



THE KENYA PLANT HEALTH INSPECTORATE SERVICE

BOARD CHARTER

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1. INTRODUCTION

The Kenya Plant Health Inspectorate Service (KEPHIS/We/Us/Our/the Service) is a state corporation under the Ministry of Agriculture, Livestock, Fisheries and Irrigation. KEPHIS was established by an Act the Number 54 of 2012. Our responsibility is to assure the quality of agricultural inputs and produce to prevent adverse impact on the economy, the environment and human health.

The KEPHIS Board of Directors (the Boar) regards corporate governance as key to the achievement of our vision “healthy plants, safe trade and sustainable agro-environment for a prosperous Kenya” and mission “to provide a science based regulatory service by assuring plant health, quality of agricultural inputs and produce for food security, globally competitive agriculture and sustainable development” and is committed to applying the core governance principles set out in this Board Charter (the Charter).

1.1 Purpose

This Charter defines the Boards rules and responsibilities as well as functions and structures in a way that supports the members in carrying out their strategic oversight function.

It will help the Board in directing the organization to maximize the long-term value of services provided for all stakeholders. It is therefore imperative for Board members to understand their individual and collective roles with the purpose of helping the organization fulfil its mandate.

The principle and policies contained in the Charter are in addition to and are not intended to change or interpret any statute, law or regulation.

The Board of Directors will review this Charter at least annually and, if appropriate, revise this Charter from time to time.

2. STATEMENT OF GOOD GOVERNANCE

The Board is committed to the highest standards of corporate governance and has ultimate responsibility for ensuring that ethical standards are maintained. As part of this commitment the Board adheres to good corporate governance practices by embracing the following principles:

- a. To observe high standards of ethical and moral behavior;
- b. To act in the best interest of the Service;
- c. To remunerate and provide fairly and responsibly;
- d. To recognize the legitimate interests of all stakeholders; and
- e. To ensure that the Service acts as a good corporate citizen.

By subscribing to this Charter:

- i. Each Director acknowledges to act in the best interest of the Service and uphold their fiduciary responsibilities and duty of care; and
- ii. Each Director commits to act honestly and in good faith so as to create a culture built on principles of integrity, accountability and transparency.

3. GUIDING PRINCIPLES

In line with Section 3 of the Leadership and Integrity Act No. 19 of 2012 of the Laws of Kenya, the Board of Directors shall respect the values, principles and the requirements of the Constitution, including:

- The national values and principles provided for under Article 10 of the Constitution;
- The rights and fundamental freedoms provided for under Chapter Four of the Constitution;
- The responsibilities of leadership provided for under Article 73 of the Constitution;
- The principles governing the conduct of State officers provided for under Article 75 of the Constitution;
- The educational, ethical and moral requirements in accordance with Article 99 (1) (b) and 193 (1) (b) of the Constitution;
- In the case of County Governments, the objectives of devolution provided for under Article 174 of the Constitution; and
- The values and principles of Public Service as provided for under Article 232 of the Constitution

4. THE BOARD OF DIRECTORS

The Board of Directors is the body of appointed members who jointly oversee the activities of the Service. It shall be diverse in its composition, independent but flexible, pragmatic, objective and focused on balanced and suitable performance of the Service.

4.1 Size of the Board

In accordance with the KEPHIS Act a fully constituted Board shall comprise of eleven (11) Directors.

4.2 Board Composition

The composition of the Board of Directors of the Service has already been set out under Section 8 of the KEPHIS Act as follows:

- i. A non-executive chairperson appointed by the President;
- ii. The Principal Secretary to the Treasury or a designated representative;
- iii. The Principal Secretary in the ministry responsible for agriculture or a designated representative; and
- iv. Not more than seven (7) other persons with qualifications as set out in Section 8 (d) of the KEPHIS Act; and
- v. The Managing Director, who shall be the secretary.

