



National Environment  
Management Authority

**NATIONAL ENVIRONMENT MANAGEMENT  
AUTHORITY (NEMA)**

# **Board Charter**

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### DEFINITIONS

Unless the contrary intention is expressed, the following words (when used in this Board Charter) have the meaning set below:

<b>Act</b>	means Environmental Management and Co-ordination Act Act No. 8 of 1999 as amended in 2015
<b>Board</b>	means the Board of Directors of National Environment Management Authority (NEMA)
<b>Committee</b>	Means the Committees of the Board established within the provisions of this Charter
<b>Employees</b>	means employees of the National Environment Management Authority (NEMA)
<b>Management</b>	means employees of the National Environment Management Authority (NEMA) vested with managerial and supervisory responsibility
<b>Mwongozo</b>	means the Code of Governance for State Corporations issued jointly by the Public Service Commission and the State Corporations Advisory Committee in January, 2015
<b>NEMA</b>	means the National Environment Management Authority
<b>SCAC</b>	means the State Corporations Advisory Committee
<b>Senior Management</b>	means those employees, Directors, Departmental Heads who report directly to the Director-General



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### A. INTRODUCTION

This Board of Directors Charter (the "Charter") defines the Board's roles and responsibilities as well as functions and structures in a way that supports the members in carrying out their strategic oversight function. The purpose of this Board Charter is to clarify the role and responsibilities of the Board in order to promote high standards of corporate governance. The Board of Directors ("Board") of National Environment Management Authority (NEMA) is collectively responsible for promoting the success of NEMA by leading, directing and monitoring the activities and effectiveness of management. The Board members should act on a fully informed basis, in good faith, with due diligence and care and in the best interest of NEMA in order to achieve the strategic objectives of NEMA.

The Charter will help the Board in leading, directing and monitoring the operations and effectiveness of the organization to maximize the long term value of services provided for all stakeholders. It is therefore imperative for Board members to understand their individual and collective roles with the purpose of helping NEMA fulfill its mandate.

The Charter has been adopted by NEMA, acting in accordance with *Mwongozo, Code of Governance for State Corporations* ('the Code'), and is complementary to the requirements regarding the Board and Board members contained in applicable Kenyan laws and regulations. In particular, the principles and policies contained in the Charter are in addition to and are not intended to change or interpret any statute, law or regulation.

Upon appointment, every Board member shall be provided with the following documents among others:

- (a) The Board Charter
- (b) The Service Charter
- (a) The NEMA Strategic Plan.
- (b) EMCA 1999 as amended in 2015



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- (c) EMCA Regulations
- (d) State Corporations Act, Cap 446
- (e) Mwongozo Code of Governance for State Corporations
- (f) NEMA's Operation Manuals
- (g) Prevailing Performance Contract
- (h) Applicable circulars
- (i) The Code of Conduct and Ethics

### **B. STATEMENT OF GOOD GOVERNANCE**

NEMA 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:

1. To Cultivate, observe and promote high standards of ethical corporate culture and moral behavior;
2. To manage conflicts of interests, and act in the best interests of NEMA;
3. To remunerate and promote fairly and responsibly;
4. To recognize the legitimate interests of all stakeholders;
5. To ensure that the organization acts as a good corporate citizen; and
6. Appreciate that strategy, risk, performance and sustainability are inseparable.

In general, Board members shall act in the best interest of NEMA and uphold their fiduciary responsibilities and duty of care. This involves not disclosing confidential information, avoiding real and perceived conflicts of interest, and favouring the interests of NEMA 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.



### **C. GUIDING PRINCIPLES**

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

1. The national values and principles provided for under Article 10 of the Constitution;
2. The rights and fundamental freedoms provided for under Chapter Four of the Constitution;
3. The responsibilities of leadership provided for under Article 73 of the Constitution;
4. The values and principles of Public Service as provided for under Article 232 of the Constitution.

### **D. THE MEMBERS OF THE BOARD OF DIRECTORS**

The Board of Directors is the body of appointed members who jointly oversee the activities of NEMA. The Board is expected to provide strategic direction, exercise control and remain accountable through effective leadership, enterprise, integrity and good judgment. In addition, it is desirable that the Board be diverse in its composition, independent but flexible, pragmatic, objective and focused on balanced and sustainable performance of NEMA.

