



# BOARD CHARTER



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## ACRONYMS, ABBREVIATIONS AND DEFINITIONS

ACRONYMS	DEFINITIONS
<b>ARC</b>	Audit and Risk Committee
<b>DG</b>	Director General
<b>EPRA</b>	Energy and Petroleum Regulatory Authority
<b>FAC</b>	Finance and Administration Committee
<b>HIARA</b>	Head of Internal Audit and Risk Assurance
<b>SCAC</b>	State Corporations Advisory Committee



## DEFINITIONS:

Unless the context otherwise requires, the following words and expressions shall have the following meaning: -

- i. **“Act”** means The Energy Act, No. 1 of 2019;
- ii. **“Authority”** means EPRA;
- iii. **“Board Charter”** means this document that sets out the roles, responsibilities, functions and Board structure in a way that supports members to professionally discharge their strategic oversight role;
- iv. **“Board of Directors”** means the Non-Executive Directors/Members of the Authority collectively;
- v. **“Director/Member”** means a person appointed under Section 12 of the Energy Act, No. 1 of 2019;
- vi. **“Chairperson”** means a person appointed under Section 12 (1) of the Energy Act, No. 1 of 2019;
- vii. **“Member in good standing”** means a member who has fulfilled the requirements for membership to a professional body and who has not voluntarily withdrawn, been expelled or suspended by the said body; and
- viii. **“Oversight body”** means the State Corporations Advisory Committee (SCAC).

## CHAPTER ONE

### 1.1 INTRODUCTION

- 1.1.1 The Energy and Petroleum Regulatory Authority Board Charter defines the Board Members' roles, responsibilities, as well as functions and structures in a way that supports the members in carrying out their strategic oversight function.
- 1.1.2 The provisions of this Charter shall be subject to any amendments to the relevant Acts of parliaments, Regulation, Government Circulars and Directives as may be issued from time to time.
- 1.1.3 The Charter is made pursuant to the provisions of **Section 14** of the Energy Act, No. 1 of 2019 which provides that the conduct and regulation of the business of the Board shall be as provided in the first schedule, but subject thereto, the Board shall regulate its own procedure and that of any committee constituted under the Act. The Charter is thus complementary to the first schedule of the Energy Act No. 1 of 2019.
- 1.1.4 Its purpose is to guide the Board in strategically overseeing the Authority's operations to maximize the long-term value of its services provided for all stakeholders. In particular, it defines the roles and responsibilities as well as functions and structures in a way that supports the members in carrying out their strategic oversight function. It provides the Board members with an opportunity to think critically and creatively thus ensuring that the Board activities are aligned with the organisation's strategy and statutory mandate.

### 1.2 The Charter: -

- 1.2.1 As much as possible and appropriate aligns with the Constitution of Kenya, 2010, the Energy Act, No. 1 of 2019 and *Mwongozo Code* of Governance for State Corporations (hereinafter, 'Code'). It complements other legal and regulatory requirements;
- 1.2.2 Shall be interpreted and applied in a manner that promotes its purposes, constitutional values and principles and in a way that advances the rule of law, development of the law, contributes to board harmony, corporate success and good governance;

- 1.2.3 Complements and shall be read, interpreted and applied taking cognisance of the provisions of among others, the provisions of Sections 12, 14, 15 and the First Schedule of the Energy Act, No. 1 of 2019;
- 1.2.4 Set out the powers delegated to various Board Committees and their Terms of Reference;
- 1.2.5 Serve as a reference guide for the Board of Directors in governance issues of the Authority; and
- 1.2.6 Shall be made accessible to all members of the Board and the public on the Authority's website.

### 1.3 Vision

A Leading Energy and Petroleum Regulator.

### 1.4 Mission

To facilitate sustainability in the energy and petroleum sector through regulation for improved livelihoods.

### 1.5 Core Values

- i. Integrity
- ii. Responsiveness
- iii. Accountability
- iv. Innovativeness
- v. Professionalism

### 1.6 Mandate

The functions of the Authority as provided in **Section 10** of the **Energy Act, No. 1 of 2019** include: -

- (a) Regulate
  - i. Generation, importation, exportation, transmission, distribution, supply and use of electrical energy with the exception of licensing of nuclear facilities;



- ii. Importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products with the exception of crude oil;
  - iii. Production, conversion, distribution, supply, marketing and use of renewable energy;
  - iv. Exploration, extraction, production, processing, transportation, storage exportation, importation and sale of coal bed methane gas and other energy forms;
- (b) Regulate, monitor and supervise upstream petroleum operations in Kenya in accordance with the law relating to petroleum, the regulations made thereunder and the relevant petroleum agreement;
  - (c) Provide such information and statistics in relation to upstream petroleum operations in Kenya to the Cabinet Secretary responsible for matters relating to petroleum as may be required from time to time;
  - (d) Collect, maintain and manage upstream petroleum data;
  - (e) Receive, review and grant an application for a nonexclusive exploration;
  - (f) coordinate the development of upstream petroleum infrastructure and promote capacity building in upstream petroleum operations,
  - (g) inspect and test any machinery or equipment that has been used, is used or shall be used in upstream petroleum operations;
  - (h) assess field development plans and make recommendations to the Cabinet Secretary responsible for matters relating to petroleum for approval, amendment or rejection of the plans;
  - (i) assess tail-end production and cessation of upstream petroleum operations and oversee decommissioning by a contractor;
  - (j) verify the measurements of petroleum production to allow for estimation and assessment of royalties and profits of oil and gas due to the National Government;
  - (k) verify the recoverable cost of oil and gas due to the parties to a petroleum agreement;
  - (l) audit contractors for cost recovery;

