitted to membership of the Scheme in accordance with Rule 1.

“Member Elected Trustee”	means a Trustee nominated by the Academic Staff or the Non-Academic Staff or the Pensioners pursuant to clause 13 of this Deed.
“Member’s Portion”	means in relation to each Member at any particular date, an amount equal to the total amount contributed by the Member, including the Transfer Amount and any additional voluntary contributions, together with Interest.
“National Fund”	means the fund established under the National Social Security Fund Act (Cap 258) or any other fund established in Kenya and requiring the making of compulsory contributions for provision of pension or other retirement benefits.
“Non-Academic Staff”	means Eligible Employees of the Sponsor who are not in the Academic Staff category.
“Normal Retirement Date”	means the first day of the month next following the 55th birthday or the 60th birthday or the 70th (as the case may be in accordance with the Member’s letter of appointment or employment contract) of a Member where the exact date of birth is known and where it is not known the first day of July in the year in which the 55th, 60th or 70th birthday (as the case may be) of the Member is deemed by the Sponsor to occur. 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 60th birthday except where the letter of appointment or employment contract provides for retirement at age 70.
“Old Scheme”	means the University of Nairobi Pension Scheme established by a Trust Deed dated 18th May 1987 as amended from time to time thereafter.
“Pensioner”	means a Member who has retired in accordance with the Rules and become entitled to a pension under the Rules.

“Pensionable Service”	means the period of Continuous Service with the Sponsor following the Member’s Entry Date.
“Personal Representatives”	means the administrators or executors of the deceased Member’s estate or the holder of the Public Trustee’s Certificate of Summary Administration.
“RBA”	means the Retirement Benefits Act (Act No. 3 of 1997) or any statutory restatement or re-enactment thereof or any rules made thereunder.
“Registered Insurer”	means an insurance company registered and licensed under the provisions of the Insurance Act, Chapter 487, of the Laws of Kenya).
“Registered Scheme”	means the Scheme or any pension or provident fund scheme (including where applicable the Scheme) established by the Sponsor which has been registered with the Commissioner under the provisions of the Income Tax Act relating to such registration.
“Rules”	means the Rules set out in the Schedule as the same may be amended from time to time.
“Salary”	means the Member’s basic annual salary as determined by the Sponsor, excluding housing allowance, any cost of living allowance, special remuneration for performing special duties or acting in a vacant post, locomotion or subsistence allowance, free honorarium or bonus of any kind, overtime payment, director’s fees or any other fluctuating emolument being received by the Member at the relevant date.
“Scheme”	means the University of Nairobi Pension Scheme 2007.
“Scheme Administrator”	means the person appointed as such by the Trustees pursuant to the provisions of the RBA.

“Sponsor”	means the University of Nairobi which expression herein where the context so admits includes any other institution which shall be successor to the University of Nairobi.
“Sponsor’s Portion”	means in relation to each Member at any particular date, the total amount contributed by the Sponsor on behalf of the Member together with Interest.
“Spouse”	means and includes a wife or husband to whom a Member is married or was so married immediately before his death by any ceremony of marriage (whether monogamous or not) which would be recognised by a Court of Law in Kenya.
“Trivial Pension”	means the amount from time to time determined as such by the Authority, which shall not be less than the minimum wage prescribed by the Minister for the time being responsible for matters relating to labour in the year in which the benefit becomes payable.
“Trust Deed” or “Deed”	means this Trust Deed (constituting the Scheme) and to which the Rules shall be deemed to form an integral part thereof and any deeds expressed to be supplemental thereto; references to the “Trust Deed” or to “this Deed” shall be deemed to include the Rules.
“Trustees”	shall include the survivor or survivors of them or other the trustee or trustees for the time being of the trusts of the Trust Deed.

In this Deed and the Rules the masculine gender shall include any other gender and the plural shall include the singular.

2. NAME OF THE SCHEME

The name of the Scheme shall be the “University of Nairobi Pension Scheme 2007”.

3. COMMENCEMENT OF THE SCHEME

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

4. MAIN PURPOSE OF THE SCHEME

The main purpose of the Scheme is the provision of pension and other benefits for employees of the Sponsor upon their retirement from the Sponsor’s service and relief for the Dependants of deceased employees.

5. DECLARATION OF TRUST

- (a) The Scheme is established under irrevocable trust declared hereby.
- (b) 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.

6. COMPOSITION OF THE SCHEME

The assets of the Scheme shall consist of all contributions paid to the Trustees by the Sponsor and the Members and any other sums received by the Trustees for the purposes of the Scheme and the Trustees shall hold such contributions and other sums and the money and investments for the time being representing the same and the income therefrom in accordance with the provisions hereof and the Rules for the respective persons for whose benefit such benefits are under the Rules expressed to be payable.

7. SPONSOR'S COVENANTS

The Sponsor hereby covenants with the Trustees:-

- (a) to collect all sums contributed by the Members in accordance with the Rules and together with its own contributions and such other payments as on its behalf are to be made under the Rules and to pay such sums to the Trustees or as they shall direct; and
- (b) subject to clause 10 hereof, to pay, on demand by the Trustees, all necessary charges and expenses incurred by the Trustees in connection with the management and administration of the Scheme.

8. SPONSOR'S RIGHT TO DISCONTINUE CONTRIBUTIONS

The Sponsor shall have the right to discontinue payment of contributions to the Scheme upon giving thirty (30) days written notice to the Trustees and in such an event and the Trustees upon taking into account all relevant circumstances, resolving that the Scheme should be wound up, the Scheme shall be dealt with in accordance with the provisions of clause 31.

9. TRUSTEES' COVENANTS

The Trustees hereby covenant with the Sponsor:-

- (a) to manage and administer the Scheme in accordance with the terms hereof and the Rules;
- (b) to pay out from or provide for under the Scheme the pensions and other benefits prescribed by the Rules and to observe and perform the terms and conditions thereof;
- (c) to comply with the provisions of the Trust Deed and the Rules; and
- (d) to comply with the provisions of the RBA, the Income Tax Act or any other legislation for the time being in force relating to the management and administration of the Scheme.

10. EXPENSES OF ADMINISTRATION AND MANAGEMENT

Except as otherwise agreed with the Sponsor, the Trustees shall pay from the Scheme

all remuneration, fees, commission, costs and other expenses of administering and managing the Scheme, including investment expenses, fees for professional services or any levy payable pursuant to any regulations for the time being in force.

11. TRUSTEES TO KEEP RECORDS

- (a) The Trustees shall have the responsibility for general management and administration of the Scheme and they shall keep all proper books and records of account showing the position in respect to contributions, other income, expenditure, liabilities and assets of the Scheme and the lump sums and other sums payable out of the Scheme and all other matters relevant to its management and shall prepare or cause to be prepared and furnish to the Sponsor with an audited account of all such transactions and matters at such intervals as the Sponsor may from time to time determine.
- (b) The Trustees shall keep at the registered office of the Scheme a register of the Members of the Scheme showing particulars of all such Members and of the contributions made from time to time in respect of each Member and of the investment and disposition thereof and of the Normal Retirement Date of each Member and the method of disposal of the amount payable out of the Scheme to or in respect of each such Member. The account of each Member shall be kept separate and distinct from the account of every other Member. Every Member of the Scheme shall have a right to inspect his own account in the register during usual business hours on giving reasonable notice.

12. TRUSTEES' ADMINISTRATIVE ARRANGEMENTS

- (a) In the event of there being more than one trustee the following provisions shall apply.
 - i. The Council shall appoint the chairman of the Board from amongst the Trustees (provided always that the Scheme Administrator shall not be eligible for appointment as chairman).
 - ii. The Trustees shall appoint a Secretary (the “Trust Secretary”) and shall meet

together for the despatch 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 seven (7) of the Trustees shall constitute a quorum.