#### **1. Board Responsibilities**

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



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In furtherance of its responsibilities, the Board will:

- a) Determine NEMA's vision and mission, provide strategic direction to NEMA and is responsible for the approval of strategic plans and the implementation of values in support thereof;
- b) Approve and monitor the annual performance contract, annual work plan and budget proposed by Management;
- c) Recruit the Director General, who reports to the Board and ensures that succession is planned;
- d) Review, evaluate and approve major resource allocations and capital investments;
- e) Ensure that the procurement process is cost-effective and delivers value for money;
- f) Review and approve the operating and financial results of NEMA;
- g) Ensure effective, accurate, timely and transparent disclosure of pertinent information on NEMA's operations and performance;
- h) Review, evaluate and approve the overall organizational structure, the assignment of senior management responsibilities and plans for senior management development and succession;
- i) Review, evaluate and approve the remuneration structure of NEMA;
- j) Adopt, implement and monitor compliance with the NEMA's Code of Conduct and Ethics;
- k) Review on a quarterly basis the attainment of targets and objectives set out in the agreed performance measurement framework with the Government of Kenya;
- l) Review periodically the NEMA's strategic objectives and policies relating to environmental management and sustainability as well as social responsibility/investment;
- m) Ensure the National Environment Action Plans and the state of environment are developed as appropriate;





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- n) Protect the rights of shareholders and optimize shareholder value;
- o) Enhance NEMA's public image and ensure engagement with stakeholders through effective communication;
- p) Determine NEMA's communication policy;
- q) Ensure that NEMA has appropriate risk management, internal control and regulatory compliance procedures in place and that it communicates adequately with stakeholders;
- r) Define levels of delegation in respect to specific matters, with required authority to board sub-committees and management;
- a) Monitor compliance with the Constitution, all applicable laws, regulations and standards; and
- b) Review, monitor and ensure that NEMA is effectively and consistently delivering on its mandate.

### **2. Board Size and Composition**

The Board of NEMA consists of eleven members as follows:

- i). A Chairperson appointed to the Board by the President for a term of 3 years;
- ii). Director-General who is also the Secretary to the Board;
- iii). Six (6) members not being public officers, appointed by the Cabinet Secretary responsible for Environment for a term of 3 years. Such persons should hold at least a post-graduate degree from a recognized university in the field of environmental law, environmental science or natural resource management or a relevant social science;
- iv). The Principal Secretary for the Ministry of Environment and Forestry or his representative;
- v). The Cabinet Secretary for the National Treasury or his representative; and
- vi). The Attorney-General or his representative.

Every effort shall be made to ensure that the composition complies with the provisions of the Constitution of Kenya and any applicable legislation with regards to gender, regional balance, diversity of experience among others. In addition, at least one member will be a financial expert. To this end, the Board will prepare its profile including size, composition and members' expertise for stakeholder information.



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### 3. Appointment and Removal of Board Members

- i) The relevant appointing authority shall select and appoint Board members. Every appointment shall be by name and by notice in the Kenya Gazette but shall cease if the Board member:
  - a) Serves the appointing authority with a written notice of resignation; or
  - b) Is absent, without the permission of the Chairperson, from three consecutive meetings; or
  - c) Is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding twenty thousand shillings;
  - d) Is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board; or
  - e) Conducts himself in a manner deemed by the appointing authority to be inconsistent with membership of the Board.
- ii) Any removal of a Board member under (i) above, shall be through formal revocation.
- iii) The Board Secretary will ensure that a record of the appointment letter, gazette notice and written acceptance by the Board member are kept in the personal file of the Board member.

### 4. Independence of Board Members

All Board members, including those nominated by stakeholders, should recognize that they owe their duties to NEMA and not their nominating stakeholder or appointing authority. Each Board member will be required to understand the mandate and the broad outline of the NEMA's policies and be in good standing professionally.



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### 5. Term Limits

Independent Board members shall hold office for a period not exceeding three (3) years, and shall be eligible for reappointment for one more term not exceeding three (3) years. The renewal of a Board Member's tenure for a second term should be subject to an acceptable evaluation as determined during Board evaluations.

