

**TPS EASTERN AFRICA LIMITED**  
**(“TPSEA” or “the Company”)**

**BOARD CHARTER**

**1.0 PREAMBLE**

TPS Eastern Africa Limited is committed to good corporate governance and to complying with legislation, regulations and codes of best industry practice in all jurisdictions in which it has a presence. The Board of Directors (“the Board”) subscribes to generally accepted principles of good corporate governance and, in particular, has adopted, as part of its continuing listing obligations, the Capital Markets Authority’s guidelines on good corporate governance practices by public listed companies in Kenya.

**2.0 OBJECTIVES OF THE CHARTER**

This Board Charter defines the governance parameters within which the Board exists and sets out specific responsibilities to be discharged by the Board and directors collectively, as well as certain roles and duties incumbent upon directors as individuals.

The Charter is intended to facilitate the full and free exercise of the Board’s mandates and to ensure the effectiveness of each director’s contribution, consistent with the standards of independent judgment, ethics, and integrity, directors are expected to observe.

Whilst the Charter stipulates minimum acceptable standards of conduct, it is critical that, in pursuit of the ideas comprising the Charter, substance should take precedence over form.

**COMMITMENT AND INDEPENDENCE**

By subscribing to this Charter, each director acknowledges the Company’s core values and commits to upholding them. Therefore, directors commit themselves to taking into account, not only the possible financial impact of their decisions, but also their consequences for the sustainable development of the Company, their effect on relations with stakeholders, and the general interest of the communities in which the Company operates.

Each director undertakes to preserve his/her independence of analysis, judgment, decision and action, and to resist any pressure, direct or indirect, whether by other directors, creditors, suppliers, or, more generally , any third party.

Each director undertakes that, in arriving at a decision on any issue, he or she shall strive to ensure that the decision is in the best interest of the Company and is not driven by personal or any other interest.

### **3.0 BOARD STRUCTURE**

#### **3.1 Size and Composition of the Board**

- 3.1.1 The Board shall comprise of not less than five (5) and not more than fourteen (14) directors, unless otherwise determined as provided in the Company's Articles of Association<sup>1</sup>.
- 3.1.2 The Board shall be composed of executive, non-executive and independent directors of diverse skills and expertise, and shall encompass gender balance such that no individual or group of individuals shall dominate the Board's decision-making process.
- 3.1.3 All directors recognize that they are collectively responsible to the shareholders for the performance of the Company, irrespective of a director's special expertise and knowledge, and regardless of whether a director is an executive, non-executive or independent director..

#### **3.2 Appointments to the Board**

- 3.2.1 There shall be a formal and transparent procedure in the appointment of directors. All appointments shall be coordinated by the Nomination & Remuneration Committee (NRC) which shall propose new nominees to the Board and or consider candidates for directorships proposed by the Chief Executive Officer of the Company and/or the Company's shareholders. However, the responsibility of appointing directors to the Board shall rest with the full Board after considering the recommendations of the NRC. All directors shall be given letters of appointment upon joining the Board<sup>2</sup>.
- 3.2.2 All appointments shall be based on merit and against objective criteria which shall include the following:

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<sup>1</sup> Article 99 of the Company's Articles of Association

<sup>2</sup> Clause 2.1 of the NRC Terms of Reference

- integrity and standing in society;
- balance among executive, non-executive, and independent directors;
- mix of skill, knowledge, expertise & experience;
- literacy in diverse business and management fields;
- track record of high performance;
- ability to exercise sound independent judgment;
- good communication skills;
- leadership qualities;
- technical (industry-specific) skills;
- gender and national outlook; and
- succession planning.

3.2.3 The Board shall undertake an annual review of its composition and performance to ensure that<sup>3</sup>:

- the membership mix is appropriate and compatible with the needs of the Board and Company business;
- non-executive directors devote adequate time and contribute effectively to the affairs of the Company; and
- executive directors' performance is satisfactory.

3.2.4 To ensure effective participation in the Board's business, a director shall not hold a position of directorship in more than five (5) listed companies at any one time and the Chairman shall not hold such position in more

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<sup>3</sup> Clause 2.1 of the NRC Terms of Reference

than two (2) listed companies. Interlocking directorships in respect of alternate directors shall be limited to three (3) listed companies<sup>4</sup>.

- 3.2.5 The Company shall make a public announcement of the appointment of a director and/or secretary.

### **3.3 Removal of Directors**

- 3.3.1 The office of director shall be vacated by statute, death or under the provisions of Article 105 of the Company's Articles of Association.