- iii. Questions arising at any meeting of the Trustees shall be decided by a majority of votes on a show of hands of those present and in case of any equality of votes the chairman shall have a second or casting vote.
- iv. 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.
- v. A resolution in writing signed by all the Trustees shall be as valid and effectual as a resolution properly passed at a duly convened meeting of the Trustees.
- vi. The Trust Secretary shall keep minutes of all meetings of the Trustees and the exercise by the Trustees of all powers and discretions vested in them and the passing of resolutions shall be recorded in such minutes. A document certified by the chairman of the Trustees or the Trust Secretary to be a true copy of a resolution of the Trustees shall be sufficient evidence of the resolution.

(b) The Trustees shall have the following additional powers and functions:

- i. 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.

- ii. 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 board 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.
- iii. The Trustees shall have power to act notwithstanding any vacancy in t h e i r number.
- iv. 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.
- v. The Trustees shall make such banking arrangements as they shall determine and set out in the By-Laws.
- vi. Contracts and other documents shall be signed by all the Trustees (unless resolved otherwise by a resolution of the Trustees) or by a Corporation if it shall be a sole trustee.
- vii. The Trustees shall convene an annual meeting of the Members to enable such Members to raise any questions or matters relating to the Scheme.
- viii. 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 the giving of reports to the Members on any changes to the benefit or contribution structure of the Scheme, audited accounts, investments and remuneration of trustees.

13. APPOINTMENT OF TRUSTEES

- a. Subject to the Sponsor deciding to appoint a Corporation as sole trustee under the provisions of clause 15, the Board shall comprise of twelve (12) Trustees as follows:—

six Trustees who are appointed and may be removed by the Sponsor by deed or a resolution of the Council;

two active employees on full time service of the Sponsor who are elected and may be removed by the Academic Staff;

two active employees on full time service of the Sponsor who are elected and may be removed by the Non-Academic Staff; and

two Pensioners who are elected and may be removed by the Pensioners; Provided That the number of Trustees shall always not be less than four and the number of Member Elected Trustees shall not be less than one half of the Board.

- b. Upon election of a Trustee by the relevant body of Members in accordance with paragraph (a) of this clause, the names of the elected members shall be submitted to the Council for formal appointment as Trustees. Such appointment may be effected by deed or by a resolution of the Council.
- c. Where a Trustee resigns, is removed from office or otherwise ceases to be a Trustee, the relevant electing body of Members shall elect a replacement in accordance with paragraph (a) of this clause.
- d. Upon such appointment or removal of a Trustee, any assurance or thing requisite for vesting the trust property or any part thereof jointly in the persons who are continuing trustees shall be executed or done.

14. NOMINATION OF TRUSTEES BY MEMBERS

The nomination of the requisite number of Trustees by the Members pursuant to clause 13, term of office and the removal of such Trustee or Trustees shall be conducted in

such manner and in accordance with the procedures or regulations laid down or issued by the Trustees from time to time and notified to the Members.

15. POWER TO APPOINT CORPORATE TRUSTEE

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

16. TERM OF OFFICE

Subject to clause 17, each Trustee shall hold office for a period of three (3) years but shall be eligible for re-election or re-appointment Provided That a Member Elected Trustee who has served two consecutive terms shall not be eligible for nomination or re-election for a further term.

17. REMOVAL OF TRUSTEES FROM OFFICE

A Trustee shall vacate office as such if:

- a. he becomes bankrupt or makes an arrangement or composition with his creditors generally; or
- b. he becomes of unsound mind; or
- c. he fails, without reasonable cause and without the consent of the other Trustees, to attend three (3) consecutive meetings of the Trustees and the other Trustees resolve that, by reason of such failure, he shall cease to be a trustee; or
- d. he is removed by a two thirds majority of the Board arising from the Board's lack of confidence in the Trustee or in the manner in which the Trustee discharges his duties as a trustee; or
- e. he resigns by notice in writing to the Trust Secretary; or
- f. he ceases to be an employee of the Sponsor; or
- g. he is forbidden to act as a trustee pursuant to the RBA or any other written law; or
- h. he is removed by the Sponsor pursuant to clause 13; or
- i. he is removed (in case of a Member Elected Trustee under clause 14; or

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- j. he is on unpaid leave of absence from the service of the Sponsor for a period k. of six months or more or has taken an appointment outside the Sponsor; or his term of office shall expire.

18. REMUNERATION OF TRUSTEES

A Trustee shall be remunerated as follows:

- (i) a Corporation in accordance with clause 15 hereof;
- (ii) a professional trustee in accordance with clause 26 hereof;
- (iii) any other trustee in such manner as may be agreed in writing from time to time between such trustee and the Sponsor.

19. COMMITTEES OF THE BOARD

The Board shall have three standing committees to facilitate the effective discharge of its duties and the better management of the affairs of the Scheme, namely:

- (i) The Investment Committee;
- (ii) The Administration Committee; and
- (iii) The Tender Committee.

The Board may establish such other standing or ad-hoc committees, as the Board may from time to time consider necessary for the better management of the affairs or the Scheme or the discharge or the duties of the Trustees.

The powers and duties of and manner of conducting business by standing and ad-hoc committees shall be as provided from time to time in the By-laws.

20. APPOINTMENT OF ADVISERS

(a) The Trustees:

- (i) shall appoint in writing a Fund Manager and ensure that at all times the Fund Manager is carrying out his work competently;
- (ii) shall (except where all the assets of the Scheme are invested in a Guaranteed

Fund) appoint in writing a Custodian who shall, inter alia, have custody of the assets of the Scheme, title deeds and other securities belonging to the Scheme;

(iii) shall appoint in writing an Actuary to be the Scheme Actuary;

(iv) shall appoint in writing the Auditor to the Scheme. No person shall be eligible for appointment as the Auditor unless he is a member of the Institute of Certified Public Accountants of Kenya whose appointment has been approved by the Authority and he is not, for the time being, a member, trustee or sponsor of the Scheme. The Trustees shall notify the appointment of the Auditor to the Authority within 30 days thereof;

(v) shall appoint in writing a liquidator in the event of the Trustees resolving to voluntarily dissolve or wind-up the Scheme;

(vi) may appoint in writing an Administrator (whether external or in-house) to manage the administrative affairs of the Scheme on behalf of the Trustees;

(vii) may appoint as necessary legal and other appropriate advisers.

(b) The terms and conditions for each appointment shall be set out in the relevant written instrument.

(c) The Trustees may remove any adviser appointed under this Rule, and on the removal of a Fund Manager, the Actuary, the Custodian or the Auditor, the Trustees shall appoint a replacement.

21. TRUSTEES' POWERS OF INVESTMENT

Subject to the RBA, the Trustees may invest any money forming part of the Scheme in the purchase of or at interest upon the security of such stocks, funds, shares and securities or property of whatever nature and wheresoever situate (and without prejudice to the generality of the foregoing to purchase, take on, or lease any real freehold leasehold or other immoveable property and to sell, let or otherwise deal in the same) 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 thereto beneficially.

22. TRUSTEES' POWER TO BORROW

The Trustees may, with the consent of the Sponsor, raise or borrow money for the purpose of the Scheme and may secure such borrowing in such manner and upon terms and conditions as they shall think fit including charging or mortgaging of all or any part of the investments for the time being constituted in the Scheme.

23. 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, administrators, managers or custodians or other professional advisers either by way of guarantee provided by the Sponsor or by way of such insurance and in such amount as the Trustees shall determine.