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

### 6. Resignation from the Board

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

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

### 7. Role of Chairperson of the Board

The Chairperson of the Board is primarily responsible for the activities of the Board and its committees. The role of the Chairperson includes approving the agenda for board meetings, chairing the meetings and ensuring that a record of proceedings of all Board activities is kept. The Chairperson shall act as the spokesperson for the Board and is the principal contact for the Director-General.

The Chairperson ensures that:

- a) The Board satisfies its duties and responsibilities;
- b) Board members when appointed participate in an induction programme and are thereafter continually developed based on identified development needs;
- c) Board members receive all information required for them to perform their duties;
- d) The Board develops and adheres to an annual work plan;
- e) The Board has sufficient time for consultation and decision-making;



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- f) The Board constitutes committees and that the committees function properly;
- g) The performance of the Board, Board members, the Director-General and the Corporation Secretary is evaluated annually;
- h) Problems relating to the performance of individual Board members are addressed;
- i) Internal disputes and conflicts of interest concerning individual Board members are addressed; and
- j) The Board has appropriate contact with the management.

### **8. Role of Individual Board Members**

Each Board member shall;

- (a) Exercise the highest degree of care, skill and diligence in discharging his or her duties;
- (b) Hold in confidence all information available to him or her as a Board member;
- (c) Act in the best interest of NEMA and not for any other purpose;
- (d) Act honestly at all times and not place oneself in a situation where personal interests conflict with those of NEMA;
- (e) Devote sufficient time to carry out Board responsibilities;
- (f) Regularly update his or her knowledge and enhance their skills;
- (g) Promote and protect the image of the NEMA; and
- (h) Exercise independent judgment.

### **9. Role of the Director-General**

The Director-General is a Board member with no voting rights. The Director-General and the Board play separate and distinct roles but work together to achieve organizational goals.



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The Board is responsible for appointing the Director General, through a competitive process, and for removing them in consultation with the Appointing Authority. The Board should also assist the Director-General in selecting the management team and put in place a succession plan for both the Director-General and the team.

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

The Board should provide the Director-General 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 or assistance.

The Director-General should:

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



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### **10. Corporation Secretary Director- General or Representative)**

The Board should be assisted by a suitably qualified, competent and experienced Board Secretary. The principal duties of the Corporation Secretary shall be:

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

### **11. Committees of the Board**

The Board remains collectively responsible for the decisions and actions taken by any committee. A committee may only perform the tasks delegated to it by the Board and may not exceed the authority or powers of the Board. The committees will promptly report to the Board any actions taken for ratification and any major developments that they become aware of.

NEMA Board has established Four (4) standing committees with the terms of reference as outlined below:



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### **A. Finance and Human Resources Committee.**

1. Review financial needs of the Authority.
2. Set, monitor and review financial benchmarks.
3. Review and recommend Board approval budgetary estimates and performance against the budget of the Authority.
4. Review and recommend Board approval of annual work plans.
5. Review quarterly and annual financial reports and provide advice to the Board.
6. Review and recommend Board approval of financial policies and procedures.
7. Set financial systems, controls and procedures and advice the Board on compliance therewith.
8. Recommend Board approval of annual procurement plans and quarterly Procurement reports.
9. Provide oversight role in ensuring compliance to The Public Procurement and Disposal laws and regulations.
10. Continually review, in line with the organization's strategy, the organizational structure, core functions and optimum establishment.
11. Develop, review and monitor implementation of the Authority's Human Resources policies and strategies to enable the Authority achieve its strategic objectives.
12. Examine policies and procedures on staff recruitment and selection process.
13. Review the staff training and development policy for operational efficiency and capacity enhancement.
14. Review quarterly and annual human resources reports and provide advice to the Board.
15. Continuously review and ensure implementation the succession plan.



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16. Interview and make recommendations to the Board the appointment of officers in the Job Grade E2, E3, E4 and E5.
17. Hear and make recommendations on disciplinary cases for officers in the Job Grade E2, E3, E4 and E5.
18. Consider and recommend Board approval of the board calendar of meetings and other Board activities.
19. Ensure effective Board processes, structures and roles, including retreat planning, board development, and board evaluation.
20. Review compliance levels of statutory revenue collection and recommend appropriate strategies of enhancing collection.