- 3.3.2 The termination of an employment contract of an executive director shall result, *ipso facto*, in the termination of his/her membership of the Board, unless the Board determines otherwise.

- 3.3.3 The Company shall disclose the resignation by a serving director in the Annual Report, together with the reasons necessitating the resignation.

### **3.4 Chairman and Chief Executive Officer**

- 3.4.1 There shall be a clear separation of the role and responsibilities of the Chairman and the Chief Executive Officer (CEO).

- 3.4.2 The Chairman's primary role is to direct the Board's business and act as its facilitator and guide, ensuring the Board is effective in its task of setting and implementing the Company's corporate policies and strategies and programmes. More specifically, the Chairman's responsibility shall include:

- providing overall leadership to the Board;
- determining the agenda and ensuring that the directors receive accurate, timely and clear information of business to be transacted at Board meetings;
- chairing and efficiently conducting Board meetings and shareholders annual general meetings;
- maintaining close but independent working relationship with the CEO;
- acting as an information link between the Board, Management and shareholders;

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<sup>4</sup> F0 3 and F 04 of the Fifth Schedule of Continuing Obligations and Miscellaneous Provisions of the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations 2002.

- harnessing the collective skills of the Board and the executive team;
- facilitating an enabling environment conducive to free and open discussions;
- overseeing the Board's performance evaluation process;
- guiding the Board's decision-making process and where necessary using his/her casting vote; and
- ensuring, in consultation with the NRC, that effective induction and training programmes for directors are developed and implemented and monitoring the overall activities and performance of the Board and its Committees.

3.4.3 The CEO shall be responsible for the day-to-day leadership of the Company's business affairs as well as the following:

- initiating the formulation of the Company's policies and strategies and presenting them to the Board for necessary deliberations and approval;
- implementing and communicating the policies and strategies approved by the Board;
- preparing business proposals and budgets and submitting them to the Board for necessary deliberations and approval;
- achieving the Company's financial and operating goals and objectives;
- ensuring continuous improvement in the quality and value of the products and services provided by the Company;
- overseeing personnel matters, including hiring and firing of senior staff, and ensuring that the Company has an effective management team structure and succession plan;
- maintaining proper internal controls;
- maintaining a conducive working environment for attracting, retaining and motivating staff; and
- nurturing a corporate culture that promotes ethical practice.

3.4.4 The Board shall have a clear succession plan for the Chairman and CEO to avoid undue disruptions that may be caused by unplanned and

sudden departures that could undermine the Company's and shareholders' interests.

### **3.5 Alternate Directors<sup>5</sup>**

3.5.1 Any director may at any time appoint another director or any person approved by the Board to be his/her Alternate director to act in his/her place at any meetings of the Board at which the appointer is unable to be present. Such appointee shall be entitled, in the absence of the appointer, to exercise all the rights and powers of a director and to attend and vote at meetings at which the appointer is not personally present and where the appointee is a director, to have a separate vote on behalf of the appointer in addition to his/her own vote.

3.5.2 Any Alternate director shall *ipso facto* cease to be an Alternate director if the appointer ceases to be a director or if the appointment is revoked or if he/she resigns.

3.5.3 Alternate directors shall be deemed to be directors for all intents and purposes and shall be bound by the provisions of this Board Charter.

### **3.6 Term**

All directors, including the Chairman, save the executive directors, shall be required to retire by rotation at regular intervals at the end of every three years with a proviso that they may offer themselves for re-election on the basis of pre-determined policies and criteria. The executive directors shall be on fixed-term contracts which shall be based on pre-agreed performance criteria.

## **4. DIRECTORS' PROCEEDINGS**

### **4.1 Frequency of Board meetings**

The Board shall develop and maintain reporting and meeting procedures for itself and its Committees as it thinks fit. Regular Board meetings shall be held at least four (4) times a year on dates and at venues agreed by the directors. Unless otherwise agreed, the meetings shall take place in Nairobi. A schedule of meetings shall be provided to the directors as part of the Annual Board Work Plan at the beginning of every Calendar year.

### **4.2 Notification of meetings and Agenda**

The Company Secretary shall, in consultation with the CEO and the Chairman, be responsible for issuing notices of Board meetings and circulation of relevant

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<sup>5</sup> Articles 103 to 105 of the Company's Articles of Association

Board papers. The Agenda and Board papers shall be circulated at least 10 working days in advance of the meeting to allow directors sufficient time for review before the meeting.

The Board has sole authority over its Agenda and exercises this through the Chairman. Any member may request the addition of an item to the Agenda through the Chairman. The Chairman, working with the CEO and the Company Secretary, shall set the Agenda.