24. POWERS CONFERRED ON TRUSTEES BY LAW

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

25. TRUSTEES NOT LIABLE FOR AGENTS

None of the Trustees shall be liable for the act, neglect, default, fraud or misconduct of any agent, officer, servant or other person employed by them or otherwise engaged or occupied in connection with these presents notwithstanding that it may not have been strictly necessary or expedient for any person to be so employed, engaged or occupied or by reason of any mistake or omission made in good faith or by reason of any other matter or thing except wilful fraud or wrong-doing on the part of any of the Trustees.

26. PROFESSIONAL CHARGING CLAUSE

Any of the Trustees being a solicitor, accountant or other person engaged in any profession or business shall be entitled to charge and be paid all usual professional or other charges for business done by him or his firm in relation to this 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 a solicitor, accountant or other professional person but which such trustee might reasonably require to be done by a solicitor, accountant or other professional person.

27. AMENDMENT OF DEED AND RULES

The Trustees may at any time and from time to time with the consent of the Sponsor alter amend or modify by deed any of the provisions of the this Deed and the Rules **Provided That** no such alteration, amendment or modification shall be made which:-

- (a) varies the main purpose of the Scheme namely the provision of pensions for employees on retirement at a specified age and relief for widows or Dependants of deceased employees;
- (b) authorises the payment of any part of the Scheme to the Sponsor (otherwise than upon the dissolution of the Scheme);
- (c) reduces the benefit of any Pensioner or affects the accrued benefit of any Member except in either case with the consent of such Pensioner or Member;
- (d) prejudices or causes the withdrawal of the approval or registration of the Scheme under the Income Tax Act or the RBA,

Provided Further That (i) no such alteration, amendment or modification shall become effective until it shall have been approved by the Commissioner (if the Scheme shall then be registered under the Income Tax Act) and the Authority and (ii) any alteration, amend-

ment or modification affecting the financial position of the Scheme shall be referred to the Actuary for certification to the Authority that the Scheme shall continue to meet its financial obligations.

28. PARTICIPATION BY ASSOCIATED EMPLOYERS

In the event of any employer associated with the Sponsor applying to participate in the Scheme and agreeing by a deed of adherence to be bound by the provisions of this Deed and the Rules, the Trustees shall have the power, with the consent of the Sponsor, the Authority and, if the Scheme is then registered under the Income Tax Act, the Commissioner, to admit any employees of that employer to membership of the Scheme and thereupon that employer shall be deemed to be included in the expression the “Sponsor” for the purposes and to the extent set out in such a deed of adherence.

29. PERPETUITY PERIOD

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

30. TRANSFER OF UNDERTAKING OF SPONSOR

If, on reorganisation or reconstruction, the Sponsor (or its successor in title) shall enter into an arrangement for the purchasing or continuing employer to undertake the Sponsor’s rights and obligations under the Scheme or if such successor in title is bound by virtue of any statutory provisions or order of a competent court to perform the said obligations and, subject to the consent of the Trustees, the new employer shall enter into a written covenant to assume such rights and obligations then, subject to such changes as may be necessary and so as the approval of the Scheme under the Income Tax Act or the RBA will not be affected, the trusts hereby created shall continue to have effect as though the new employer had been a party to this Deed and the Sponsor shall be released from all obligations under this Deed and the Rules.

31. WINDING UP OF THE SCHEME ON CERTAIN EVENTS

If the Sponsor shall be dissolved or wound-up or its undertaking (whether for the purposes of amalgamation or reconstruction or otherwise) shall be acquired or become vested in any other body corporate and such body corporate shall not enter into a deed in accordance with the provisions of Clause 29 to undertake the rights and obligations of the Sponsor or any other institution or if the Sponsor shall cease to contribute to the Scheme for any reason and the Trustees shall, after taking into account all relevant circumstances, resolve to wind-up the Scheme then, the Trustees shall cause the Scheme to be wound-up in the manner required by the RBA and the Rules in so far as it relates to the Members who are or were employees of the Sponsor and shall make provision for such Members in the manner described in Clause 32.

32. DETERMINATION OF TRUSTS

- (a) Upon the commencement of any winding up of the Scheme under the provisions of clause 31 hereof or the expiration of the Trust Period the trusts constituted by these presents shall determine. Upon such determination, the affairs of the Scheme shall, subject always to the RBA and the provisions of paragraphs (c) and (d) hereof, be wound up and after payment of all costs, charges, expenses or other moneys properly payable by or to the Trustees, the liquidator appointed pursuant to clause 20, shall arrange:-
- (i) to provide for the benefit of each former Member already in receipt of a pension under the Scheme, an annuity which, as near as possible, shall be on the same terms and equivalent in value to the pension to which such former Member is then or shall be entitled to under the Scheme; or
 - (ii) to convert the Member's and Sponsor's contributions together with Interest into immediate or deferred annuities for the benefit of the Members; or
 - (iii) that any balance of the funds of the Scheme remaining after the purposes of this clause have been fulfilled shall (with the consent of the Commissioner, if the Scheme shall then be a Registered Scheme) be paid by the liquidator to the Sponsor and any such refund shall be charged to tax in the hands of the Sponsor.

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- (b) Notwithstanding the provisions of sub-paragraphs a(i) and (ii) of paragraph (a) of this clause, in the event of any pension payable under this clause being a Trivial Pension or the person entitled thereto being in serious ill health, the liquidator may pay a lump sum in lieu of any pension entitlement.
- (c) Notwithstanding paragraph (a) of this clause, if the Trustees with the approval of the Authority and the Sponsor shall think fit, the Scheme shall not be wound up and shall be continued as a Closed Scheme subject to the Rules but the liability of the Sponsor to contribute to the Scheme shall cease upon the occurrence of the event causing the determination of the trusts of the Scheme.
- (d) In the event of the Sponsor giving to the Trustees such notice as is referred to in clause 8 hereof, the Trustees may request an Actuary to propose an arrangement to make provision for such amended benefits and contributions as may be necessary. The arrangement shall then be submitted to the Sponsor and the Trustees for adoption or rejection. If the proposed arrangement is rejected by the Sponsor or the Trustees, the Scheme shall be wound up in accordance with the RBA. Should the proposed arrangement be adopted, details relating thereto shall be circulated to Members, Pensioners and deferred Pensioners affected by the proposed arrangement.

33. LAW AND CURRENCY

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

34. CLAIMS ONLY IN ACCORDANCE WITH THE 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 Fund 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.

35. ARBITRATION

Save where the decision of the Trustees is made final under the provisions of this Deed, if at any time hereafter any dispute, difference or question shall arise between the Sponsor, the Trustees, the Members, the Members' Dependants 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 any of them under this Deed or otherwise howsoever in relation to the Scheme 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 then Chairman for the time being of the Chartered Institute of Arbitrators, Kenya Branch and the result of which arbitration shall be final and binding upon all parties and the proceedings shall be regulated by the provisions of the Arbitration Act or any law or instrument amending, extending or replacing that Act.

36. REGISTERED OFFICE

The registered office of the Scheme shall be the Land Reference Number 209/8407, Harry Thuku Road, P.O. Box 30197, Nairobi or such other place as the Trustees may from time to time determine and notify to the Authority.

37. 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 and delivered or addressed to the Trustees care of the principal office for the time being of the Sponsor or, if a Corporation shall be a sole trustee, at the place of business of the Corporation.