4.3 Appointment of Board Members

- i. The relevant appointing authority, including but not limited to the President, The Cabinet Secretary of Agriculture, the Public Service Commission and relevant stakeholders, shall select and appoint Board members. Every appointment shall be by name and by notice in the Kenya Gazette but shall cease if the Board member:
 - a. Serves the appointing authority with a written notice of resignation; or
 - b. Is absent, without the permission of the Chairperson, from three consecutive meetings; or
 - c. Is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding twenty thousand shillings; or
 - d. Is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board; or
 - e. Conducts himself in a manner deemed by the appointing authority to be inconsistent with membership of the Board.
- ii. Any removal of a Board member under (i) above, shall be through formal revocation.
- iii. The Corporation Secretary will ensure that a record of the appointment letter, gazette notice and written acceptance by the Board member are kept in the personal file of the Board member.

4.4 Independence of Board Members

The Directors shall: -

- a. Make decisions independently in discharging their duties;
- b. Declare and manage any actual or perceived conflicts of interest within a set framework;
- c. Be free to seek external independent advice in connection with their duties following a pre-determined process;
- d. Not have served in the Service as an employee until a minimum period of five (5) years has elapsed; and
- e. The Board shall have policies and procedures in place to ensure

independence of its members.

Independent Board Members: The status of independent Board members shall be assessed annually by the Board. Independent Board members bring independent and objective judgement to the Board and this mitigates risks arising from conflict of interest or undue influence from interested parties. An independent Board member is one who:

- a. Has not been employed by the Service in an executive capacity within the last three years;
- b. Is not associated with an adviser or consultant to the Service or a member of the Service's senior management or a significant customer or supplier of the Service or with a not-for-profit entity that receives significant contributions from the Service; or within the last three years, has not had any business relationship with the Service (other than service as a director) for which the Service has been required to make disclosure;
- c. Has no personal service contract with the Service, or a member of the Service's senior management;
- d. Is not employed by a public listed Company/Organization at which an executive officer of the Service serves as a director;
- e. Is not a member of the immediate family of any person described above, or has not had any of the relationships described above with any affiliate of the Service;
- f. Is not a representative of a shareholder who has the ability to control or significantly influence management;
- g. Is free from any business or other relationship which could be seen to interfere
- h. Materially with the individual's capacity to act in an independent manner;
- i. Does not have a direct or indirect interest in the Service (including any parent or subsidiary in a consolidated group with the Service) which is either material to the director or to the Service. A holding of five percent or more is considered material;
- j. Does not hold cross-directorships or significant links with other directors through involvement in other companies or bodies; and
- k. Has not served for more than nine years since they were first elected.

4.5 Age Limit

Board Members shall, unless the shareholders at an Annual General Meeting vote to retain such a member, retire upon attaining seventy (70) years of age.

4.6 Term Limits

Board members shall hold office for a term not exceeding three (3) years, as stipulated under Section 9(1) of the KEPHIS Act. They shall be eligible for reappointment for one further term, subject to the terms and conditions specified in their instrument of appointment and performance reviews.

The appointing authority shall ensure staggering of Board appointments so that the respective expiry dates of the members terms fall at different time to ensure continuity.

4.7 Resignation from the Board

A Board member may resign at any time by giving notice, in writing, to the appointing authority, copied to the Chairperson of the Board and the Managing Director.

The resignation shall take effect upon receipt of notice by the appointing authority or at any later time specified therein; and unless otherwise specified in the notice, the acceptance of such resignation shall not be necessary to make it effective.

4.8 Removal of Directors

The office of a Director may become vacant under the following circumstances:

i. By Statute:

The Director ceases to hold office as provided for under applicable laws.

ii. Death:

The office is vacated upon the death of the Director.

iii. Resignation:

A Director may resign at any time by submitting written notice to the Cabinet Secretary responsible for Agriculture, as per Section 9(2)(a) of the KEPHIS Act.

iv. Removal by the Cabinet Secretary:

A Director may be removed from office by the Cabinet Secretary if:

- The Director is absent from three consecutive meetings of the Board without the permission of the Chairperson.
- The Director is convicted of a criminal offence and sentenced to imprisonment.
- The Director is adjudged bankrupt or enters into a scheme of composition or arrangement with creditors.
- The Director is incapacitated by prolonged physical or mental illness.
- The Director fails to comply with the provisions of the Second Schedule on disclosure of interest.
- The Director engages in conduct deemed inconsistent with membership of the Board by the Cabinet Secretary.
- The Director fails to comply with the leadership and integrity requirements under Chapter Six of the Constitution of Kenya.