- (m) monitor in consultation with the Competition Authority conditions of contractors' operations and their trade practices;
- (n) provide information to the relevant authority for the collection of taxes and fees from upstream petroleum operations;
- (o) set, review and approve contracts, tariffs and charges for common user upstream petroleum facilities;
- (p) make proposals to the Cabinet Secretary responsible for matters relating to petroleum in relation to regulations which may be necessary or expedient for the regulation of the upstream petroleum sector or for carrying out the objects and purposes of this Act;
- (q) work with the relevant statutory authorities to formulate, enforce and review environmental, health, safety and quality standards for the upstream petroleum sector;
- (r) develop guidelines, in consultation with other statutory authorities, in relation to the implementation of treaties, conventions or protocols affecting the upstream petroleum sector that have been ratified by Kenya;
- (s) regulate contracts on upstream petroleum operations not specifically provided for under the law relating to petroleum;
- (t) advise the Cabinet Secretary responsible for matters relating to petroleum in the evaluation of the bids and applications made for upstream petroleum blocks;
- (u) ensure that contractors uphold the relevant laws, regulations and petroleum agreement terms;
- (v) ensure optimal levels of recovery of petroleum resources;
- (w) promote well-planned, executed and cost-efficient operations;
- (x) ensure optimal utilization of existing and planned facilities;
- (y) ensure the establishment of a central database of persons involved in upstream petroleum operations;
- (z) manage upstream petroleum data and provide periodic updates and publication of the status of upstream petroleum operations;

- (aa) take such action as is necessary to enforce the requirements in a petroleum agreement or any regulations and to protect the environment, the health and safety of workers and the public;
- (bb) ensure and facilitate competition, access and utilization of facilities by third parties;
- (cc) prescribe the form and manner in which any application for any authority, consent or approval under the law relating to petroleum shall be made;
- (dd) investigate complaints or disputes arising from petroleum operations;
- (ee) enforce local content requirements;
- (ff) issue operational permits and non-exclusive exploration permits in accordance with the law relating to petroleum;
- (gg) ensure enforcement and compliance with the national values and principles;
- (hh) protect consumer, investor and other stakeholder interests;
- (ii) provide such information and statistics to the Cabinet Secretary as the Cabinet Secretary may from time to time require;
- (jj) collect and maintain energy data;
- (kk) develop guidelines on applicable treaties, conventions and protocols affecting the energy sector in consultation with other statutory authorities except those relating to nuclear energy;
- (ll) co-ordinate the development and implementation of a national energy efficiency and conservation action plan, in consultation with relevant statutory authorities and other stakeholders;
- (mm) develop testing and certification procedures, in conjunction with relevant statutory agencies, for certification and testing for energy consumption of equipment and appliances;
- (nn) ensure, in collaboration with the Kenya Bureau of Standards, that only energy efficient and cost-effective appliances and equipment are imported into the country;
- (oo) certify energy managers and license energy auditors;

- (pp) promote, in consultation with the Kenya National Accreditation Service, the establishment of accredited laboratories for energy efficiency; and
- (qq) perform any other function that is incidental or consequential to its functions under this Act or any other written law.

### 1.7 Statement on Good Governance

The Authority has adopted high standards and applies strict rules of conduct, based on the best corporate practices. As part of this commitment, the Board adheres to good corporate governance by embracing the following principles: -

- (a) To observe high standards of professional, ethical and moral behaviour;
- (b) To identify and mitigate risks and act in the best interests of the Authority;
- (c) To achieve corporate strategy and success;
- (d) To remunerate and promote fairly and responsibly;
- (e) To recognize the legitimate interests of all stakeholders; and
- (f) To ensure that the Authority acts as a good corporate citizen.

In general, the Board shall act in the best interest of Authority and uphold their fiduciary responsibilities and duty of care. This involves not disclosing confidential information, avoiding real or perceived conflicts of interest, and favouring the interests of the Authority over other interests. They will act honestly and in good faith so as to create a culture built on principles of integrity, accountability and transparency.

### 1.8 GUIDING PRINCIPLES

In accordance with the **Constitution of Kenya, 2010**, and **Section 3 of the Leadership and Integrity Act No. 19 of 2012**, the Board shall uphold the following constitutional values, principles, and requirements: -

- (a) National Values and Principles: As outlined in Article 10 of the Constitution;
- (b) Rights and Fundamental Freedoms: As enshrined in **Chapter Four** of the Constitution;
- (c) Responsibilities of Leadership: As stipulated in **Article 73** of the Constitution;

- (d) Principles Governing the Conduct of State Officers: As defined in **Article 75** of the Constitution; and
- (e) Values and Principles of Public Service: As provided in **Article 232** of the Constitution.



## CHAPTER TWO

### 2.1. THE BOARD OF DIRECTORS

The Board is a group of appointed individuals who jointly oversee the activities of the Authority. They are responsible for providing strategic direction, exercising control, and ensuring accountability through effective leadership, enterprise, integrity and good judgement. To fulfil these duties effectively, the Board should be diverse, independent and focused on the Authority's long-term success. They should be pragmatic, objective committed to balanced and sustainable performance of the Authority. By adhering to these principles, the Board shall help the Authority achieve its goals and maintain its reputation.

#### 2.1.1. Board Size

The Board shall have a maximum of ten (10) members as provided for in Section 12 (1) of the Energy Act, No. 1 of 2019 {with the Director General as an Ex – Officio} as follows:-

- (a) The Chairperson;
- (b) The Principal Secretary responsible for Energy or his representative;
- (c) The Principal Secretary responsible for Petroleum or his representative;
- (d) The Principal Secretary in the National Treasury or his or her authorized representative;
- (e) One (1) County Executive Committee member responsible for energy and petroleum or his representative nominated by the Council of County Governors; and
- (f) Five (5) other members not being public officers appointed by the Cabinet Secretary.

#### 2.1.2. Board Composition and Features

The Board shall ensure that: -

- (a) Its composition complies with the requirements of the **Constitution of Kenya, 2010, The Energy Act, No. 1 of 2019**, and other relevant legislation;
- (b) Its members act independently;

- (c) Each of its members understand the Authority's policies and Code of Conduct;
- (d) Each of its members is in good standing professionally and has sufficient expertise to perform his or her role;
- (e) At least one (1) board member possesses specialized knowledge in financial management and accounting; and

In consultation with the **Audit and Risk Committee**, a detailed profile that outlines the board's size, composition, and the specific expertise of its members is developed. This profile shall remain available to stakeholders to enhance transparency and accountability.

### **2.1.3. Appointment of the Board Members**

- 2.1.3.1 The Chairperson of the Board shall be an appointee of the President, while other board members shall be appointed by the CS as provided under **Section 12 of the Energy Act, No. 1 of 2019**.
- 2.1.3.2 Every appointment shall be by name and by notice in the Kenya Gazette.
- 2.1.3.3 In line with the provisions of **Section 14 of the Energy Act No.1 of 2019**, the Chairperson and Members of the Board shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times to ensure business continuity of the Authority.