38. HEADINGS

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

THE SCHEDULE

THE RULES OF UNIVERSITY OF NAIROBI

PENSION SCHEME 2007

RULE 1. MEMBERSHIP

- a. Any person who was a Member of the Old Scheme at the Commencement Date (“Defined Benefit Member”) shall be entitled to become a Member in accordance with this Rule. Such Defined Benefit Member must at the same time transfer a sum representing the value of his accrued rights under the Old Scheme to the Scheme (the “**Transfer Amount**”). The Transfer Amount will be calculated by the Trustees on the advice of the Actuary.
- b. The Transfer Amount shall be credited to the Member’s account in the Scheme on the date on which it is received by the Trustees. No benefits will then be payable to the Defined Benefit Member under the Old Scheme.
- c. The Sponsor may give a Defined Benefit Member who did not join the Scheme on the Commencement Date (or within such further period as the Sponsor may stipulate) another opportunity to become a Member of the Scheme. If such Defined Benefit Member then wishes to become a Member of the Scheme, the provisions of paragraphs (a) and (b) of the this Rule shall apply.
- d. Any person employed by the Sponsor on or after the Commencement Date shall, on becoming an Eligible Employee, become a Member of the Scheme and such membership shall be effected by completion and submission to the Trustees of a form prescribed by the Trustees for that purpose and shall be effective from the Entry Date coincident with or next following the date upon which the Trustees receive such completed form.
- e. A Member may not thereafter cease to be a Member (except as otherwise provided in these Rules or prescribed by law) whilst he is employed by the Sponsor and no moneys shall be payable to a Member while he remains in the service of the Sponsor.

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- f. An employee who fails to join the Scheme when he becomes an Eligible Employee may elect to become a Member within a period not exceeding twelve (12) months of becoming eligible, failing which, he shall not be entitled to become a Member at a later date unless special permission of the Trustees and the Sponsor is obtained and subject to the approval of the RBA.
 - g. A Member who leaves employment of the Sponsor and ceases to be a Member as a result thereof, shall on being re-employed by the Sponsor and becoming an Eligible Employee, become a Member again on the Entry Date coincident with or next following the date on which he again becomes an Eligible Employee.
 - h. Every Member shall produce to the Trustees evidence of age satisfactory to the Trustees for himself and such of his Dependants as the Trustees may require and shall give the Trustees such other information as they may require for the purpose of the Scheme Provided That if satisfactory evidence of age of such Member or Dependant is not produced the Trustees may at their absolute discretion determine the date of birth for the purposes of the Scheme.

RULE 2. CONTRIBUTIONS

(a) (i) Member's Contributions

Subject to the provisions of these Rules, every Member shall from his Entry Date, contribute to the Scheme in each Contribution Year an amount of seven percentum (7%) of his Salary less any amount contributed by the Member to the National Fund. Such contributions shall be deducted by the Sponsor from the Salary in twelve equal monthly instalments and paid to the Trustees or in accordance with their directions.

(ii) Additional Voluntary Contributions

- a. A Member may elect to pay additional voluntary contributions. The amounts of these contributions and the intervals at which they are paid shall be agreed with the Trustees. If the Trustees so require, a Member shall give notice of his intention to start, reduce, or stop paying additional voluntary contributions.

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- b. Each Member's additional voluntary contributions will be accounted for separately from all the other assets of the Scheme. The proceeds will be used to provide additional benefits for, or in respect of, the Member and shall be fully commutable. The additional benefits will comply so far as possible with any wishes notified in writing by the Member to the Trustees.

(iii) Sponsor's Contributions

Subject to the rights reserved to the Sponsor by The Trust Deed, from the Commencement Date or from any Member's Entry Date (as the case may be), the Sponsor shall contribute in respect of such Member an amount equal to fifteen per centum (15%) of the Member's Salary (less any contribution on behalf of the Member to the National Fund) or such higher amount as the Sponsor may determine from time to time. Such contributions shall be made in equal monthly instalments and paid to the Trustees together with the Member's contributions;

Provided That the aggregate contributions to the Scheme in each Contribution Year (including any additional voluntary contributions) by the Member and the Sponsor in respect of the Member that are deductible for tax purposes under the Income Tax Act shall not exceed 30% of the Member's pensionable income (as defined in the Income Tax Act) for such Contribution Year or two hundred and forty thousand Shillings (Shs.240,000) whichever is the less or such other greater amount as may be prescribed from time to time under the Income Tax Act Provided Further That the rates of contribution specified under (i) and (iii) of paragraph (a) of this Rule may be adjusted downwards by the Sponsor in the event that emoluments not included in the Salary of a Member are subsequently added thereto or consolidated therewith but only to the extent that any such adjustment does not reduce the accrued benefit of a Member.

- b. All contributions in respect of any Member shall be paid to the Trustees before the tenth day of every calendar month or any other day as may be notified or approved by the Authority. Any contributions not remitted within the stipulated period shall attract interest at a rate determined by the Trustees on the advice of the Actuary or the Fund Manager and shall be payable by the Sponsor on demand by the Trustees or otherwise recoverable summarily as a civil debt owed by the Sponsor to the Scheme.

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- c. Contributions in respect of a Member shall cease to be payable as from the first day of the Contribution Year in which he reaches Normal Retirement Date or from any earlier date upon which he ceases to be a Member Provided That contributions in respect of a Member who remains in the permanent service of the Sponsor after Normal Retirement Date shall continue until the last day of the month immediately preceding the date of his actual retirement.
 - d. All benefits derived from contributions made by a Member shall vest immediately in such Member.
 - e. Notwithstanding anything to the contrary herein contained, all benefits in respect of a Member should be fully vested in a Member within three (3) years of joining service of the Sponsor.
 - f. Any contributions owing in respect of a Member shall become a first charge upon any benefit payable to him or his Dependents or personal representatives under the Rules and may be deducted therefrom or appropriate adjustments made in respect thereof.
 - g. In the event of a Member being temporarily absent from work the Trustees may, at the request of the Sponsor and provided that the Member shall not be in receipt of any Salary, permit the contributions of the Sponsor in respect of such Member to be suspended for a period not exceeding forty-eight consecutive calendar months in the case of illness or injury or twelve consecutive calendar months where the absence is due to any other cause. During the period of such absence the Member shall be deemed for the purpose of the Scheme to remain a Member. On such Member's return to work, unless the arrears of contributions (if any) shall then be paid, the amount of benefit to which the Member will become entitled under the Rules shall be reduced by the amount of benefit that would have been purchased by the unpaid contributions. If, after the expiration of the period of such suspension, the Member has not returned to work, his membership will be deemed to have terminated from the date such suspension commenced and his entitlement under the Scheme shall be in accordance with Rule
 - h. The provisions of Rule 2(g) shall apply mutatis mutandis to the absence of a Member

who is seconded by the Sponsor to the service of another employer provided that any longer period of absence shall require the prior approval of the Council.

RULE 3. LIFE ASSURANCE BENEFIT

- (a) Upon an Eligible Employee becoming a Member of the Scheme, the Trustees may from the funds of the Scheme effect with a reputable insurance company (which is also a Registered Insurer), a life assurance cover in respect of the Member for an amount equal to five (5) times such Member's Salary and may, increase such cover from time to time as shall be necessary to maintain its equivalent in amount to five (5) times the Member's Salary for so long as a Member remains in service of the Sponsor.
- (b) The Trustees shall not effect such life assurance cover in respect of a Member who is absent from work on account of injury or illness on the date of his becoming a Member until he shall have returned to work and remained in active and continuous employment for two consecutive calendar months.
- (c) The Trustees may prior to effecting any such life assurance cover or at any time subsequent thereto require from any Member evidence of health satisfactory to the insurance company provided that if such evidence shall not be satisfactory to the insurance company, the life assurance benefit in respect of such a Member may be subject to such conditions or limitations as the insurance company may reasonably impose.
- (d) The proceeds of the life assurance cover effected by the Trustees pursuant to the provisions of this Rule shall be applied by the Trustees in the manner described in Rule 9 *mutatis mutandis*.
- (e) The Trustees shall have the option of paying the death in service benefits under Rule 9 from the funds of the Scheme instead of effecting a life assurance cover in terms of paragraph (a) of this Rule.