### **B. Environmental Management and Conservation Technical Committee.**

1. Assist the Board of Management in determining NEMA's vision, mission and values, providing strategic direction to NEMA, recommendation for approval of strategic plans and implementation thereof.
2. Review and advise the Board of Management on NEMA's Annual Work plan.
3. Recommend to the Board of Management the approval of quarterly progress reports on implementation of annual work plans activities and performance contract targets.
4. Periodically review NEMA's strategic plan and advise the Board on necessary changes thereon as the case may be.
5. Review and recommend Board approval of the quarterly and annual work plan and performance target reports.
6. Examine and advice on policies, priorities and planning for the protection of the environment.





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7. Review and recommend Board approval of operational policies, strategies, and approaches in environmental management and conservation.
8. Review and recommend Board approval of frameworks for channeling research findings into policy development and programming processes.
9. Examine, review and advice on strategies for implementing environmental excellence awards.
10. Advice and recommend to the Board of Management the design, development and implementation of environmental education and awareness programmes in the public, private and formal sphere.
11. Advice the Board of management on co-ordinated and integrated knowledge management policy and information dissemination strategy.
12. Recommend to the Board strategies for tapping into debates on topical and emerging environmental management and conservation issues.
13. Periodically review and recommend Board adoption of the NEMA Research Strategy.
14. Review and make recommendations to the Board of Management on compliance and enforcement policies and procedures.
15. Advice on environmental impact assessment and audit policies and processes.
16. Advice and recommend to the Board appropriate economic instruments, and incentives to promote environmental management and sustainable development.



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### **C. Audit, Governance and Risk Management Committee.**

1. Monitor and review NEMA's risk assessment and management control systems.
2. Receive and review periodic financial information from the internal audit unit of NEMA.
3. Receive and ensure completeness, accuracy, and timeliness of the financial statements from NEMA management.
4. Receive, deliberate and advice the Board of Management on the necessary action in regard to the findings and recommendation of Auditor General, and other organs of the State.
5. Monitor Management's achievement and compliance with the laid down internal and statutory financial reporting policies.
6. Receive periodic reports on procurement and disposal of assets from Management.
7. Evaluate NEMA's policies, procedures and standards of internal control and financial reporting and accounting policies and make recommendations thereof to the Board.
8. Monitor and review the effectiveness of the internal audit function and management's responses to the recommendations.
9. Liaise with the internal and external auditors on all matters pertinent to NEMA's financial management
10. To review and recommend to the Board, NEMA's annual reports, interim and preliminary reports.
11. Recommend appointment of external auditors where need arises and receive their reports thereof.
12. Receive the internal Auditors' reports.



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13. Evaluate and approve the Internal Auditors' plans, scope of findings and reports
14. Evaluate the effectiveness of the internal auditing function, including its purpose, activities, scope, adequacy and costs, and recommend Board approval of the annual internal audit plan.
15. Review and approve activities, scope, adequacy and effectiveness of NEMA's risk management and regulatory procedures.
16. Establish procedures for the receipt, retention and treatment of complaints received by NEMA regarding accounting, internal control or auditing matters.

### **D. Strategy, Legal and Resource Mobilization Committee**

1. Examine, review and advice on resource mobilization strategies for the Authority.
2. Identify and solicit funds from external sources.
3. Oversee the development and implementation of the Fundraising Plan.
4. Consider and recommend special funding proposals including loans and grants and related project reports.
5. Advise the Board on the investment of funds of the Authority.
6. Develop and monitor the Authority's Information Communication and Technology (ICT) policy and strategy.
7. Review and monitor implementation of the corporate strategy through operational and budget mechanisms and review and modify strategy as necessary in light of feedback from operational plans.