4.9 Chairperson of the Board

The Chairperson directs the Board's business and acts as its facilitator and guide ensuring that the Board is effective in its tasks of setting and implementing KEPHIS' direction and strategy.

The role of the Chairperson includes approving the agenda for board meetings, chairing the meetings and ensuring that a record of proceedings of all Board activities is kept.

The Chairperson should act as the spokesperson for the Board and is the principal contact for the MD.

4.10 Role of the Chairperson

The Chairperson shall ensure that:

- The Board satisfies its duties and responsibilities;
- Board members when appointed participate in an induction programme and are thereafter continually developed based on identified development needs;
- Board members receive all information required for them to perform their duties;
- The Board develops and adheres to an annual work plan;
- The Board has sufficient time for consultation and decision-making;
- The Board constitutes committees and that the committee's function properly;
- The performance of the Board, Board members, the MD and the Corporation Secretary is evaluated annually;
- Problems relating to the performance of individual Board members are addressed;
- Internal disputes and conflicts of interest concerning individual Board members are addressed; and
- The Board has appropriate contact with the management.

4.11 Managing Director

The MD is an ex-officio Board member with no voting rights. The MD and the Board play separate and distinct roles but work together to achieve organizational goals.

The Board is responsible for appointing the MD, through a competitive process, and for removing them. The Board should also assist the MD in selecting the management team and put in place a succession plan for both the MD and the team.

The MD is responsible for overseeing the execution of the Board's directions and policies to ensure desirable outcomes. The MD therefore serves as the link between the Board and the Management.

The Board should provide the MD with:

- l. Defined performance goals and authority levels;
- m. An attractive remuneration package;
- n. Regular formal performance review feedback;
- o. Constructive informal feedback on job performance;
- p. Reward for exceptional performance; and
- q. Prompt response to request for guidance or assistance.

The MD should:

- a) Demonstrate commitment to the organization's vision, mission, core values and mandate;
- b) Achieve set performance objectives and targets;
- c) Put in place effective administrative structures, processes and systems;
- d) Provide regular, thorough and prompt communication to the Board on key technical, financial and administrative matters;
- e) Effectively represent the organization to stakeholders and enhance its public image;
- f) Promptly respond to Board members requests for information; and
- g) Notify the Chairperson of the Board of Directors when seeking travel clearance.

4.12 Corporation Secretary

The Board should be assisted by a suitably qualified, competent and experienced Corporation Secretary. The Corporation Secretary should satisfy the requirements of Chapter Six of the Constitution on leadership and integrity and be a Certified Public Secretary in good professional standing.

The Board should empower the Corporation Secretary to efficiently and effectively execute his or her duties and responsibilities.

The Board is responsible for the appointment and removal of the Corporation Secretary.

The principal duties of the Corporation Secretary are:

- (a) Providing guidance to the Board and Board members individually on their duties, responsibilities and powers and how these should be exercised in the best interests of the organization;
- (b) Ensuring that board procedures are followed and reviewed regularly, and that the Board complies with the Law, rules and regulations;
- (c) Assisting the Chairperson in organizing Board activities, including providing information, preparing agenda, issuing notices and preparing for meetings, board evaluations and board development programs;
- (d) Providing secretarial services to the Board including ensuring that the Board work plan is prepared and adhered to, circulating board papers in advance of the meeting, keeping a record of attendance at meetings, keeping safe custody of the seal and a record of its usage, and preparing the Board for annual general meetings where applicable;
- (e) Ensuring that the minutes of the Board and Board committees are promptly prepared and circulated;
- (f) Keeping the Board abreast of and informed on, current governance thinking and practice; and
- (g) Coordinating the governance audit process.

4.13 Relationship Between Board and Management

The Board and Management should execute their mandate in an environment of mutual trust and respect having regard to the principles of good governance. In this regard, the Board shall provide clear and distinct lines of responsibility and accountability, and maintain effective channels of communication.