#### **4.3 Attendance at Board meetings**

The quorum for transacting the business of the Board may be fixed by the directors and unless so fixed shall be six (6) directors present in person or through Alternates.

#### **4.4 Board Minutes**

The Company Secretary shall be responsible for taking notes and preparing minutes of all Board meetings. Such minutes shall provide an accurate record of the directors' and all invited persons'/professionals' contributions present at meetings, the resolutions passed, and proceedings at the meetings. Minutes of all Board meetings shall be considered at subsequent Board meetings, approved and signed by the Chairman of the meeting. The draft minutes shall be circulated to directors for comments two (2) weeks after the respective Board meeting.

#### **4.5 Decision at Board meetings**

The Board shall endeavour to arrive at decisions through consensus. Questions arising at any meeting shall be determined by a majority of votes of the directors present and in the event of a tie, the Chairman shall have a second or casting vote.

### **5. ROLE OF THE BOARD**

5.1 The Board of directors shall assume primary responsibility of fostering the long-term business of the Company consistent with its fiduciary and legal responsibilities to the shareholders. The Board shall accord sufficient time to its functions and act on a fully-informed basis while treating all shareholders fairly in the discharge of the following responsibilities, among others:

- define the Company's Mission, Vision, Values, goals, plans, objectives, strategies, and risk policy;
- ensure accountability and stewardship of resources within the Company;
- oversee the Company's corporate management, operations, accounts, major capital expenditures, corporate performance, and strategies at least on a quarterly basis;

- identify corporate business opportunities as well as principal risks in its operating environment, including implementation of appropriate measures to manage such risks or anticipated changes likely to impact on the Company's corporate business;
- ensure the efficient management of the Company and development of appropriate staffing and remuneration policies, including appointment of the CEO and senior staff;
- ensure that the Company has developed succession plans for its directors and senior management;
- review on a regular basis the adequacy and integrity of the Company's internal controls, acquisitions and divestitures and management information systems;
- ensure that the Company complies with all relevant laws, regulations, rules and guidelines;
- establish and implement a system that provides necessary information to the shareholders, including shareholder communication policy for the Company;
- take into consideration the interests of the Company's stakeholders by maintaining an effective disclosure and communication system with all stakeholders;
- approve the Company's annual budgets;
- ensure the Company has developed an effective Corporate Social Responsibility programme;
- evaluate regularly its performance and effectiveness as a whole and that of individual directors, including the CEO and the Chairman;
- monitor the adequacy and effectiveness of the Company's governance structures; and
- monitor and manage potential conflict of interest at management, Board, and shareholder level.

5.2 In discharging their above responsibilities, directors are expected to have the following attributes:

- act in good faith and in a transparent and professional manner, having regard to their fiduciary duties and responsibilities to the shareholders;
- exercise independent judgment in the interests of the Company; and
- apply themselves diligently to the business of the Company.

## **6. BOARD COMMITTEES**

To enable the Board to effectively discharge its duties, the Board shall form Committees of its members and delegate specific mandates to such Committees. The Committees shall conduct their business in accordance with their Terms of Reference as approved by the Board. The Board shall establish the following



Committees as a minimum and delegate to them specific mandates detailed in Appendix I and II<sup>6</sup>.

- Audit & Finance Committee
- Nomination & Remuneration Committee

## **7. CONFLICT OF INTEREST**

- 7.1 The directors are under a fiduciary duty to act honestly and in the best interests of the Company. To this end, directors shall avoid putting themselves in a position where their self-interest conflicts with their duty to act in the best interests of the Company.
- 7.2 The Company Secretary shall maintain a register of directors' personal interests to provide a formal record of interests that may conflict with Company's interests.
- 7.3 Directors, their immediate families, and companies where directors have a controlling interest may only transact business with the Company on arm's length basis. All such transactions shall be recorded in the register of Directors' Interests and reported at each Board meeting.
- 7.4 It shall be the duty of a director to disclose any area of conflict of interest or potential conflict of interest that may undermine his/her position as director. Directors shall, on an annual basis, make a declaration that they have not in any way transacted business with the Company or conducted their affairs in any manner resulting or likely to give rise to a conflict of interest.
- 7.5 The following options may be considered in resolving conflicts of interest:
- Disclosing the conflict: A director shall disclose the nature of a conflict which shall be recorded in the minutes of Board meetings and the register referred to in Paragraph 7.2 above.
  - Refraining from discussion: If the conflict is of a minor nature, it may be sufficient for a director who has disclosed his/her interest to remain at the meeting and simply refrain from discussion. If a conflict is of a more substantial nature, the Board may consider excluding a director from those portions of Board meetings where the matter creating such a conflict or potential conflict is discussed.