RULE 4. PENSION BENEFITS AT NORMAL RETIREMENT DATE

- a.) Subject to the provisions of the Trust Deed and these Rules each Member who shall retire from the service of the Sponsor at Normal Retirement Date shall be entitled to a pension for life of such an amount as shall be then purchased by his Fund Credit according to immediate annuity rates applicable at his age available at the time of purchase from an insurance company (which is also a Registered Insurer) selected by the Member or by the Member on the advice of the Trustees or the Actuary.
- b. The pension shall be payable to a Pensioner by equal monthly instalments the first such being payable on the last day of the month following the Member's Normal Retirement Date and thereafter throughout the remainder of his lifetime ceasing with the monthly instalment due immediately before the date of his death.

RULE 5. EARLY RETIREMENT/ILL HEALTH RETIREMENT

- (a) A Member who retires with the consent of the Sponsor before Normal Retirement Date after having completed a minimum of three years of Pensionable Service and attaining the age of fifty (50) years or earlier on grounds of ill health as certified by a qualified medical practitioner approved by the Sponsor shall be paid forthwith a pension for life of an amount based on the total amount of his Fund Credit according to immediate annuity rates applicable at his age which are available from an insurance company (which is also a Registered Insurer) selected by the Member or by the Member on the advice of the Trustees or the Actuary.
- (b) Such pension shall be payable by equal monthly instalments the first of which shall be payable on the first day of the month following the date of actual retirement and the last on the first day of the month during which the Pensioner's death shall occur.

RULE 6. LATE RETIREMENT

If a Member remains in the permanent service of the Sponsor after Normal Retirement Date then commencing from the Member's actual date of retirement, the Pensioner shall be paid a pension based on the total amount of his Fund Credit according to immedi-

ate annuity rates applicable at his age which are available from an insurance company (which is also a Registered Insurer) selected by the Member or by the Member on the advice of the Trustees or the Actuary and payable as provided under Rule 4 for a pension commencing on Normal Retirement Date.

RULE 7. RESIGNING FROM SPONSOR'S SERVICE

- a.) Should a Member leave the service of the Sponsor before completing three (3) years of Pensionable Service he shall be entitled to a refund the Member's Portion and that part of the Sponsor's Portion relative to his completed years of Pensionable Service in accordance with the following Scale.

The Scale Hereinbefore Referred To

Number of Years of Pensionable Service	Percentage Entitlement to Benefit of Sponsor's Portion
Less than 1 year	Nil
1 year but less than 2	35%
2 years but less than 3	50%
3 years or more	100%

- b. Should a Member leave the service of the Sponsor after completing three (3) or more years of Pensionable Service, but prior to Normal Retirement Date, he shall be entitled to the whole accumulated value of the Sponsor's Portion and also have one of the following options:
- (i) to take a deferred pension commencing on his Normal Retirement Date for the amount represented by the Member's Portion and the Sponsor's Portion; or
 - ii) to take in cash a refund of his Member's Portion upto the date of leaving service; and
 - (iii) a reduced deferred pension commencing on his Normal Retirement Date for the amount represented by the Sponsor's Portion Provided That where a Member is emigrating from Kenya without any present intention of returning to reside in

Kenya and the Trustees have (with a copy to the Authority) approved in writing the withdrawal of the Sponsor's portion, the Member may take in cash a refund of the whole of his Fund Credit; or

- (iv) to transfer his benefits or the amount represented by the Sponsor's Portion to another scheme or fund in accordance with Rule 21.
- (c) Failure of a Member to elect any of the options under paragraph (b) above within ninety (90) days of termination of service will cause the provisions of paragraph (b)(i) of this Rule to apply.
- (d) Any deferred pension under paragraph (b) above shall be paid in accordance with the provisions of Rule 4.
- (e) If a Member entitled to a deferred pension under paragraph (b) above should die before his Normal Retirement Date, the whole of his Fund Credit shall be held by the Trustees upon trust to be paid by them in accordance with the discretionary and other powers referred to in Rule 9(a) *mutatis mutandis*.
- (f) A Member who leaves service at least a year before his Normal Retirement Date, but is entitled to a deferred pension or a reduced deferred pension in the Scheme in terms of Rule 7(b) may transfer the retained benefit to another scheme or fund in accordance with Rule 21. The Member may exercise this right by applying in written to the Trustees at any time up to a year before Normal Retirement Date (or if later six (6) months after leaving service) Provided That the Member must exercise this right in respect of the whole of the retained pension.
- (g) A Member entitled to a deferred pension or a reduced deferred pension in terms of Rule 7(b) may request the Trustees to provide a reduced pension before Normal Retirement Date and such reduced pension shall be determined by the Trustees on the advice of Actuary Provided That such request may only be made by a Member who has attained the age of fifty (50) years
- (h) Where a benefit has been paid to a Member as a lump sum in terms of Rule 7(a) or Rule 7(b)(ii) or transferred in terms of Rule 7(f), the Member shall have no further claim on the Scheme or the Trustees.

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- (i) Subject to the provisions of paragraph (b) above, a Member who leaves service of the Sponsor owing to a general scheme for reduction or re-organisation of staff or to retrenchment generally shall be entitled to the full benefit of the Sponsor's contributions.
 - (j) Any portion of the Sponsor's contributions not utilised as aforesaid shall be retained by the Trustees and may be applied towards the Sponsor's costs and expenses under the Scheme or be set off against the Sponsor's contributions the following or any subsequent year.

RULE 8. OPTION FOR SPOUSE/DEPENDANT PENSION

If a Member is already married at the date on which he is entitled to receive a pension in terms of Rule 4, 5, 6 or 7 (as the case may be), the Member may elect that instead of the pension provided for in terms of Rule 4, 5, 6 or 7 (as the case may be) his Fund Credit be applied to provide a pension to the Member until his death and thereafter a pension payable to his surviving Spouse or such of the Member's Dependants and in such proportions as the Trustees shall in their absolute discretion determine, commencing on the day following the deceased Member's death and continuing until the last day of the month in which the Spouse or the Dependant dies, of such an amount as the Member may in his discretion determine or in the alternative, the pension secured for the Member shall be such that should the Member die within five (5) years of the commencement of the pension, then the pension will continue to be paid to the Member's Spouse or such of the Member's Dependants and in such proportions as the Trustees shall in their absolute discretion determine for the balance of the five (5) year period. The amounts of such pension and the lump sum required to provide for the Spouse's pension shall be determined according to immediate annuity rates available at the time of purchase from an insurance company selected by the Member or by the Member on the advice of the Trustees or the Actuary.

RULE 9. DEATH IN SERVICE BENEFITS

a. Lump Sum Death Benefits

- i. Upon the death of a Member whilst in the service of the Sponsor before

attainment of Normal Retirement Date, a lump sum equal to five (5) times the Member's Salary shall be held by the Trustees Upon Trust with power to be exercised (if at all) before the expiration of the Trust Period and within one year after the date of death of the Pensioner for the beneficiary or beneficiaries nominated by the Member in accordance with Rule 13 and in such proportions as may have been stipulated by the Member for the absolute use and benefit of such beneficiary or beneficiaries, to pay the benefits due to such beneficiary or beneficiaries with all reasonable expedition once the fund representing the benefits are to hand and subject to the beneficiary or beneficiaries providing such evidence of identity as may reasonably be required by the Trustees in support of such person's claim.