4.14 Committees of the Board

The Board shall establish committees with specific terms of reference. The Board shall appoint into committees, members with requisite skills and competence to discharge allocated responsibilities.

In the event that a committee lacks specific skills within it the Board may, with the approval of the oversight body, co-opt skilled non-Board members to serve on the committee, provided that the chair of a committee shall not be co-opted member or the Chairperson of the Board.

The Board may, from time to time, rotate Board members between the committees. The Board remains collectively responsible for the decisions and actions taken by any committee. A committee may only perform the tasks delegated to it by the Board and may not exceed the authority or powers of the Board.

The Chairperson of each committee, in consultation with the Board, will determine the frequency of committee meetings as is necessary to fulfill the Committee's functions. The Chairperson of each committee, in consultation with management, will develop the committee's agenda. The Board will however determine the procedure and process within which committees may take independent professional advice at the Service's expense.

The committees will promptly report to the Board any actions taken for ratification and any major developments that they become aware of. The Board shall, as set out in the terms of reference of the respective committees, receive a report of the committee's findings and actions.

The following are the Committees of the Board:-

- Technical Committee
- Finance Committee
- Human Resource and Administration Committee
- Governance, Audit and Risk Committee

The service may establish any other ad hoc committees to handle any special business. The Terms of Reference of any committee of the Board shall be developed by the Board.

4.15 Authority of Committees

- a. Except where expressly authorized by the Board, the Committees shall not have decision making capabilities as this shall be the preserve of the Board.

- b. Save as the Board may otherwise allow, all the recommendations of the Committees must be approved by the Board before implementation by the Management.
- c. Amendments and review of terms of reference and mandate of the Committees may be made from time to time but subject to approval by the Board.

4.16 Matters Reserved for The Board.

The following matters shall be reserved for decision by the Board, supported by any recommendation made from time to time by the committees of the Board;-

- a. Financial Functions
 - i. The adoption of any significant change or departure in the accounting Policies and practices of the Service;
 - ii. The raising of incremental borrowing facilities;
 - iii. The approval of strategy, business plans, annual budgets and of any subsequent material changes in strategic direction or material deviations in business plans;
 - iv. The approval of annual financial statements, the approval of interim reports, the valuation of unlisted investments; and
 - v. Reviewing the Banks financial statements and overseeing its compliance with applicable audit, accounting and reporting requirements.
- b. Governance functions.
 - i. The appointment, removal or replacement of the external auditor of the Service;
 - ii. Developing a set of corporate governance guidelines;
 - iii. Constitution of and appointment of membership to committees;
 - iv. Establishing appropriate structures and procedures to allow the Board to function independently or management;
 - v. Setting expectations and responsibilities of Directors, including attendance at, preparation for, and participation in meetings;
 - vi. Undertaking regular evaluation of the Board, its committees, and its members, and reviewing its composition with a view to the effectiveness and independence of the Board and its members;
 - vii. The frequency of meetings of the board'
 - viii. The formulation of recommended policies in relation to industrial relations;

- ix. The appointment, removal or replacement of the Managing Director, Corporation Secretary, and other senior management staff;
 - x. The formulation and amendment of the Service's Code of Ethics.
- c. Risk Management Functions.
- Risk management established processes for identifying, analyzing, and managing the risks, which could prevent the Service from achieving in business objectives or strategies. Risk Management involves putting control activities in place to manage risk throughout the Service by developing tailored risk management plans. To this end:
- i. The Board is responsible for the total process of risk management and uses the risk assessment monitor as its main source of information to determine the effectiveness of the Services management process.
 - ii. The Board should identify, assess, manage and monitor the risks to which the business is exposed – internally and externally;
 - iii. The Board must appreciate the business risk issues and key performance indicators affecting the ability of the Service to achieve its strategic purpose and objectives;
 - iv. The Board must ensure that appropriate systems are in place to manage the identified risks, measure the impact and to proactively manage it, so that the Service's assets and reputation are suitably protected.

5. PRACTICES OF THE BOARD

5.1 Board Responsibilities

The basic responsibility of the Board members is to exercise their best judgment and to act in a manner that they reasonably believe to be in the best interest of the organization and its stakeholders. In discharging that obligation, the members should be entitled to rely on the honesty and integrity of the Service's management, staff and its external professional advisors and auditors.