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<sup>6</sup> Appendix I - AFC Terms of Reference  
Appendix II - NRC Terms of Reference

- Resignation: In the event that the conflict is major, for instance where a director or a member of his/her family is involved in a competing business, such director may be asked to resign from the Board.

7.6 The provisions of conflict of interest herein stated shall be complementary to the provisions relating to this subject in the Company's Articles of Association and the Companies Act (Cap 486 of the Laws of Kenya).

## **8. DECISION MAKING**

8.1 Directors are encouraged to hold discussions openly and constructively, recognizing that genuinely-held differences of opinion could, in such circumstances, bring greater clarity and lead to better decisions.

8.2 Each director commits himself/herself to expressing his/her views in a forthright manner and to using all means at their disposal to convince the Board of the validity of their position should they hold that a proposed Board decision is not in the best interest of the Company.

8.3 The Chairman shall facilitate free, fair and open discussions on all matters tabled for consideration. He/She shall use his/her best endeavours to seek consensus in Board decisions, failing which he/she shall call for a vote.

8.4 The Company Secretary shall keep a register of all decisions that are voted upon and the votes of the respective directors.

## **9. CONFIDENTIALITY**

9.1 Information concerning the Company which is communicated orally or in Board papers to directors in confidence in connection with their functions is provided *intuit personae* (in consideration of the person). Directors must personally take the necessary precautions to respect the confidentiality of such information and not divulge it under any circumstances. This personal responsibility applies equally to any Alternate directors.

9.2 The Company Secretary shall ensure that any employee, consultant or invitee attending Board/Committee meetings is aware of this duty of confidentiality and is bound accordingly.

## **10. DIRECTORS REMUNERATION**

10.1 The Board shall establish a formal and transparent procedure for working out the remuneration of directors. The Board shall be responsible for reviewing the directors' remuneration and approving changes from time to time as recommended by the Nomination & Remuneration Committee.

- 10.2 In considering the compensation for non-executive directors, the Board shall consider the following:
- the number of hours spent by directors in preparing for and attending meetings;
  - current market rates applicable to other directors of companies of similar size in competing sectors; and
  - the number of meetings in the year.
- 10.3 Executive directors' remuneration shall be competitively structured and linked to performance.
- 10.4 Directors' remuneration shall be disclosed in the Annual Report and approved by shareholders.

## **11. DIRECTORS' ORIENTATION AND TRAINING**

- 11.1 Newly appointed directors shall undergo a comprehensive, formal and tailor-made induction programme to enhance their effective contribution to the work of the Board and its Committees. The induction shall cover the nature of the Company's business, organizational structure, Board and Committee mandates, key strategies, Board practices and procedures as well as the role, duties, and responsibilities of directors, among others. The induction process shall be coordinated by the CEO and the Company Secretary.
- 11.2 All directors shall also receive continuing training to extend and refresh their knowledge and skill which add to their credibility and effectiveness in the discharge of their responsibilities. All directors shall, in particular and as a minimum, undergo formal training and certification in corporate governance. Training is further required due to the weighty responsibilities placed upon directors to enhance the level of commitment called for and due to the fast changes in the corporate environment requiring directors' preparedness .
- 11.3 The Company shall provide the necessary resources for implementing such training programmes.

## **12. PERFORMANCE EVALUATION**

- 12.1 The Board shall have in place a process of a formal self-evaluation of its performance after every 2 years. The primary purpose of the self-evaluation is not only to enhance the performance, effectiveness, and contribution of each director, but also to improve the effectiveness of the Board as a whole. The

formal self-evaluation shall not replace informal feedback on performance on an ongoing basis.

12.2 The self-evaluation shall cover the performance of the Chairman, CEO, individual directors, the Company Secretary, and the Committees.

12.3 The self-evaluation process shall address, as a minimum, the key areas contained in Appendix III<sup>7</sup> and the following additional information:

12.3.1 Shareholders' and Stakeholders Expectations

- Has the Board clearly defined the Company's stakeholders to which it is accountable and responsible?
- Is there full and accurate reporting on Company affairs to the shareholders?
- Do Company goals reflect shareholder expectations?

12.3.2 Legal and Regulatory Responsibilities

- Does the Board have effective procedures in place to ensure that the organization is meeting its legal and regulatory responsibilities?