- ii. If the lump sum benefit payable under paragraph (i) of this Rule is insured with a Registered Insurer in terms of Rule 3, then the amount payable shall be limited to the amount paid by the insurer and shall only become payable upon receipt by the Trustees.
- iii. Notwithstanding the provisions of subparagraph (i) above, the Trustees may in their discretion refuse to pay a nominated beneficiary or beneficiaries provided that the reasons for such refusal shall be recorded in writing by the Trustees.
- iv. In the event that the Member shall not have made a valid nomination of a beneficiary or beneficiaries in accordance with Rule 13 or if the Trustees shall exercise their power to refuse to pay a nominated beneficiary or beneficiaries then the Trustees shall hold the benefits payable hereunder upon trust for such of the Member's Dependents in such proportions as the Trustees shall in their absolute discretion decide or upon trust for the Member's Personal Representatives to be distributed by them, in the case of a Member leaving a valid Will, not as part of his estate but in accordance with those provisions of his Will applicable to his residuary estate or in the case of intestacy not as part of his estate but to those persons entitled and in the shares laid down by the laws of intestacy applicable to such Member if he had died solvent and such sum or part thereof as aforesaid comprised his entire estate.

b. Pension payable to surviving Spouse and/or Dependants

If a Member dies in service of the Sponsor before Normal Retirement Date:

- (i) and, is survived by a Spouse or Dependants, then in addition to the lump sum benefit described in Rule 9(a)(i) above, a pension shall be paid to the surviving Spouse or the Member's Dependants, commencing on the day after the Member's death and in such proportions and in such manner as the Trustees in their absolute discretion determine. The pension or pensions paid, shall in aggregate, be of such amount as shall then be purchased by the Members' Fund Credit at date of death according to immediate annuity rates available at the time of purchase from an insurance company (which is also a Registered Insurer).

- (ii) and, leaves no surviving Spouse or Dependants, then in addition to the lump sum benefit described in Rule 9(a)(i) above, a lump sum equal to the Member's Fund Credit at the date of death shall be held by the Trustees Upon Trust to be paid by them in accordance with the discretionary and other powers referred to in Rule 9(a)(i) *mutatis mutandis*.

RULE 10. RESERVE ACCOUNT

The Trustees may establish an account in the books of the Scheme to be known as "Reserve Account" and which may from time to time be credited or debited with such amount as the Trustees may in their absolute discretion determine. If the Reserve Account is established and maintained in terms of this Rule, a Member shall receive a share of such Reserve Account upon being paid benefits in respect of retirement or death as the case may be.

RULE 11. LUMP SUM PAYMENT PERIOD AND INTEREST

Any lump sum payable to a Member or his Dependants or nominated beneficiaries hereunder shall be paid to the Member or Dependant or nominated beneficiaries within ninety (90) days of the due date of payment. In the event that such payment is not made within such ninety (90) days period, the Trustees shall pay interest on the delayed payment or any part thereof Provided That such interest shall not be less than the investment inter-

est declared in respect of the Scheme in the year the payment was due to the Member or his Dependants or nominated beneficiaries.

RULE 12. COMMUTATION OF PENSION

The Trustees may in their absolute discretion, subject only to the consent of the Sponsor, the provisions of the RBA or the Income Tax Act and the advice of the Actuary, grant to a Member in lieu or in commutation of the pension to which the Member would be entitled to hereunder and payable on the date on which such pension would have commenced, a lump sum payment not exceeding one third of such pension and a non-commutable and non-assignable pension commencing on the date such pension would have commenced in respect of the balance of such pension Provided That benefits arising from any additional voluntary contributions by the Member may be fully commuted and any Trivial Pension may be paid by way of a lump sum in lieu of any pension entitlement.

RULE 13. NOMINATION OF BENEFICIARY

- a. A Member may, during his lifetime, nominate a beneficiary or beneficiaries of the benefits payable by virtue of Rule 9 by properly and fully completing the relevant form prescribed by the Trustees from time to time and returning the same to the Trust Secretary at the registered office of the Scheme.
- b. If a nominated beneficiary predeceases the Member then the nomination in that person's favour will fail.
- c. A Member is free to revoke the nomination of any beneficiary at any time or to amend the proportion of the benefits payable to such beneficiary but such revocation or amendment shall not be effective until express written notice of it on the form prescribed from time to time by the Trustees is received by the Trust Secretary at the registered office of the Scheme.
- d. If a Member on his death shall have made a Will which specifically gives or bequeaths the benefits payable under Rule 9 to a named or identifiable beneficiary or beneficiaries who shall have survived the Member then subject to Probate of that

Will being granted by the Court in Kenya then the Trustees shall have the absolute discretion to treat such gift or bequest of the benefits as a proper nomination of a beneficiary for the purposes of this Rule and pay the benefits to the executor or executors of the Member named in the Grant of Probate provided that they shall not have paid the benefits already to the Member's Dependants pursuant to Rule 9(a) (i).

RULE 14. DISCRETIONARY BENEFITS

If the Sponsor requests and pays any additional contributions that the Trustees consider prudent (for which purpose, the Trustees will seek and consider actuarial advice), the Trustees may provide;

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

RULE 15. BENEFITS NON-ASSIGNABLE

No Member or any other person may transfer, alienate, assign, charge or anticipate absolutely by way of security or otherwise his rights and interest or any part thereof in the Scheme or the moneys thereof, whether or not the same may be standing to his credit in any account of the Scheme and no purported transfer, assignment, alienation or anticipation of such rights and interest or any part thereof should be binding upon the Trustees notwithstanding service on them of notice of such transfer, assignment, alienation or anticipation.

RULE 16. INCAPACITY OF PENSIONER

If a Pensioner, Dependancy or other person to whom the Trustees are making payments or to whom any benefit has become payable shall be suffering from any physical or mental

incapacity (as to which a certificate from a qualified medical practitioner to the effect that such Pensioner, Dependant or other person is so suffering may be accepted by the Trustees as conclusive evidence) or is an infant, the Trustees may, if in their absolute discretion they think it advisable, pay or apply the whole or any part of such payments to any person or persons, association or corporate body on behalf of such Pensioner, Dependant or other person without being bound to see to the application thereof, and the receipt of such person or persons, association or corporate body shall be a complete discharge to the Trustees for such payment.

RULE 17. POWERS CONFERRED ON SPONSOR

The exercise of any power, right or discretion conferred on the Sponsor by this Deed or the Rules shall be evidenced by the Sponsor in writing.

RULE 18. SPONSOR'S RIGHT OF DISMISSAL

Nothing in the Rules shall in any way restrict the right of the Sponsor or its duly authorised servant to terminate the employment of any Member, and the existence or cesser of any actual or prospective or possible benefit under this Deed or the Rules shall not increase or affect the damages in any action brought against the Sponsor in respect of any termination of employment or otherwise.

RULE 19. PROHIBITED PAYMENTS

- a. No payment shall be made to the Sponsor without the prior consent in writing of the Commissioner and of the Authority.
- b. No payment shall be made hereunder to a Member while he remains in the service of the Sponsor.
- c. No moneys shall be paid or payable out of the Scheme by way of loans, advances or any other similar payment to a Member or any other person.

RULE 20. ACCOUNTS, ANNUAL REPORTS AND ACTUARIAL REVIEWS

- a. The Trustees will prepare annual accounts of the Scheme and have them audited

by the Auditor and submitted to the Authority together with the trustees' and investment reports within four (4) months from the end of the Financial Year. The audited accounts will comply with the RBA. A copy of the annual accounts shall also be submitted to the Sponsor, the Commissioner and the Commissioner of Insurance within four months of the end of the Financial Year.