In furtherance of its responsibilities, the Board will:

- (a) Determine the organization's mission, vision, purpose and core values;
- (b) Review, evaluate and approve, on a regular basis, long-term plans for the organization;
- (c) Review, evaluate and approve the organization's budget and financial forecasts;

- (d) Review, evaluate and approve major resource allocations and capital investments;
- (e) Ensure that the procurement process is cost-effective and delivers value for money;
- (f) Review and approve the operating and financial results of the organization;
- (g) Ensure effective, accurate, timely and transparent disclosure of pertinent information on the organization's operations and performance;
- (h) Ensure that effective processes and systems of risk management and internal controls are in place;
- (i) Review, evaluate and approve the overall organizational structure, the assignment of senior management responsibilities and plans for senior management development and succession;
- (j) Review, evaluate and approve the remuneration structure of the organization;
- (k) Adopt, implement and monitor compliance with the organization's Code of Conduct and Ethics;
- (l) Review on a quarterly basis the attainment of targets and objectives set out in the agreed performance measurement framework with the Government of Kenya;
- (m) Review periodically the organization's strategic objectives and policies relating to sustainability and social responsibility/investment;
- (n) Protect the rights of shareholders and optimize shareholder value;
- (o) Enhance the organization's public image and ensure engagement with stakeholders through effective communication;
- (p) Monitor compliance with the Constitution, all applicable laws, regulations and standards; and
- (q) Review, monitor and ensure that the organization is effectively and consistently delivering on its mandate.

5.2 Responsibilities of Individual Board Members

Each Board member shall:

- (a) Exercise the highest degree of care, skill and diligence in discharging their duties;
- (b) Act in the best interest of the Service and not for any other purpose;
- (c) Act honestly at all times and must not place themselves in a situation where their personal interest's conflict with those of the organization;
- (d) Exercise independent judgment;
- (e) Devote sufficient time to carry out their responsibilities, regularly update their

- knowledge and enhance their skills;
- (f) Promote and protect the image of the organization;
- (g) Owe their duty to the organization and not to the nominating or appointing authority; and
- (h) Owe the Service the duty to hold in confidence all information available to them by virtue of their position as a Board member.

5.3 Principles of Public Service

The Board, in performing its functions, shall be guided by the principles of Public Service as provided in Chapter Thirteen of the Constitution of Kenya, which include:

- (a) High standards of professional ethics;
- (b) Efficient, effective and economic use of resources;
- (c) Responsive, prompt, effective, impartial and equitable provision of services;
- (d) Involvement of stakeholders in policy making;
- (e) Accountability for administrative acts;
- (f) Transparent and timely provision to the public of accurate information;
- (g) Fair competition and merit as the basis of appointments and promotions;
- (h) Representation of Kenya's diverse communities; and
- (i) Affording adequate and equal opportunities for appointment, training and advancement, at all levels of public service, of men and women, members of all ethnic groups and persons with disabilities.

5.4 Board and Committee Meetings

- a. The Board and Committee meetings shall be conducted in the manner set out by the KEPHIS Act.
- b. The Board and Management are expected to agree in advance and formulate a calendar of meetings (ALMANAC), annual work plan, highlighting critical issues that require the attention of the Board, the various Board committees etc. taking into account the timing of other statutory required actions.
- c. As required in Mwongozo, the Board work plan shall provide for
 - i. A review of managements implementation strategies, policies and plans.
 - ii. Risk Assessment and Management.
 - iii. Budgeting and Financial Management.
 - iv. Quality Assurance Processes.

- v. Board Evaluation.
- vi. Strategic Planning and Review.
- vii. Governance and Compliance.
- viii. Competence development for Board Members.
- d. The Service shall, through the parent ministry, submit to SCAC an approved annual ALMANAC by 30th June of every financial year.
- e. Board members must attend all scheduled Board and Committee meetings, including meetings called on ad hoc basis for special matters unless prior apology with reasons has been submitted to the Chairman, MD or Corporation Secretary.
- f. The Board should set aside adequate time, annually to discuss strategy and policy matters.