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8. Receive and periodically review instruments of co-operation and partnerships among public departments, County Governments, private sector, non-governmental organisations and such other organisations engaged in environmental protection programmes.
9. Examine, review and advice on appropriate strategies for internal and external communication.
10. Examine, review and advice on strategies for enhancing service delivery.
11. Examine, review and advice on strategies of enhancing corporate brand and image.
12. Development and review of the Authority's corporate social responsibility policy, programmes and activities.
13. Consider and recommend Board approval of draft regulations, standards and guidelines.
14. Advice and recommend to the Board of Management legal and legislative issues on the affairs of the Authority and on environmental management. This will entail advising the Board of Management on impact of criminal and civil cases.
15. Advice the Board of Management on strategies for revenue collection for enhancing compliance and enforcement.
16. Advice on appropriate legal and fiscal policies that may be used to encourage the public and private sectors to incorporate environmental requirements into their planning and operational processes.
17. Identify and recommend policy, legislative and other measures for preventing, controlling or mitigating specific as well as general adverse impacts on the environment.



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18. Periodically advise the Board of Management on constitutional and devolution matters for environmental management.
19. Review and make recommendations to the Board relating to the mandate of NEMA.
20. Ensure projects and programmes are aligned with the Authority's Strategic Plan, Vision 2030, Sustainable Development Goals (SDGs), MTPIII and other National Development Plans.
21. Provide advice and guidance on the preparation of concepts and project proposals. Liaison with Parliamentary Committees on Environment.

The Board will adopt Committee Charters in respect of all Committees, addressing the role, duties and responsibilities, composition and structure, administration and any other matters the Board determines relevant to such Committee.

### **D: Ad-Hoc Committee (On need basis)**

NEMA Board may establish ad-hoc committees to handle any special business that, in the opinion of the Board, requires establishment of such ad-hoc Committee.

### **12 Appointment of Members to the Committees**

The Board shall appoint into committees, members with requisite skills and competence to discharge allocated responsibilities. In the event that a committee lacks specific skills within its membership, the Board may, with the approval of the oversight body, co-opt skilled non-Board members to serve on the committee, provided that the chair of a committee shall not be a co-opted member or the Chairperson of the Board and that no more than three members shall be co-opted at any one time. The Board may, from time to time, rotate Board members between the committees.

The Chairperson of each committee, in consultation with the Board, will determine the frequency of committee meetings as is necessary to fulfill the Committee's functions.



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The Chairperson of each committee, in consultation with management, will develop the committee's agenda. The Board will however determine the procedure and process within which committees may take independent professional advice at NEMA's expense.

No committee shall have less than four (4) nor more than six (6) members of the board including the Director General or Corporation Secretary in order to manage quorum dynamics.

### **E. PRACTICES OF THE BOARD**

#### **1. Principles of Public Service**

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

- a) High standards of professional ethics;
- b) Efficient, effective and economic use of resources;
- c) Responsive, prompt, effective, impartial and equitable provision of services;
- d) Involvement of stakeholders in policymaking;
- 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.



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### 2. Board and Committee Meetings

The Chairperson shall preside at every meeting of the Board at which he is present, but in his absence the Vice-Chairperson shall preside, and in his absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat have all the powers of the Chairperson.

#### a) Frequency of meetings

The Board shall normally hold a minimum of four meetings per year, spread over quarterly intervals. The meetings of the Committees will be regulated by the respective Committees for the purposes of achieving the objectives for which the Committees are established by the Board. The committees shall also hold a minimum of four meetings per year.

#### b) Schedule of meetings

A schedule of meetings for the following calendar year shall be prepared and approved by the Board during the last meeting of the previous calendar year. Each Board member shall be issued with the schedule of meetings for planning purposes.

Notices of the location and the timing of meetings will be issued prior to the meetings. The Board work plan may be adjusted if deemed necessary by the Board.

### 3. Notice and Agenda for Meetings

- (a) Notice and agenda of Board and committee meetings shall be issued from the Corporation Secretary as directed by the Chairperson of the Board or relevant committee in consultation with Director General. Each Board member is free to suggest the inclusion of items on the agenda by providing notice to the Chairperson at least fourteen (14) days prior to the meeting, to enable preparation. Additional agenda items may be included in the agenda during the meeting subject to approval by the Board or the committee.



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- (b) Save for the additional agenda items, the agenda for the meetings will be aligned to the Board's work plan which will establish a schedule of agenda subjects to be discussed during the year to the degree this can be foreseen.
- (c) Except for urgent cases, as determined by the Chairperson, detailed agenda accompanied by relevant supporting documents and recommendations will be provided to the Board members at least ten (10) days prior to a meeting. Board members should review these materials in advance of the meeting to enhance effectiveness.