- b. Where a surplus is identified by the annual audit, such surplus shall be allocated to the accounts of the Members until the surplus is exhausted. Such allocation will be deemed to be contributions to the Scheme by the Sponsor.
- c. The Trustees will prepare annual reports which will contain:-
 - (i) a copy of the audited accounts;
 - (ii) trustees' and investment reports; and
 - (iii) such other information as is or may be required under the RBA.
- d. The annual audited accounts and reports described in (a) and (b) above will be prepared and made available for inspection by the Members within six (6) months after the end of the Financial Year to which they relate.
- e. Each Member shall within six (6) months after the end of each Financial Year receive from the Trustees a summary of the audited accounts together with the Member's benefit statement.
- f.
 - (i) The Trustees will obtain an actuarial review of the Scheme from the Actuary as required by the Authority from time to time. The actuarial review will comply with the RBA.
 - (ii) The Trustees shall within three (3) months of receipt of the actuarial review notify the Members that the review or an abstract thereof is available for their inspection at the registered office of the Scheme or such other place and at such times as the Trustees may specify.

RULE 21. TRANSFERS TO OTHER SCHEMES

In the event of an employee ceasing to be a Member and becoming a member of any

other scheme, fund or arrangement approved for the purpose of this clause under the RBA and the Income Tax Act, the Trustees may instead of granting to the Member the benefits which he would otherwise be entitled under the Scheme and with the prior consent of the Commissioner and the Authority transfer to such other scheme, fund or arrangement an amount to be determined by the Trustees and the Trustees may require inter alia as a condition of any such transfer, a discharge of all liabilities in terms satisfactory to them.

RULE 22. TRANSFERS FROM OTHER SCHEMES

The Trustees may with the prior consent of the Commissioner and the Authority accept funds or assets in respect of a person or member of any other scheme, fund or arrangement. The proportion of the funds or assets which represent such person's contributions with interest as certified by the person authorised so to do by the transferring scheme or fund shall be conclusive evidence as between the Trustees and the transferring scheme or fund of the facts therein contained.

RULE 23. TAX, DUTIES AND OTHER DUES

If the Trustees or the Sponsor or any of them are accountable for tax duties or other dues on any benefit payable under the Scheme an appropriate deduction to meet the same may be made and the amount of the benefits will then be reduced accordingly or the Trustees may postpone payment of the benefit until arrangements satisfactory to them have been made to meet the same.

RULE 24. REGISTER

The Trustees shall maintain a register in which will be entered the name and dates of birth of all Members and their marital status, i.e. single, married or widowed. A Member shall advise the Trustees forthwith of any change in his marital status and supply the following information as relevant for the registration of potential beneficiaries:

- (i) The name, address and the date of birth of his Spouse;
- (ii) The name and date of birth of any child born to him or his wife;
- (iii) The adoption of any child by him or his Spouse;

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- (iv) The death of any Dependant; and
 - (v) The annulment or dissolution of his marriage.

The Trustees may require a Member to make a declaration that there are no persons dependant on him, other than those who have already been registered as Dependents. The Trustees shall also have registers and records kept that will enable an Actuary to conduct an actuarial review of the Scheme at any time.

RULE 25. ISSUE OF MEMBERSHIP CERTIFICATE AND RULES

Each Member on the admission to membership shall be issued with a certificate of membership or a distinctive membership number and upon written notice to the Trustees shall at any reasonable time be permitted to inspect a copy of the Trust Deed and the Rules.

RULE 26. AMENDMENT OF RULES

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

RULE 27. RELATIONSHIP OF SCHEME TO GOVERNMENTAL FUNDS

The benefits and contributions provided for under the Rules have been introduced having regard to the provisions of the National Social Security Fund Act, 1965 as applicable at the date hereof. If after the date hereof contributions to the National Social Security Fund payable by the Members and or the Sponsor are increased, the Sponsor reserves the right, notwithstanding any of the provisions of the Trust Deed or the Rules, to amend the Rules by way of reduction in the benefits or contributions as the case may require by an amount not exceeding the equivalent amount of each and every increase in the contributions required by any amendment or re-enactment of the National Social Security Fund Act 1965. Similarly, should there be introduced in Kenya a statutory National Provident Fund (by whatsoever names such a fund be known) to which the Sponsor and/or the Members are required to contribute the Sponsor reserves the like right to amend the Rules in like manner and subject to similar conditions.

RULE 28. HEADINGS

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

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

Vice-Chancellor)

Deputy Vice-Chancellor,)

Administration and Finance)

SIGNED SEALED and **DELIVERED** by)
the said **PROFESSOR GEORGE ALBERT**)
OMORE MAGOHA in the presence of:-)

SIGNED SEALED and DELIVERED by)
the said **PROFESSOR PETER MULWA**)
FELIX MBITHI in the presence of:-)
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SIGNED SEALED and DELIVERED by)
the said **ISAAC ODUNDO AWUONDO**)
in the presence of:-)
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SIGNED SEALED and DELIVERED by)
the said **DR FRANK GITAU NIENGA**)
in the presence of:-)
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SIGNED SEALED and DELIVERED by the)
said **PROFESSOR CLEMENT MESHACK**)
PETER ONIANG'O in the presence of:-)
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the said **PROFESSOR LUCY WACHUHI**)
IRUNGU in the presence of:-)
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the said **GERISHON PETER MBUGUA**)
in the presence of:-)
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the said **NAFTALI ARODI OYUGI**)
in the presence of:-)
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SIGNED SEALED and DELIVERED by)
the said **PROFESSOR PATRICK OBONYO**)
OCHIENG' DIGOLO in the presence of:-)
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the said **DR. JOHN MWANGI**)
in the presence of:-)
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the said **TOM OWANO KONGERE**)
in the presence of:-)
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SIGNED SEALED and DELIVERED by)
the said **SAMUEL NGUMI KIRUMBA**)
in the presence of:-)
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DEED OF AMENDMENT

DATED _____ 2008

PROFESSOR GEORGE ALBERT OMORE MAGOHA
PROFESSOR PETER MULWA FELIX MBITHI
ISAAC ODUNDO AWUONDO
PROFESSOR LUCY WACHUHI IRUNGU
GERISHON PETER MBUGUA
NAFTALI ARODI OYUGI
DR JOHN MWANGI
TOM OWANO KONGERE
(the "Trustees")

– AND –

UNIVERSITY OF NAIROBI
(the "Sponsor")

**TRUST DEED AND RULES OF
UNIVERSITY OF NAIROBI PENSION SCHEME 2007**

KAPLAN & STRATTON
Advocates

Williamson House
4th Ngong Avenue
P.O. Box 40111
Nairobi 00100
Tel.: +254 (020) 2841000
Fax: +254 (020) 2734667
E-mail: ks@kapstrat.com

THIS THIRD DEED OF AMENDMENT is made on

2008 between:

1. PROFESSOR GEORGE ALBERT OMORE MAGOHA, PROFESSOR PETER MULWA FELIX MBITHI, ISAAC ODUNDO AWUONDO, PROFESSOR LUCY WACHUHI IRUNGU, GERISHON PETER MBUGUA, NAFTALI ARODI OYUGI, DR JOHN MWANGI and TOM OWANO KONGERE (together the “Trustees”) all care of P.O. Box 30197, Nairobi, Kenya; and
2. UNIVERSITY OF NAIROBI (the “Sponsor”) a statutory body established under the University of Nairobi Act (Cap 210, Laws of Kenya) and of P.O. Box 30197, Nairobi, Kenya;

AND IS SUPPLEMENTAL TO a Trust Deed (the “Trust Deed”) dated 13th June 2007 made between the persons therein named as trustees of the one part and the Founder of the other part being the Trust Deed and Rules (the “Rules”) of **UNIVERSITY OF NAIROBI PENSION SCHEME 2007** (the “Scheme”).