5.5 Quorum for Board and Committee Meetings

The quorum for a Board meeting will be five (5) members. The quorum for Board Committee meetings will not be less than half of the members of the Committee.

5.6 Notice and Agenda for Board and Committee Meetings.

Notice and agenda of Board and committee meetings will issue from the Managing Director as directed by the Chairperson of the Board or relevant committee. The Corporation Secretary must circulate the notice, agenda to the Board Members at least seven (7) days before the date of the meeting.

Each Board member is free to suggest the inclusion of items on the agenda by providing notice to the Chairperson at least fourteen (14) days' prior to the meeting, to enable preparation. Additional agenda items may be included in the agenda during the meeting subject to approval by the Board or the committee.

Save for the additional agenda items, the agenda for the meetings will be aligned to the Board's work plan which will establish a schedule of agenda subjects to be discussed during the year to the degree this can be foreseen.

Except for urgent cases, as determined by the Chairperson, detailed agenda accompanied by relevant supporting documents and recommendations will be provided to the Board members at least seven (7) days prior to a meeting. Board members should review these materials in advance of the meeting to enhance effectiveness.

5.7 Venue of Meetings

Board and committee meetings are generally held at the head office of the organization but may also take place elsewhere with relevant approvals. The time and venue of the meetings should be clearly communicated in the notice for the meeting.

In addition, meetings of the Board or committees may be held by video or conference call or by any other means of communication approved by the Board, provided that all members have been given prior notification and they can communicate with each other simultaneously.

5.8 Attendance of Meetings

The MD shall attend all Board meetings and, if requested by the Board, other members of the senior management shall also attend a Board meeting in whole or in part.

A Board member who is unable to attend a meeting will explain their absence to the Chairperson and notify the Corporation Secretary.

5.9 Procedure of Meetings

5.9.1 Chairing of Meetings

Board meetings shall be chaired by the Chairperson of the Board or in the case of a committee meeting, the Chairperson of that committee. In the absence of the Chairperson, one of the Board members designated by the Board members present at the meeting, will chair.

5.9.2 Constitution of the Meeting

The Board meeting will be constituted in accordance with constitutive documents of the Service and shall include a confirmation that there is quorum for the meeting to proceed and recording of attendance.

5.9.3 Protocol of Board Meetings

The Chairperson, having ensured that the meeting is properly constituted, will also ensure that at an appropriate time during the meeting, the minutes of the previous meeting are confirmed and matters arising therefrom handled.

A special meeting of the Board or Board Committee will not discuss any matter other than that specified in the agenda.

The conduct of Board meetings may also be undertaken through tele/video conferencing, in the case where some of the participants will not be physically present. The following guiding principles shall apply:

1. The Corporation Secretary should ensure that the constitutive documents of the organization allow for tele/video conferencing;
2. The Corporation Secretary shall ensure that the necessary arrangements are in place to facilitate effective and secure communication during the meeting;

3. On sending out the notice of the meeting, the Corporation Secretary shall also confirm whether each Board member or participant will attend physically or through tele/video conferencing;
4. At the start of the scheduled meeting and for the purpose of confirming quorum, a record of attendance shall be taken during which each Board member or participant will clearly state, for the record, their full name, location, type of device being used and give confirmation that they can clearly hear the others;
5. All Board members or participants shall identify themselves for the record before speaking and must confirm that they can clearly hear and/or see each other in the course of the meeting;
6. If a statement of a Board Member or participant in the meeting via tele/video conferencing is interrupted or garbled, the Chairperson shall request for a repeat or reiteration;
7. The Chairperson should ensure that resolutions are clarified for record purposes; and
8. The Chairperson should ensure that the agenda is suitable for tele/video conferencing.

5.9.4 Decision-Making

The Board members, with the guidance of the Chairperson, should work towards unanimous adoption of resolutions. However, Board members are entitled to voice dissenting opinions and have these recorded in the minutes when unanimity cannot be reached.

Resolutions of the Board will be made at Board meetings or approved in writing by circulation, provided that in respect to the latter the proposed resolution is submitted to all Board members and none of them objects to this form of adoption. Approval of resolutions by circulation shall be effected in writing by all Board members. Objection to this method of adoption or to the proposed resolution should also be in writing.