#### **4. Venue of Meetings**

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

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

#### **5. Quorum**

The quorum for a Board meeting will be six members, while the quorum for Board committee meetings will be three (3) members excluding the Director General or the Corporation Secretary. The meetings of the Committees will be regulated by the respective Committees for the purposes of achieving the objectives for which the Committees are established by the Board

In the event of a meeting of the Board or a committee, where a quorum is not present within a reasonable time, such a meeting shall stand adjourned to such other day and at such other time and place as the members may determine.





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### **6 Attendance of Meetings by Members**

Board members are expected to attend Board meetings and meetings of the committees on which they serve. A Board member who is unable to attend a meeting will explain their absence to the Chairperson and notify the Corporation Secretary for purpose of recording the apology. The Director-General shall attend all Board meetings and, if requested by the Board, other members of the senior management shall also attend a Board meeting in whole or in part.

The Board should set aside adequate time, annually, to discuss strategy and policy matters as well as monitoring and evaluating key projects.

### **7. Attendance of meetings by non-members**

The Chairperson, Director-General or Committee Chairpersons may from time to time invite senior managers, other employees, advisors, auditors or any other person who is not a member to attend a meeting of the Board or a committee. Such invitations may be extended if, in the opinion of the Chairperson, the person or persons so invited have a special or technical contribution to make in the deliberations of the meeting. A person so invited to a meeting may only speak at the request of the Chairperson or other member presiding and may not vote.

In addition, the Inspector-General (Corporations) may attend the Board and Committees meetings as provided for in the State Corporations Act, CAP. 446, and will be notified of all Board functions.

### **8. Procedure of Meetings**

#### *a) 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, the Vice-Chairperson shall preside, and in his absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat have all the powers of the Chairperson.



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### *Constitution of the Meeting*

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

### *b) 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.

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

### **c) Guiding Principles for Tele/Video Conferencing**

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:

- i). The Corporation Secretary should ensure that the constitutive documents of NEMA allow for tele/video conferencing;
- ii). The Corporation Secretary shall ensure that the necessary arrangements are in place to facilitate effective and secure communication during the meeting;
- iii). On sending out the notice of the meeting, the Corporation Secretary shall also confirm whether each Board member or participant will attend physically or through tele/video conferencing;
- iv). At the start of the scheduled meeting and for the purpose of confirming quorum, a record of attendance shall be taken during which each Board member or participant will clearly state, for the record, their full name, location, type of device being used and give confirmation that they can clearly hear the others;
- v). All Board members or participants shall identify themselves for the record before speaking and must confirm that they can clearly hear and/or see each other in the course of the meeting;



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- vi). 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;
- vii). The Chairperson shall ensure that resolutions are clarified for record purposes; and
- viii). The Chairperson shall ensure that the agenda is suitable for tele/video conferencing.
- ix). The Chairperson of either the Board or the Committee and the Corporation Secretary shall be present in the Boardroom even when the meeting is held virtually.

### **d) Resolutions, Minutes and Implementation**

- i). The Board members, with the guidance of the Chairperson, shall work towards unanimous adoption of resolutions. However, Board members shall be entitled to voice dissenting opinions and have these recorded in the minutes when unanimity cannot be reached.
- ii). Resolutions of the Board will be made at Board meetings or approved in writing by circulation, provided that in respect to the latter the proposed resolution is submitted to all Board members and none of them objects to this form of adoption. Approval of resolutions by circulation shall be effected in writing by all Board members. Objection to this method of adoption or to the proposed resolution should also be in writing.
- iii). Minutes must be drawn up for every Board and Committee meeting with resolutions highlighted therein. The minutes should be circulated to the Board members as soon as possible after the meeting. Upon confirmation, the minutes should be signed by the Chairperson and added to the records of NEMA. Substantial corrections to previous minutes will be recorded in the minutes of the meeting where the corrections are made and adopted by the Board members. Urgent resolutions may be drawn up and signed immediately in the relevant meeting.