12.3.3 Management of Board and Committee Meetings

- Does the Board and Committees hold meetings in accordance with the Charter and the respective Terms of Reference?
- Is there active participation in deliberations and decision making?
- Is there an enabling environment for the directors to exercise independent and sound business judgment?
- Are key members of management invited to Board and Committee meetings to provide management perspective and briefs?

12.3.4 The Company's Direction and Performance

- How satisfactory or effective is the Board's monitoring of the Company's performance?

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<sup>7</sup> Appendix III – Board Performance Evaluation Template

- Are important issues identified in a timely manner and appropriately addressed?
- Is there an effective risk management process in place? Are risks properly identified and mitigated effectively?
- Is an impact assessment relating to key decisions carried out and appropriate action taken to address any deficiencies that may come to light?

#### 12.3.5 Individual Board Members Contributions

- How effective is the Chairman, CEO, and individual directors in the discharge of their responsibilities?
- Is there an adequate recognition and effective use of individual Board members' particular skills?

12.4 The results of the self-assessment shall be used to determine the strengths and weaknesses of the Board, identify any skills gaps in the composition of the Board, and provide important inputs for appointments, re-appointments, and specific training needs of directors.

### **13. ACCOUNTABILITY AND AUDIT**

13.1 Financial Reporting – The Board of Directors is responsible for:

- ensuring that qualified, competent, fit and proper persons are employed to undertake accounting and financial responsibilities;
- ensuring the integrity and adequacy of the Company's accounting and financial systems;
- ensuring the Company complies with applicable accounting standards and regulatory framework.

13.2 The Board shall present to the stakeholders, annually, a balanced and understandable assessment of the Company's financial position and prospects. The Directors shall explain in the Annual Report their responsibility for preparing the accounts and express their opinion on whether the Company remains a going concern, with supporting assumptions or qualifications as necessary.

### **14. INTERNAL CONTROLS**

The Board is responsible for the Company's systems of internal controls. It shall set appropriate policies on internal controls, and shall regularly (at least

annually) conduct a review of the effectiveness of the Company's systems of the internal controls, and confirm to the shareholders the position. The review shall cover all material controls, including financial, operational compliance, as well as risk management procedures. The Board shall further ensure that the system of internal control is effective in managing risks in the manner in which it has approved.

**15. INSIDER TRADING**

The Capital Markets Authority Act (the 'CMA Act') has prescribed certain regulations that expressly prohibit the use of unpublished insider information. The Company has an Insider Trading Policy ("the ITP")<sup>8</sup> in place that is in line with the CMA Act and directors are expected to act in strict compliance with the insider trading rules and regulations set out in the ITP and in the Act. Accordingly directors shall not, directly or indirectly, buy or sell shares in the Company while in possession of insider information or disclose inside information to anyone within or outside the Company.

**16. CORPORATE SOCIAL RESPONSIBILITY**

The Board shall ensure establishment of a Corporate Social Responsibility Policy (the CSR Policy). The CSR Policy shall as a minimum provide for allocation and spread of the CSR activities to be carried out in the respective Calendar year by the respective Serena units.

**17. BOARD WORK PLAN**

The Board shall prepare a Work Plan setting out the activities planned for each Financial year. The Work Plan will cover amongst others, the timings for regular Board and Committees meetings and the Annual General Meeting, special projects and principal areas of focus in that year.

Each year's Work Plan shall be presented to and be approved by the Board at the commencement of the Calendar year.

**18. PROCESS OF REVIEW OF THE BOARD CHARTER**

The Board shall review this Charter as and when deemed necessary to ensure it remains relevant to the Company's business objectives and best practices for corporate governance.

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<sup>8</sup> Appendix IV

**19. MEMORANDUM AND ARTICLES OF ASSOCIATION<sup>9</sup>**

This Charter is subject to Company's Articles of Association and in the event of any conflict or inconsistency between the provisions of this Charter and those in the Articles of Association, the provisions of the latter shall prevail.

NOTES

This Charter and the Company's Articles of Association are subject to the Companies Act (Cap 486 of the Laws of Kenya) and the Capital Markets Authority Act (Cap 485A of the Laws of Kenya) in so far as it applies to the Company.

In the event of conflict of the conflict between the Charter, the Articles of Association of the Company and the Companies Act, the Companies Act will prevail.

Reference to the Legislation and the Articles will apply to its subsequent amendments.

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<sup>9</sup> Appendix V

APPENDIX I: Audit and Finance Committee Terms of Reference



APPENDIX II: Nomination and Remuneration Committee Terms of Reference

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APPENDIX III: Board Performance Evaluation Template

APPENDIX IV: TPSEA Insider Trading Policy

APPENDIX V: TPSEA Articles of Association