5.9.5 Resolutions and Minutes

Minutes must be drawn up for every Board and committee meeting with resolutions highlighted therein. The minutes should be circulated to the Board members as soon as possible after the meeting. Upon confirmation, the minutes should be signed by the Chairperson and added to the records of the Service. Substantial corrections to previous minutes will be recorded in the minutes of the meeting where the corrections are made and adopted by the Board members.

Urgent resolutions may be drawn up and signed immediately in the relevant meeting.

5.9.6 Implementation of Resolutions

Generally, the Board delegates to the MD responsibility to implement the resolutions of the Board. The MD may delegate some of these responsibilities to senior management. The Board is responsible for monitoring the implementation of the resolutions.

5.10 Liability of Board Members

A Board member shall not be liable for any act done in good faith in carrying out duties and responsibilities in the organization. However, there is no limitation of liability for negligence or breach of the member's duty of care to the organization or its stakeholders, or for acts or omissions not in good faith, or which involve intentional misconduct or violation of the law.

5.11 Conflict of Interest

A conflict of interest may arise where a Board member or close family member such as a spouse, child, parent or sibling has private interests that could improperly influence the performance of the Board member's official duties and responsibilities. Conflict may also arise where a Board member uses their office for personal gain.

A Board member who identifies an area of conflict shall be required to disclose any actual or potential conflict of interest to the Board. In so reporting, the Board member is required to provide all relevant information, including information which relates to their immediate family members by blood or marriage which is related to the area of conflict. When declared, the Board member shall abstain from decisions where the conflict exists.

The Corporation Secretary should keep a record of conflicts of interest declared, for accountability purposes, and as a rule of good practice on appointment and on regular intervals or at any time when circumstances change, all members shall in good faith disclose to the Board for recording, any other business or interest likely to create a potential conflict of interest.

5.12 Notice of other Directorships

Board members should carefully consider the number of other boards on which they can serve, consistent with the time and energy necessary to satisfy the requirements of the organization provided that a Board member shall not serve in more than three boards of State Corporations concurrently.

In furtherance of these considerations, Board members should notify the appointing authority in a timely fashion before accepting an invitation to serve on the Board of another public or private body. This prior notice is to allow discussion with the Chairperson of the Board and to obtain legal advice on whether such other service will interfere with the Board members service on the organization's Board, impact the Board member's independence, or create an actual or apparent conflict of interest for the Board member.

5.13 Board Members Access to Employees

Board members should have full and free access to employees of the organization but such access should be arranged through the MD. The Board members will use their judgment to ensure that any such access does not disrupt the operations of the Service.

5.14 Independent Advisors

Board members may individually and collectively seek independent advice in connection with their duties in the Service as and when required. Independent professional advice for the purposes of this Charter shall include legal advice, advice on matters of governance, the advice of accountants and other professional financial advisors on matters of law, accounting and other regulatory matters but shall exclude advice concerning the personal interests of the director concerned, such as matters relating to their appointment or disputes with the Service.

5.15 Board Induction and Continuous Skills Development

The Board will provide new Board members with an effective induction programme in order to familiarize them with their responsibilities as directors, general principles of corporate governance and Board practices. The induction programme will also provide the Board member with an orientation of the Service, strategic plans, financial status and policies, risk management, compliance programmes and the Code of Conduct and Ethics.

The Board will ensure that a competence needs assessment is carried out periodically and an annual development plan prepared to address identified gaps. In this regard, Board members will be provided with access to, or notice of, continuing development programs that are designed to keep members abreast of the latest developments in sector best practice, corporate governance and critical issues relating to the operation of public sector boards.

The Board will satisfy itself that its members are up-to-date with continuous professional development in their respective professional bodies.

5.16 Remuneration for Directors

Subject to Section 10 (1) of the State Corporations Act, Chapter 446 Laws of Kenya, allowances for members of the Board shall be paid out of the funds of the Service. Those include sitting allowances or other remuneration as the Board may, within the scales of remuneration specified from time to time by the State Corporation Advisory Committee and the Salaries and Remuneration Committee, approve.