### **2.1.4. Chairperson of the Board**

- 2.1.4.1 The Chairperson of the Board is primarily responsible for the activities of the Board and its Committees. The role of the Chairperson includes but is not limited to the following:-
  - (a) Providing overall leadership to the Board;
  - (b) Approving the Agenda of Board meetings;
  - (c) Chairing Board meetings;
  - (d) Conducting efficient Board meetings and guiding the Board's decision-making process;
  - (e) Ensuring that a record of proceedings of all Board activities is maintained;
  - (f) Being spokesperson for the Board;

- (g) To the extent possible, ensuring that there is a formal succession plan for Board members; and
- (h) Providing quarterly updates on governance matters and any issues thereof to the responsible Cabinet Secretary and SCAC.

2.1.4.2 The Chairperson shall ensure that: -

- (a) The Board effectively performs its duties and responsibilities;
- (b) The Board Members are inducted after appointment and thereafter are continually developed based on identified development and Authority's needs;
- (c) The Board Members receive all information required for them to perform their duties;
- (d) The Board develops and adheres to the developed and adopted annual work plan;
- (e) The Board has sufficient time for consultation and decision-making;
- (f) The Board constitutes committees and that the committees function optimally and as mandated under the specific terms of references;
- (g) The performance of the Board, Board Members, the DG, and the Corporation Secretary are evaluated annually;
- (h) Challenges relating to the performance of individual Board Members are identified and addressed;
- (i) Internal disputes and conflicts of interest concerning individual Board Members are avoided and addressed appropriately should they occur; and
- (j) The Board Members have appropriate contact with the Senior Management through the DG.

#### **2.1.5. Director General (DG)**

- (a) The DG shall be the Chief Executive and the Accounting Officer of the Authority.



- (b) The DG shall competitively be appointed by the Board, subject to the approval of the Cabinet Secretary.
- (c) The DG, while a non-voting member of the Board, works in consultation with the Board and the Senior Management to achieve the Authority's mandate.
- (d) The DG shall, subject to the directions of the Board, be responsible for the day to day management of the Authority. Serving as the crucial link between the Board and the management team, the DG is accountable for ensuring implementation of the Board's decisions and resolutions.

#### **2.1.5.1 The Board's Responsibilities to the DG**

The board shall provide the DG with: -

- (a) Defined performance goals and Authority levels;
- (b) An attractive remuneration package;
- (c) Regular formal performance review feedback;
- (d) Constructive informal feedback on job performance;
- (e) Reward for exceptional performance; and
- (f) Prompt response to request for guidance and assistance.

#### **2.1.5.2 The DG 's Responsibilities**

The DG shall:

- (a) Demonstrate commitment to the Authority'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) Be responsible for the execution and communication of the Board's strategies, decisions and policies;
- (e) Be responsible for the day-to-day operations of the organization.

- (f) Provide leadership to Management and staff of the organisation
- (g) Ensure that the organization has an effective management structure including succession plans;
- (h) Provide regular, thorough and prompt communication to the Board on key technical, financial and administrative matters;
- (i) Be responsible for stakeholder management and the enhancement of the corporate image of the organization;
- (j) Effectively represent the Authority to stakeholders and enhance its public image; and
- (k) Promptly respond to Board Members' requests for information.

#### 2.1.6. Term Limits

- (a) **Chairperson:** shall hold office for a maximum of four (4) years and is eligible for re-appointment for one further term.
- (b) **Board Directors:** shall hold office for a maximum of three (3) years and are eligible for re-appointment for one further term; and
- (c) The renewal of a Board Member's tenure for a second term shall be subject to acceptable evaluation as determined during Board Evaluations.

#### 2.1.7. Independence of Board Members

All Board Members recognize that their primary duty is to the Authority, and not to the nominating stakeholder and/or appointing Body.

#### 2.1.8. Resignation from the Board

##### 2.1.8.1 Resignation of a Board Member:

A Board Member may resign anytime by submitting a written notice to the appointing body, with copies to the Chairperson and the DG. The resignation

will be effective upon receipt by the appointing body or at any later time specified therein. Acceptance by the appointing authority is not required unless explicitly stated in the notice.

#### **2.1.8.2 Records Maintenance:**

The Authority Secretary shall maintain a record of each Director's appointment letters, gazette notices, and written acceptance of resignation, which shall be kept in the Director's personal file.

#### **2.1.9. Removal of the Chairperson and Board Member from Office**

Pursuant to **Second Schedule part 4 of the Energy Act No. 1 of 2019**, the Chairperson or Board Member (other than some ex-officio member) may be removed from office on account of any of the following: -

- (a) Violation of the Constitution of Kenya or any other law;
- (b) Gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
- (c) Physical or mental incapacity to perform the functions of the office;
- (d) Being absent from three (3) consecutive meetings of the Authority, as the case may be without reasonable cause;
- (e) Failure to disclose to the Authority or Board any interest in any contract or matter before the Authority or Board;
- (f) Being convicted of a criminal offence;
- (g) Incompetence; or
- (h) Bankruptcy.

#### **2.1.10. Board Committees**

- (a) To effectively discharge its mandate, the Board shall establish committees with specific terms of reference.
- (b) Board Members appointed to these committees shall possess the necessary skills and expertise to perform the assigned duties.
- (c) On instances where a committee lacks specific skills among its members, the Board, with approval from the oversight body, may co-opt a qualified non-member to serve on the committee.
- (d) However, the committee Chairperson shall neither be a co-opted member nor the Chairperson of the Board.
- (e) The Board may from time to time, as appropriate and necessary, rotate committee members between the committees.
- (f) While each committee operates within the Board's delegated authority, the Board remains collectively responsible for all committee decisions and actions.
- (g) A committee's functions are limited to tasks assigned by the Board and cannot exceed the Board's own powers or Authority as set out in Schedule One of this Board Charter.
- (h) Each committee's Chairperson, in consultation with the Board, shall determine the frequency of meetings necessary to meet the committee's responsibilities.
- (i) Additionally, the committee Chairperson, in Consultation with Senior Management, shall develop the meeting Agenda.
- (j) The Board shall, where necessary, establish procedures for committees to seek independent professional advice at Authority's expense.
- (k) The Committees shall report their actions promptly to the Board for approval or ratification and shall communicate any significant developments.
- (l) The Board will receive reports on each committee's findings and recommendations, as outlined in the respective committee's terms of reference.