WHEREAS:

- A. The Trustees are the present trustees of the Scheme.
- B. By Clause 27 of the Trust Deed, the Trustees are empowered to amend the provisions of the Trust Deed and the Rules Provided That no such amendment shall become effective unless it is approved and registered by the Retirement Benefits Authority and the Commissioner of Income Tax.
- C. The Trustees have resolved to amend the Trust Deed and the Rules in the manner and to the extent hereinafter appearing.
- D. The amendments hereby effected have been approved by the Sponsor as is testified by the Sponsor’s execution hereof.

NOW THIS DEED WITNESSES as follows:

1. In pursuance of the powers conferred upon the Trustees by clause 27 of the Trust Deed and all other powers enabling, the Trustees **Hereby Amend** the Trust Deed and the Rules in the manner hereinafter appearing:-

THE TRUST DEED

a. Clause 1

By deleting the definition of “**Corporation**” in clause 1(a) and substituting therewith the following:

“**Corporation**” means a corporate trustee or a trust corporation with the meaning of section 2 of the RBA, namely, a trust company incorporated under the Companies Act (Cap 486), having a subscribed capital of not less than ten million shillings which is for the time being empowered (by or under any written law, its charter, memorandum or association, deed of settlement or other instrument constituting it or defining its powers), to undertake trusts but for so long a time only as that body corporate shall not, by any prospectus, circular, advertisement or other documents issued by it or on its behalf, state or hold out that any liability attaches to the Public Trustee or to the Consolidated Fund in respect of any act or omission of that body corporate when acting as an executor or administrator.”

By adding the following after the word “RBA” in the definition of “**Guaranteed Fund**”:

“...namely, an asset class issued by an approved issuer, whereby the approved issuer, inter alia, guarantees the accumulated capital of the Scheme together with the investment income thereof in accordance with the terms of the guaranteed fund contract entered into between the approved issuer and the Scheme.”

b. Clause 2

By deleting clause 2 and substituting therewith the following:

“The name of the Scheme shall be the “**University of Nairobi Pension Scheme 2007**” previously known as the “**University of Nairobi Staff Retirement Benefits Scheme 2007**”.

c. Clause 12

By deleting clause 12(1) (a) and substituting therewith the following:

“The Trustees shall appoint a chairman of the Board from amongst their number as they shall determine Provided Always That neither the Chief Executive Officer of the Sponsor nor the Administrator shall be eligible for appointment as chairman.”

c. Clause 13

- (i) By deleting clause 13(a) and substituting therewith the following:–
- (a) Subject to the Sponsor deciding to appoint a Corporation as a sole trustee under the provisions for such appointment hereinafter appearing, the Board shall comprise of eight (8) Trustees as follows:

Four (4) Trustees who are appointed and may be removed by the Sponsor by deed or a resolution of the Council;

Two (2) employees on full time service of the Sponsor who are elected and may be removed by the Academic Staff;

Two (2) employees on full time service of the Sponsor who are elected and may be removed by the Non-Academic Staff.

Provided That the number of Trustees shall always not be less than four (4) and not more than nine (9).

By deleting the last sentence of clause 13 (b)

d. Clause 15

By deleting the word “Directors” appearing on the 1st line of clause 15 and substituting therefor the word “Council”.

e. Clause 27

By deleting the words “alter” in the first line, the words “or modify” in the second line, the words “alteration” and “or modification” in the third line of Rule 27 and the words “alteration” and “or modification” in the first line of the proviso to Rule 27.

THE RULES

Rule 2(e)

By deleting the expression "...within three (3) years of joining service of the Sponsor" appearing in Rule 2(e) and substituting therefor the expression "...after one (1) year of joining service of the Sponsor..."

Rule 7

By deleting Rule 7 and substituting therewith the following:—

"7. RESIGNATION OR DISMISSAL FROM SERVICE OF THE SPONSOR

Should a Member leave the service of the Sponsor before completing one (1) year of Pensionable Service he shall be entitled to a refund of the Member's Portion and shall have no entitlement to the benefit of the Sponsor's Portion.

Should a Member leave the service of the Sponsor after completing one (1) or more years of Pensionable Service, but prior to Normal Retirement Date, he shall be entitled to the whole accumulated value of the Sponsor's Portion and also have one of the following options:

to take a reduced deferred pension commencing on his Normal Retirement Date for the amount represented by the Sponsor's Portion and the Member's Portion **Provided That** where a Member is emigrating from Kenya without any present intention of returning to reside in Kenya and the Trustees have (with a copy to the Authority) approved in writing the withdrawal of the Sponsor's Portion or retires on grounds of ill health under Rule 5 or subsequent to his retirement, the Member becomes incapacitated on grounds of health, which if the Member was in employment, would occasion retirement, the Member may take in cash a refund of the whole of his Fund Credit; or

to transfer his Fund Credit to another scheme or fund in accordance with Rule 21. Any deferred pension under paragraph (b) above shall be paid in accordance with the provisions of Rule 4.

If a Member entitled to a deferred pension under Rule 7(b) above should die before

his Normal Retirement Date, the whole of his Fund Credit shall be held by the Trustees upon trust to be paid by them in accordance with the discretionary and other powers referred to in Rule 9(a) mutatis mutandis.

A Member entitled to a deferred pension or a reduced deferred pension in terms of Rule 7(b) above may request the Trustees to provide a reduced pension before Normal Retirement Date and such reduced pension shall be determined by the Trustees on the advice of Actuary Provided That such request may only be made by a Member who has attained the age of fifty (50) years.

Subject to the payment restrictions contained in Rule 7(b) above, a Member who leaves service of the Sponsor owing to a general scheme for reduction or re-organisation of staff or to retrenchment generally shall be entitled to the full benefit of the Sponsor's contributions.

Any portion of the Sponsor's contributions not utilised as aforesaid shall be retained by the Trustees and may be applied towards the Sponsor's costs and expenses under the Scheme or be set off against the Sponsor's contributions the following or any subsequent year.

Rule 11

By deleting the expression "...within ninety (90) days appearing in the 2nd and 3rd lines of Rule 11 and substituting therewith "...within sixty (60) days..."

Rule 13

By deleting the expression "Rule 9" in the first line of Rule 13 and substituting therewith the expression "Rules 2(a)(ii)(b), 9 or 16..."

Rule 16

By deleting Rule 16 in its entirety and substituting therewith the following:

"INCAPACITY OF PENSIONER

If a Pensioner, Dependant or other person to whom the Trustees are making payments or to whom any benefit has become payable shall be suffering from any physical or mental incapacity (as to which a certificate from a qualified medical practitioner to the effect

that such Pensioner, Dependant or other person is so suffering may be accepted by the Trustees as conclusive evidence) the Trustees may, if in their absolute discretion they think it is advisable, pay or apply the whole or any part of such payments to any person nominated as a beneficiary under Rule 13 or to any other person entitled to receive such payment under the law.”

Rule 20

By deleting the expression within four (4) months appearing in the 3rd and 5th lines of Rule 20(a) and substituting therewith the expression “...within six (6) months...”

By deleting the second sentence of Rule 20(b).

1. The above amendments shall be deemed to have come into force on the date hereof.
2. In all other respects the Trust Deed and the Rules shall continue in full force and effect.

IN WITNESS whereof each of the Trustees has set his hand and affixed his seal and the Founder has caused its Common Seal to be affixed hereunto the day and year first above written.

SIGNED SEALED and DELIVERED by)
the said **PROFESSOR GEORGE ALBERT**)
OMORE MAGOHA in the presence of:-)
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FELIX MBITHI in the presence of:-)
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SEALED with the Common Seal of)
UNIVERSITY OF NAIROBI)
and delivered in presence of:)
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Vice-Chancellor)
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Deputy Vice-Chancellor,)
Administration and Finance)



uonpension@uonbi.ac.ke