The Board shall, subject to Section 10 (2) of the State Corporation Act, within the scales specified by the State Corporations Advisory Committee.

In accordance with the State Corporation (Performance Contracting) Regulations, the Board may, upon receipt of the outcome of the evaluation of the Services Performance Contracting obligations, pay the Directors, Management and Staff such bonuses as it may determine.

The Board shall disclose: -

- i. In the financial statements, the remuneration of directors, individually and collectively.
- ii. The salaries and remuneration of the Managing Director and the senior management.
- iii. A summary of the Board evaluation results.

5.17 Board Performance

The Board undertakes a comprehensive annual performance evaluation of the Board. This encompasses a 360-degree assessment where Individual Directors evaluate the Chairman, the Chairman evaluates each Director, all Directors evaluate the Managing Director, and a peer assessment is conducted for each Director.

Additionally, the Board evaluates the performance of the Corporation Secretary. This feedback mechanism aims to pinpoint areas of improvement for both the Board and individual Directors.

The Evaluation shall cover the following areas:-

- Functions of the Board;
- Procedures and management of meetings of the Board;
- Appointment, selection, induction, training, development, succession and removal of Directors;
- Board composition and structure;

- Information dissemination and communication;
- Strategic planning and vision;
- Adherence to corporate governance;
- Skillset and competence;
- Independent decision-making;
- Level of preparedness as a Director
- Personal qualities and professionalism; and
- Awareness and consideration of stakeholders.

Every year the Chairman, after consulting with all Board members, reviews the performance of the Managing Director. The outcomes of this appraisal influence the Boards decisions regarding the Managing Director and MD's performance assessment and compensation. The evaluation should be guided by the objective criteria, emphasizing company performance, the achievement of long-term goals, and leadership development.

The Board Committees shall be evaluated regularly to ascertain their optimal performance and effectiveness.

On an annual basis or as deemed necessary, the Board reviews the performance of the Corporation Secretary.

5.18 Board and Management Succession

The Board will put in place a succession plan for both the Board and management and review the same regularly.

5.19 Governance Audit

The Board should ensure that a governance audit of the organization is undertaken on an annual basis. The purpose of the governance audit is to ensure that the organization conforms to the highest standards of good governance. The governance audit should cover the following parameters among others:

- (a) Leadership and strategic management;
- (b) Transparency and Disclosure;
- (c) Compliance with Laws and Regulations;
- (d) Communication with stakeholders;
- (e) Board independence and governance;
- (f) Board systems and procedures;
- (g) Consistent shareholder and stakeholders' value enhancement; and Corporate social responsibility and investment.

5.20 Board Workplan

The Board shall prepare a work plan setting out the activities planned for each period. The work plan will cover among others, the timings for regular Board Meetings, and the Board Meetings, special projects and principal areas of focus.

6. Directors Undertakings in Line with this Charter

The Directors are appointed on the basis of their professional competencies and personal qualities. Each Director by accepting a Board appointment accepts this Charter and in particular makes the following undertakings:

6.1 To always act in the best interest of KEPHIS and not for any other collateral purpose, to exercise his/her power in good faith and to act with the care of a prudent person.

6.2 To dedicate the time and attention necessary to fulfil his/her duties.

6.3 To preserve his/her independence of analysis, and judgment in all circumstances and to resist any pressure direct or indirect from whichever source.

6.4 To disclose to the Board fully and immediately it comes to his/her attention any real or potential conflict of interest, direct or indirect, which they may have.

6.5 Being fully aware of the importance of regular attendance and effective participation at meetings, each Director undertakes to do everything within their power to attend all meetings. Each Director further undertakes to prepare sufficiently for meetings by carefully considering Board papers and attachments thereto and where necessary seeking clarifications.

6.6 To keep in confidence all information that comes to him/her by virtue of his/her position in the Board.

7. Review of the Board Charter

This Board Charter shall be reviewed as and when need arises.

8. Approval of the Board Charter

This Board Charter is now approved and issued under the signature of:

Chairman of the Board of Directors

Hon. Joseph M'eruaki

Sign: _____ Date: _____