- (m) The Board has established the following standing committees: -
- i. **Audit and Risk Committee;**
  - ii. **Technical Committee; and**
  - iii. **Finance and Administration Committee.**
- (n) The Board may create additional standing committee as and when necessary.
- (o) The Board may further establish *Ad Hoc* Committees to address specific issues as they arise, with the term of each *Ad Hoc* Committee specified in its appointing instrument.
- (p) The Board remains responsible for developing the Terms of Reference for each committee. The said Terms of References shall remain an integral part of this Charter as spelled out in Schedule One of this Charter.
- (q) The Board should review the mandate of the committees periodically.
- (r) The Board should annually review the effectiveness and performance of its committees.

#### **2.1.11. Relationship Between the Board and Senior Management of the Authority**

The Board and Senior Management shall 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, accountability, and maintain effective channels of communication.

#### **2.1.12 Separation of Roles between Board and Senior Management**

- (a) The role of the Board Members shall be clearly separated from that of the Senior Management.
- (b) The office of the Chairperson and that of the DG shall be held by different persons.
- (c) The office of the DG and that of the Authority Secretary shall be held by different persons.

#### **2.1.13 The Authority Secretary**

The Board shall appoint a suitably qualified, competent, and experienced Certified Public Secretary in good professional standing to assist in the effective governance of the Authority.

The Authority Secretary shall be responsible for the efficient and effective execution of their duties and responsibilities and shall comply with the leadership and integrity requirements of **Chapter Six of the Constitution of Kenya, 2010**.

The principal duties of the Authority Secretary are as follows: -

- (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 and success of the Authority;
- (b) Ensuring that Board's procedures are followed and reviewed regularly, and that the Board complies with the applicable law, rules and regulations;
- (c) Organizing Board's activities, including; issuance of Board and Board Committees' notices, agenda, Board Papers, facilitating meetings, Board evaluations and Board's competence and development programs;

- (d) Providing secretarial services to the Board and Board Committees, save for the Audit & Risk Committee 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;
- (e) Maintain and update the register of conflicts of interest;
- (f) Ensure that Board members are aware of all relevant laws affecting the organization;
- (g) Ensuring that the minutes of the Board and committees are promptly prepared and circulated;
- (h) Keeping the Board abreast of, and informed on, current governance trends and practices;
- (i) Facilitating Board payments and allowances, as appropriate; and
- (j) Coordinating the governance audit process.

The Authority Secretary should assist in:

- (a) Board induction and training;
- (b) Updating the Board and Committee Charters;
- (c) Facilitating evaluations of the Board, Committee, the DG and the Authority Secretary;
- (d) Conducting Governance Audits; and
- (e) Implementation of the Code of Conduct and Ethics.

## CHAPTER THREE

### 3.1 PRACTICES OF THE BOARD

#### 3.1.1 Board Responsibilities

The basic responsibility of the Board is to exercise their best judgment and to act in a manner that they reasonably believe to be in the best interest of the Authority and its stakeholders.

In discharging that obligation, the Board Members shall be entitled to rely on the honesty and integrity of Authority's Management, staff and its external professional advisors and auditors.

**In its responsibilities, the Board shall:**

- (a) Determine the Authority's mission, vision, purpose and core values;
- (b) Review, evaluate and approve, on a regular basis, long-term plans;
- (c) Review, evaluate and approve the annual 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;
- (g) Ensure effective, accurate, timely and transparent disclosure of pertinent information on the Authority'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 assign Senior Management responsibilities and plan 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 Authority'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) Periodically review Authority's strategic objectives and policies relating to sustainability and social responsibility investment;
- (n) Protect the rights of shareholders and optimize shareholder value;
- (o) Enhance Authority'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 Authority is effectively and consistently delivering on its mandate.
- (r) Exercise its role collectively and not individually.
- (s) Ensure that the strategy is aligned with the purpose of the organization and the legitimate interests and expectations of its shareholders and other stakeholders.
- (t) Ensure that the strategy of the organization is aligned to the long-term goals of the organization on sustainability.
- (u) Develop, approve and periodically review the Board Charter and the organisation's policies.

### 3.1.2 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 Authority and not for any other purpose;
- (c) Act honestly at all times and must not place themselves in a situation where their personal interests conflicts with those of the Authority;
- (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 Authority;
- (g) Owe their duty to the Authority and not to the nominating or appointing authority; and
- (h) Owe the Authority the duty to hold in confidence all information available to them by virtue of their position as Board Member.

### **3.1.3 Acting Director General**

Where a vacancy exists arising from criminal prosecution, retirement, resignation, end of term and or any other circumstance:

- (a) An Acting DG is to be appointed by the Board of Directors in consultation with the Ministry of Energy & Petroleum within Seven (7) days thereof.
- (b) Where the Board Members is unable to source an acting replacement from the Authority, the Chairperson shall consult with the Cabinet Secretary, Energy & Petroleum to select a suitable officer within the Ministry, who shall be seconded to Authority, and appointed by the Board or as specified in the Energy Act No. 1 of 2019.
- (c) In the case of vacancy arising from criminal prosecution, the Board of Directors shall immediately initiate disciplinary proceedings to determine whether the conduct of the DG constitutes misconduct that merits dismissal as applicable under the Act, and may terminate the contract of employment of the DG in furtherance thereof.
- (d) In case of vacancy arising out of any other natural attrition factors, the Board of Directors shall initiate the recruitment for the new DG.
- (e) Unless otherwise provided in the enabling instruments, the Board of Directors shall appoint a new DG in line with existing laws, regulations and guidelines.
- (f) The Chairperson of the Board of Directors shall ensure there is compliance with the directive on filling of acting positions within six (6) months of occurrence.
- (g) Contracts of employment shall be entered into, in the format and incorporating the terms and conditions as approved and communicated through government guidelines.

### 3.1.3 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, 2010* 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.

### 3.1.4 Board and Board Committee Meetings

- (a) Board Committee meetings shall be governed principally in the same way as the Board meetings in line with this Board Charter provisions.
- (b) The Board, as the case may be, shall meet as often as necessary for the transaction of business but shall meet not less than four times every financial year and not more than four months shall elapse between the date of one meeting and the next.