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- iv). Generally, the Board delegates to the Director-General responsibility to implement the resolutions of the Board. The Director-General may delegate some of these responsibilities to senior management. The Board is responsible for monitoring the implementation of the resolutions.
- v). Copies of confirmed minutes of all Board meetings will be filed in Board's Minutes book for record purposes.

### **9. Liability of Board Members**

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

### **10. Conflict of Interest**

Board members shall be obliged to act in good faith and to avoid actual and perceived conflict between the interest of NEMA and their personal, professional and business interest. A conflict of interest may arise where;

- A Board member uses his or her office for personal gain.
- 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.

Board members are required to avoid conflict of interest and deal at arms-length in any matter that relates to NEMA. However, a Board member who identifies an area of conflict shall be required to disclose any actual or potential conflict of interest to the Board. In so reporting, the Board member is required to provide all relevant information, including information which relates to their immediate family members by blood or marriage which is related to the area of conflict. When declared, the Board member shall abstain from decisions where the conflict exists.

The Corporation Secretary shall keep a record of conflicts of interest declared, for accountability purposes, and as a rule of good practice on appointment and on regular



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intervals or at any time when circumstances change, all members shall in good faith disclose to the Board for recording, any other business or interest likely to create a potential conflict of interest.

### **11. Notice of Other Directorships**

Board members should carefully consider the number of other Boards on which they can serve, consistent with the time and energy necessary to satisfy the requirements of NEMA, provided that a Board member shall not serve in more than two boards of State Corporations concurrently and a board chairperson shall not hold such a concurrent position in another State Corporation to ensure they devote sufficient time in steering the State Corporation..

In furtherance of these considerations, Board members should notify the appointing authority in a timely fashion before accepting an invitation to serve on the Board of another public or private body. This prior notice shall be 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 NEMA's Board, impact the Board member's independence, or create an actual or apparent conflict of interest for the Board member.

### **12. Independent Advisors**

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



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### 13. Interaction with Stakeholders

Only designated representatives shall communicate on behalf of NEMA with the Government, media, stakeholders and the general public. The specific communication will be made in consultation and concurrence with the Chairperson and the Director-General and as per NEMAs Communication Strategy.

### 14. Board Induction and Continuous Skills Development

The Board shall ensure that:

- (a) New Board members undergo an effective induction programme in order to familiarize themselves with their responsibilities as Board members under the law, general principles of corporate governance and Board practices. The induction programme will also provide the Board member with an orientation of the operations of NEMA, strategic plans, financial status, policies, risk management, compliance programmes and Code of Conduct and Ethics.
- (b) 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 members abreast of the latest developments in sector best practice, corporate governance and critical issues relating to the operation of public sector boards.
- (c) The Board members are up to date with continuous professional development in their respective professional bodies.

### 15. Board 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 should include attendance allowances, transport facilitation, accommodation where applicable and performance bonuses.



### **16. Board Performance**

The Board will conduct an annual evaluation to appraise its performance. This evaluation will be carried out in accordance with the Board Evaluation Tool.

The Board evaluation provides an opportunity for Board members to identify strengths, collective skill gaps and individual areas of improvement. The Board will also review the performance of each committee against the agreed Terms of Reference.

The Board will also evaluate the performance of the Director-General and Corporation Secretary.

This evaluation will be carried out by the State Corporations Advisory Committee or any other authority as may be prescribed from time to time in accordance with the Board Evaluation Tool.

### **17. Board and Management Succession**

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

### **18. Governance Audit**

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

- a) Leadership and strategic management;
- b) Transparency and Disclosure;
- c) Compliance with Laws and Regulations;
- d) Communication with stakeholders;
- e) Board independence and governance;
- f) Board systems and procedures;



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- g) Consistent shareholder and stakeholders' value enhancement; and
- h) Corporate social responsibility and investment.

### 19. Review and Approval

The Board will review this Charter annually or as may be necessary from time to time. This Charter is available to all members of the Board for application and is posted on NEMA's website for the information of stakeholders.

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This Board Charter is effective from this .....day of....., 2023.

Signed:.....

DATE.....

**EMILIO MUGO**

**CHAIRPERSON, NEMA BOARD OF MANAGEMENT**