#### 3.1.4.1 Board

- (a) A schedule of meeting dates will be determined by the Board and outlined in the Board Work Plan.
- (b) Notices of meeting locations and times will be issued at least seven (7) days prior to the scheduled date.
- (c) Quorum for Board meetings shall be five (5) members.

#### **3.1.4.2 Committees:**

- (a) **Quorum:** A quorum for committee meetings shall be at least three (3) Board Members.
- (b) **Attendance:** Board Members are expected to attend both Board meetings and meetings of committees on which they serve.
- (c) **Co-opting of expertise:** The Board may from time to time co-opt into its membership one or more persons to assist it in any particular matter for the time being before the Board but such co-opted person shall have no voting rights.
- (d) **Invitation:** The Board Chairman, Board Committee Chairpersons or DG may invite Senior Management, other employees, and advisors to attend Board or Board Committee meetings as may be necessary.

#### **3.1.4.3 Board Role and Focus:**

The Board's primary role is to provide strategic direction and address organizational risks. The majority of Board time should be dedicated to discussions on policy, strategy, and risk management.

Operational matters are the responsibility of Management and should not be the primary focus of the Board.

#### **3.1.5 Notice and Agenda for Meetings**

- (a) Notice and Agenda of Board and Committee meetings shall be issued by the Authority Secretary as directed by the Chairperson of the Board or relevant committee and in liaison with the DG.
- (b) Any 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.
- (c) Additional agenda items may be included in the agenda during the meeting subject to approval by the Board or the committee.
- (d) 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 extent this can be foreseen.

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

#### **3.1.6 Venue of Meetings**

- (a) Board and Committee meetings shall generally be at the head office of Authority, but may also take place elsewhere with necessary approvals.
- (b) The time and venue of the meetings shall be clearly communicated in the notice of the meeting.
- (c) In addition, meetings of the Board or committees may be held by video conference 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.
- (d) The Board may conduct Meetings through audio-visual means and/or leveraging on existing Information and Communication Technology infrastructure; with the exception of the Chairperson, DG and/or the Authority Secretary who are required to be physically present at the principal or registered office to host the meeting.
- (e) The audio and visual tool must be secure and one which assures the participation of only the Board Members and persons expected to be in attendance; through appropriate security, identification, access and documents sharing protocols.
- (f) The Meeting must record Board Members participating by tele/video conferencing and record of the proceedings shall be maintained by the Corporation Secretary.
- (g) The Board Members participating via tele/video conferencing will be entitled to a sitting and lunch allowance only.

#### **3.1.7 Attendance of Meetings**

- (a) The DG shall attend all Board meetings and, if requested by the Board, other members of the Senior Management shall also attend Board meetings in whole or in part but shall not have the right to vote.

- (b) A Board Member who is unable to attend a meeting shall explain their absence to the Chairperson and notify the Authority Secretary for the purpose of recording apology.

### **3.1.8 Procedure of Meetings**

#### **3.1.8.1 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 other Board Member present at the meeting will preside over the meeting.

#### **3.1.8.2 Constitution of the Meeting**

The Board meeting shall be constituted in accordance with the First Schedule of Energy Act, No. 1 of 2019 and shall include a confirmation that there is quorum for the meeting to proceed and recording of attendance.

#### **3.1.8.3 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 there-from handled.

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: -

- (a) The Authority Secretary shall ensure that the constitutive documents of the Authority allow for tele/video conferencing;
- (b) The Authority Secretary shall ensure that the necessary arrangements are in place to facilitate effective and secure communication during the meeting;

- (c) On sending out the notice of the meeting, the Authority Secretary shall also confirm whether each Board Member or participant will attend physically or through tele/video conferencing;
- (d) 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, and give confirmation that they can clearly hear the others;
- (e) All Board Member 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;
- (f) 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;
- (g) The Chairperson should ensure that resolutions are clarified for record purposes; and
- (h) The Chairperson shall ensure that the agenda is suitable for tele/video conferencing.

#### **3.1.8.4 Decision-Making**

- (a) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the Board Member present, as the case may be, and in the case of an equality of votes, the Chairperson presiding shall have a casting vote.
- (b) Any Board Member present at a meeting of the Board or a Committee thereof, shall have the right to require his opinion to be recorded in the minutes if the Board or the Committee, as the case may be, passes a resolution, which in the opinion of that member is contrary to his advice or to law.
- (c) Resolutions of the Board shall 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.
- (d) 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.



#### **3.1.8.5 Resolutions and Minutes**

- (a) Minutes shall be prepared for every Board and Board committee meeting with resolutions highlighted.
- (b) The minutes shall be circulated to the Board Members as soon as possible after the meeting.
- (c) The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and the minutes of each meeting shall be confirmed by the Board at the next meeting of the Board and signed by the Chairperson or the member presiding at the meeting.
- (d) 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.

#### **3.1.8.6 Implementation of Resolutions**

Generally, the Board delegates to the DG responsibility to implement the resolutions of the Board. The DG may delegate some of these responsibilities to Senior Management. The Board is responsible for monitoring the implementation of the resolutions.

### **3.2 Liability of Directors**

A Board Member shall not be liable for any act done in good faith in carrying out duties and responsibilities in Authority. 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 done in good faith, or which involve intentional misconduct or violation of the law.

### **3.3 Conflict of Interest**

- (a) 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.
- (b) Conflict may also arise where a Board Member uses their office for personal gain. Board Members are required to avoid conflict of interest and deal at arm's-length in any matter that relates to the organization.



- (c) The Board Member who has a direct or indirect interest in a matter being considered or to be considered by the Board shall, as soon as possible after the relevant facts concerning the matter have come to his/her knowledge, disclose the nature of his interest to the Board or Board Committee and shall not be present during any deliberations on the matter.
- (d) In so reporting, the Board Member is required to provide all relevant information, including information which relates to their immediate family by blood or marriage which is related to the area of conflict. When declared, the Board Member shall abstain from decisions on the matter where the conflict exists.
- (e) The Authority Secretary shall 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 Board Members shall in good faith disclose to the Board for recording, any other business or interest likely to create a potential conflict of interest.

### **3.4 Notice of Other Board Directorships**

- (a) Board Directors should carefully consider the number of other Board Directorships on which they can serve, consistent with the time and energy necessary to satisfy the requirements of Authority provided that a Board Member shall not serve in more than three boards of State Corporations concurrently.
- (b) In furtherance of these considerations, a Board Member shall notify the appointing body 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 Authority's Board, impact the Board Member's independence, or create an actual or apparent conflict of interest.

### **3.5 Board Member Access to Employees**

Board Members shall have full and free access to employees, but such access shall be arranged through the DG. The Board Members shall use their judgement to ensure that any such access does not disrupt the operations of the Authority.

### **3.6 Independent Advisors**

- (a) Board Members may individually and collectively seek independent advice in connection with their duties as and when required.
- (b) 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 Authority.

### **3.7 Interaction with Stakeholders**

3.7.1 Only designated representatives of the Authority shall communicate on behalf of the Authority with the Government, media, stakeholders and the general public.

3.7.2 The Board should:

- (a) Ensure that a policy on the management of stakeholder relationships is developed and implemented;
- (b) Ensure periodic review of the policy for the management of stakeholder relationships;
- (c) Promote effective communication with stakeholders;
- (d) Ensure that stakeholder' interests, expectations and their power to influence the operations and direction of the organization are documented;
- (e) Ensure that the reputation of the organization and its linkage with stakeholders is a regular Board agenda item;
- (f) Identify the rights of key stakeholders and ensure that their rights are respected; and
- (g) Take account of the legitimate interests and expectations of its stakeholders in its decision-making.

### **3.8 Induction and Continuous Skills Development**

- (a) The Authority shall provide new Board Members with an effective induction programme in order to familiarize them with their responsibilities as Board Members, general principles of corporate governance and board practices. The induction programme shall provide the Board Members with an orientation of the Authority, strategic plans, financial status and policies, risk management, compliance programmes and the Code of Conduct and Ethics.
- (b) The office of the DG and the Authority Secretary in consultation with the Board shall 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 shall be provided with access to, or notice of, continuing development programs that are designed to keep Board Members abreast of the latest developments in the energy & petroleum sector best practice, corporate governance and critical issues relating to the operation of public sector boards.
- (c) The Board Members shall be expected to remain in good standing and up-to-date with the continuous professional development in their respective professional bodies.

### **3.9 Remuneration**

Board Members shall be remunerated for their services in accordance with the prevailing relevant legislative provisions and/or guidance from the relevant authority. In line with best practice, the remuneration shall include chairman honoraria, monthly pay, sitting, lunch and travel allowances.

### **3.10 Performance and Evaluation**

- (a) The Board shall conduct an annual evaluation of its performance.
- (b) The Board shall also review the performance of each Board committee against the agreed Terms of Reference.
- (c) The Board shall evaluate the performance of the DG and Authority Secretary on an annual basis.
- (d) The Board evaluation provides an opportunity for Board Members to identify strengths, collective skill gaps and individual areas of improvement.

- (e) This evaluation shall be carried out in accordance with the SCAC Evaluation Tool.
- (f) The Board Members shall schedule an annual Board evaluation activity as part of the Board Calendar and notify SCAC of the same by 31<sup>st</sup> July of each year. The evaluation shall be conducted within the first four (4) months of every financial year or as directed by SCAC. The evaluation report shall thereafter be filed with the Ministry of Energy & Petroleum and SCAC.

### **3.11 Annual Board Calendar**

The annual Board Calendar shall be submitted to SCAC through the Ministry of Energy & Petroleum by 31<sup>st</sup> July every year. This shall be based on the organisational work plan, statutory obligations of the Board and the available budget.

### **3.12 Governance Related Disputes Avoidance & Management**

- (a) It is the collective responsibility of the Board to deal with disputes in an amicable, efficient and effective manner for good governance, business continuity and good image of the Authority;
- (b) The Board is responsible for ensuring that governance related disputes are handled tactfully, with diligence, care and confidentiality; and
- (c) To enable the above, the Authority shall develop and adopt a Governance Disputes Resolution Policy to guide the process.

### **3.13 Board and Senior Management Business Continuity**

The Board shall put in place a Board and Senior Management Business Continuity Framework and actions.

### **3.14 Governance Audit**

The Board shall ensure that a governance audit of the Authority is undertaken on an annual basis. The purpose of the governance audit shall be to ensure that the organization conforms to the highest standards of good governance.

### **3.15 Legal Compliance Audit and Reporting**

The Board should: -

### 3.15 Legal Compliance Audit and Reporting

The Board should: -

- (a) Ensure that a legal compliance audit is carried out at least annually, with the objective of establishing the level of adherence to applicable laws, rules, regulations and standards.
- (b) Ensure that the recommendations in the Legal Compliance Audit Report are implemented.
- (c) Ensure that a comprehensive and independent legal audit is carried out, at least once every two years.
- (d) The Board shall file compliance reports on all statutory obligations in each quarter to the responsible Cabinet Secretary and SCAC.

### 3.16 Interpretation of the Charter

- (a) This Charter shall be applied and interpreted in a manner that; promotes its purposes, Constitutional Values, Principles and good governance.
- (b) The Charter shall be reviewed as and when necessary but at least every Three (3) years.

This Board Charter is effective from 23<sup>RD</sup> day of JUNE 2025.

Name: Adan H. Ali Signed: [Signature]

Chairperson

## SCHEDULE ONE

### TERMS OF REFERENCE (TORS) FOR THE BOARD COMMITTEES

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#### PART I: AUDIT AND RISK COMMITTEE

##### 1.0 Mandate

The purpose of the audit and risk committee is to provide a structured, systematic oversight of the Authority's governance, risk management, and internal control practices.

##### 1.1 Key Responsibilities

###### 1.1.1 Corporate Governance

Support the board in reviewing the effectiveness of the Authority's processes of Corporate Governance to ensure that:

- i. Acceptable policies and procedures are followed;
- ii. Governance Audits are undertaken, findings deliberated on and implementations of the same are effected;
- iii. Legislative requirements and established standards are met;
- iv. Resources are used efficiently and economically; and
- v. Planned tasks are accomplished effectively.

###### 1.1.2 Financial Statements

- i. Review the result of the audit on the financial statements by the External Auditor or other inspector or investigator engaged by the Authority;
- ii. Review significant accounting and reporting issues, including complex or unusual transactions and judgement made in connection with the preparation of the Authority's financial statements, interim reports, and related formal statements;


- iii. When requested, review other sections of the annual report and consider the accuracy and completeness of the information;
- iv. Understand how management develops interim financial information, and the nature and extent of internal and external auditor involvement;
- v. Review interim financial reports with management before submission to the National Treasury, and consider whether they are complete and consistent with the information known to the members; and
- vi. Review with management and the external auditors all matters required to be communicated to the Audit & Risk Committee under generally accepted auditing standards.

### **1.1.3 Internal Controls and Assurance on Risk Management**

- i. Consider the effectiveness of the Authority's internal control systems (including information technology security and control) established by management to ensure compliance with policies, laws and regulation; safeguarding of the Authority's assets; economic and efficient utilization of resources; and the accomplishment of established objectives and goals for operations and programs;
- ii. Receive an annual report from HIARA on reasonable assurance on the state of risk management in the Authority;
- iii. Review and provide advice on the Authority's internal controls as a whole and its individual units; and
- iv. Receive reports on all matters of significance arising from work performed by other providers of financial and internal control assurance.



#### 1.1.4 Internal Audit Function

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- i. Review with management and HIARA the activities, staffing, qualifications of the internal auditors and organizational structure of the Internal Audit function;
  - ii. Have final authority to review and approve the annual internal audit work plan and all major changes to the plan;
  - iii. Approve the internal audit budget;
  - iv. Review and approve the internal audit charter and internal audit policies and procedures manual;
  - v. Consider and review significant audit findings, management responses and extent of implementation of audit recommendations;
  - vi. Ensure that there are no unjustified restrictions or limitations of access to information and resources to enable the internal audit functions fulfill its mandate;
  - vii. Approve the appointment and /or termination of appointment of the Head, Internal Audit & Risk Assurance (HIARA);
  - viii. The performance assessment of the head of Internal Audit should be conducted by the Audit & Risk Committee and should not be left at the discretion of the management;
  - ix. Meet with the HIARA at least once a year without the presence of management;
  - x. Ensure that the HIARA has direct access to the board chairman and to the audit committee, and is accountable to the audit committee; and
  - xi. Review the effectiveness of the Internal Audit function, including compliance with the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing*.

#### 1.1.5 External Audit

- i. Review the management letter from the External Auditors on any weaknesses in the internal accounting, operating



- controls, and consider their audit recommendations and action taken by management to implement recommendations and suggestions for improvement;
- ii. Review the annual audit report from the External Auditors and discuss significant findings and any difficulties encountered during the audit;
  - iii. Engaging with external auditors and assessing the adequacy of management response to issues identified by audit; and
  - iv. Meet with the external auditor at least once a year.

#### **1.1.6 Compliance**

- i. Review the effectiveness of the system of monitoring compliance with laws and regulations and management's action on noncompliance. This includes receipt of and deliberations and securing management's actions and implementations on internal and external legal audits;
- ii. Review the findings of any examination by Regulatory Agencies/ inspector /investigator/auditor and ensure that corrective action is taken where necessary; and
- iii. Obtain regular updates from Management regarding compliance matters.

#### **1.1.7 Reporting**

- i. Report the audit committee's activities, issues and related recommendations to the board on a regular basis;
- ii. Provide an open avenue of communication among Internal Auditors, the External Auditors, and the board;
- iii. Report annually to the stakeholders, describing the Audit & Risk Committee's composition, responsibilities and how they were discharged, and any other information required by rule, including approval of non-audit services; and
- iv. Review any other reports the organization issues that relate to the Audit & Risk Committee responsibilities.

### **1.1.8 Whistle Blowing & Fraud Prevention Procedures**

- i. Ensure that there are procedures for receipt, retention and treatment of complaints on the operations of the Authority;
- ii. Ensure that there is a system for confidentiality, anonymous submission and protection of employees reporting significant noncompliance, inconsistencies or other complaints;
- iii. Evaluate management's arrangements for the prevention and deterrence of fraud;
- iv. Ensure that appropriate action is taken against known perpetrators of fraud; and
- v. Ensure that the Authority has appropriate anti-fraud programmes and controls in place to identify potential fraud and ensure that investigations are undertaken if fraud is detected.

### **1.1.9 Values and Ethics**

To obtain reasonable assurance with respect to the Authority's values and ethics practices, the ARC will:

- i. Review and assess the policies, procedures, and practices established by the Board to monitor conformance with its code of conduct and ethical policies by all the Authority's staff and management;
- ii. Provide oversight of the mechanisms established by management to establish and maintain high ethical standards for all the Authority's staff and management; and
- iii. Review and provide advice on the systems and practices established by management to monitor compliance with laws, regulations, policies, and standards of ethical conduct and identify and deal with any legal or ethical violations.

## **PART II: FINANCE AND ADMINISTRATION COMMITTEE**

### **2.0Mandate:**

The Finance and Administration Committee shall amongst others support the Board in overseeing the financial management, human resources, and administrative functions of the Authority.

### **2.1 Key Responsibilities:**

#### **2.1.1 Financial Oversight:**

**2.1.1.1** Discuss and recommend to the Board the approval of annual budget estimates, annual reports, financial reports, financial statements, and management accounts for Board approval;

**2.1.1.2** Oversee long-term financial and investment plans for Board approval; and

**2.1.1.3** Review the financial performance reports of licensees for Board approval.

#### **2.1.2 Procurement Oversight**

In exercising the Board delegated functions the FAC shall:

**2.1.2.1** Establish a procurement policy that promotes sustainability, high ethical standards and best practice;

**2.1.2.2** Establish a procurement function in the organization, which is managed by competent and professionally qualified persons of high integrity;

**2.1.2.3** Approve the annual procurement plan, which should be aligned with the annual budget;

**2.1.2.4** Periodically review the implementation of the procurement plan;

**2.1.2.5** Receive a quarterly report on the actual expenditure compared to the budget and demand explanations from management on any variances;

**2.1.2.6** Ensure that the Committee responsible for risk monitors risks in the procurement process and that they are addressed in accordance with the organization's risk management policy; and

- 2.1.2.7 Ensure that there exists a clearly documented audit trail of procurement activities.

### **2.1.3 Strategic and Operational Planning:**

- 2.1.3.1 Recommend objectives and strategies in ensuring that they are aligned with the Authority's mandate, considering the interests of shareholders, customers, and employees for Board approval;
- 2.1.3.2 Review operational matters including performance contracts, risk management plans, procurement plans, and strategic reports for Board approval; and
- 2.1.3.3 Oversee the development and periodic review of the Corporate Strategic Plan, for Board approval, and monitor its implementation.

### **2.1.4 Human Resource Management:**

- 2.1.4.1 Review and recommend HR-related matters such as staff confirmation, probation, acting appointments, disciplinary issues, and gratuity remissions for Board approval;
- 2.1.4.2 Oversee HR planning to ensure the Authority's has the required staffing capacity and skills;
- 2.1.4.3 Consider staff establishment and recommend remuneration structures, bonuses, and incentives for Board approval;
- 2.1.4.4 Review staff recruitment processes and recommend for Board approval; and
- 2.1.4.5 Recommend training budgets and oversee management development and succession planning for Board approval.

### **2.1.5 Policy Development:**

- 2.1.5.1 Review and approve organizational policies; and
- 2.1.5.2 Oversee the development and implementation of financial, human resource, and operational policies and procedures.

#### **2.1.6 Communication matters:**

- 2.1.6.1** Ensure that there is a robust policy framework for effective internal and external communication;
- 2.1.6.2** Ensure that the communication department has the most accurate and update information of the Authority's mandate, operations and activities; and
- 2.1.6.3** Ensure a positive image of the Authority is maintained at all times.

#### **2.1.7 ICT matters:**

- 2.1.7.1** Assist the Authority in fulfilling its oversight responsibilities for the implementation of ICT infrastructure within the Authority and county government;
- 2.1.7.2** Reviewing the Authority's ICT governance structure;
- 2.1.7.3** Reviewing the Authority's ICT Policies and making appropriate recommendations to the Authority; and
- 2.1.7.4** To create partnerships with ICT based government institutions whose mandates complements the Authority's mandates.

#### **2.1.8 Risk and Compliance:**

- 2.1.8.1** Review enterprise risk management plans and annual status reports for Board approval.
- 2.1.8.2** Safeguard the integrity of management information and financial reporting systems.

#### **2.1.9 Other Duties:**

Any other incidental responsibilities or as may be assigned by the Board.

## PART III: TECHNICAL COMMITTEE

### 3.1 Mandate:

The Technical Committee is responsible for advising the Board on technical and regulatory matters relating to the Authority's mandate in the energy and petroleum sectors.

### 3.2 Key Responsibilities:

#### 2.1.1 Regulatory Oversight:

- 2.1.1.1 Review licensing procedures and regulations in the electricity and petroleum sectors, and recommend them for Board approval; and
- 2.1.1.2 Review and advise on effective regulatory frameworks.

#### 2.1.2 Tariff and Contract Review:

- 2.1.2.1 Review and recommend tariff rates, energy sales contracts, and network agreements for Board approval; and
- 2.1.2.2 Review and recommend retail tariffs for petroleum products and tariffs for petroleum infrastructure for Board approval.

#### 2.1.3 Sector Development:

- 2.1.3.1 Review and recommend energy and petroleum development plans;
- 2.1.3.2 Review and recommend field development plans, non-exclusive permits, and petroleum production licenses; and
- 2.1.3.3 Oversee the implementation of local content in petroleum sector projects.

#### 2.1.4 Policy Recommendations:

- 2.1.4.1 Recommend regulatory policies to ensure efficiency and effectiveness in the electricity and petroleum sectors.

#### 2.1.5 Technical Advisory:

- 2.1.5.1 Provide technical advice to the Board on any matter relevant to the Authority's mandate.

#### **2.1.6 Other Duties:**

Any other incidental responsibilities or as may be assigned by the Board.



## LIST OF REFERENCES

1. Constitution of Kenya, 2010. Available at: <https://www.kenyalaw.org> [Accessed 13<sup>th</sup> February 2025].
2. Energy Act, No. 1 of 2019 (Kenya). Available at: <https://www.kenyalaw.org> [Accessed 13<sup>th</sup> February 2025].
3. Energy and Petroleum Regulatory Authority (the Authority) Board Charter (2022). [Accessed 13<sup>th</sup> February 2025].
4. Government of Kenya Circulars and Presidential Directives on Management of State Corporations.
5. Kenya Bureau of Standards Act (Cap 496, Laws of Kenya). Available at: <https://www.kenyalaw.org> [Accessed 13<sup>th</sup> February 2025].
6. Kenya National Accreditation Service (KENAS) Act (Cap 534, Laws of Kenya). Available at: <https://www.kenyalaw.org> [Accessed 13<sup>th</sup> February 2025].
7. Leadership and Integrity Act, No. 19 of 2012 (Kenya). Available at: <https://www.kenyalaw.org> [Accessed 13<sup>th</sup> February 2025].
8. Mwongozo Code of Governance for State Corporations, 2015 (Kenya). Available at: <https://www.scac.go.ke/mwongozo> [Accessed 13<sup>th</sup> February 2025].
9. Petroleum Act, No. 2 of 2019 (Kenya). Available at: <https://www.kenyalaw.org> [Accessed 13<sup>th</sup> February 2025].
10. Public Audit Act, 2003 (Kenya). Available at: <https://www.kenyalaw.org> [Accessed 13<sup>th</sup> February 2025].
11. Public Finance Management Act, 2012, CAP 412A (Kenya). Available at: <https://www.kenyalaw.org> [Accessed 13<sup>th</sup> February 2025].
12. Public Officer Ethics Act, 2003 (Kenya). Available at: <https://www.kenyalaw.org> [Accessed 13<sup>th</sup> February 2025].
13. Public Procurement and Asset Disposal Act, No. 33 of 2015 (Kenya). Available at: <https://www.kenyalaw.org> [Accessed 13<sup>th</sup> February 2025].
14. Public Service Commission (PSC) Guidelines on Wealth Declaration (Kenya). Available at: <https://www.publicservice.go.ke> [Accessed 13<sup>th</sup> February 2025].
15. Second Schedule of the Energy Act, No. 1 of 2019 (Kenya). Available at: <https://www.kenyalaw.org> [Accessed 13<sup>th</sup> February 2025].
16. State Corporations Act, Cap 446 (Kenya). Available at: <https://www.kenyalaw.org> [Accessed 13<sup>th</sup> February 2025].
17. State Corporations Advisory Committee (SCAC) Guidelines on Terms and Conditions for Service (Kenya). Available at: <https://www.scac.go.ke> [Accessed 13<sup>th</sup> February 2025].



Chairperson:

Name: Adan H. Ali

Signed: 