



TRUST DEED



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THIS TRUST DEED is made the day **18th of November, Two Thousand and Ten** by the SECRETARY FOR HEALTH, the SECRETARY TO THE TREASURY, the EXECUTIVE SECRETARY FOR NATIONAL LOCAL GOVERNMENT FINANCE COMMITTEE, the REPRESENTATIVE OF CHRISTIAN HEALTH ASSOCIATION OF MALAWI, the REPRESENTATIVE OF THE SOCIETY OF ACCOUNTANTS IN MALAWI, the REPRESENTATIVE OF THE MALAWI LAW SOCIETY and the REPRESENTATIVE OF THE PHARMACEUTICAL SOCIETY OF MALAWI (hereinafter referred to as the “Original Trustees”).

WHEREAS the Government is desirous of establishing a fund for the purposes of ensuring continuous, uninterrupted and adequate supply of approved, quality and affordable medicines and other medical supplies to health facilities;

AND WHEREAS the Government is further desirous of capitalizing the trust fund for the establishment of the Trust.

NOW THIS DEED WITNESSETH and it is hereby declared as follows:

ARTICLE 1 INTERPRETATION

In this Trust Deed, unless the context otherwise requires –

“Board” means the Board of Trustees;

“Chairperson” means the Chairperson of the Board;

“Donors” includes the Government and development partners;

“Essential medicines” means medicines that cater for 90% of ailments of the population;

“Chief Executive Officer” means the chief executive officer of the Central Medical Stores;

“Medical supplies” means any other supplies other than medicines that are used in the provision of care to patients;

“Minister” means the Minister responsible for Health;

“Quality medicines” means medicines which are efficacious, safe, affordable, and suitable to meet local requirements;

“Secretary” means such person appointed by the Trustees to hold the office of Secretary to the Board;

“Trust” means the Trust declared and established under this Trust Deed;

“Trustees” means that person appointed as such in accordance with Article 7 of this Trust Deed and their successors. Trustee shall mean any one of the Trustees individually;

“Trust Fund” means the total assets donated by the Donors and such funds raised and set aside for the purposes of the Trust and all investments, securities, moneys and other property, real or personal, which may at any time be given, bequeathed, devised, paid, transferred, conveyed to or otherwise acquired, received or held by or assured to the Trustees in such manner as to become subject to the Trust hereof and the property and investments for the time being representing the same and the rents, profits and income thereof and moneys arising there from.



ARTICLE 2
ESTABLISHMENT AND NAME

There is hereby declared and established a Trust upon the terms and conditions and for the objects detailed herein. The name of the Trust shall be the Central Medical Stores Trust (hereinafter referred as the “Trust”).

ARTICLE 3
LEGAL STATUS AND LIMITED LIABILITY

- (1) The Trust is a body corporate duly incorporated under the Trustees Incorporation Act (Cap 5:03) of the Laws of Malawi;
- (2) The rights and obligations of the Trust vest in the Trust independently of its Trustees;
- (3) The Trust shall not distribute any of its profits or gains to any person and it shall use its funds solely for the objects for which it has been established;
- (4) The Trust shall have perpetual succession;
- (5) The Trust may sue and be sued in its own name; and
- (6) The liabilities of the Trust are limited to its assets.

ARTICLE 4
OBJECTS OF THE TRUST

The objects of the Trust shall be –



(1) To ensure an efficient, sustainable and economical national procurement system of quality medicines and medical supplies in partnership with the Government, Non-Governmental Organizations and cooperating partners in the health sector;

(2) To ensure the accessibility to and availability of quality medicines and medical supplies for the general population;

(3) To offer to the public, non-profit making private health facilities and, from such a time as the Trustees shall determine, profit making private health facilities, with quality medicines and medical supplies;

(4) To ensure that the standard of the quality medicines and medical supplies complies with the requirements as defined by the Ministry of Health and other regulatory bodies through the establishment and maintenance of appropriate systems and procedures;

(5) To securely, safely and efficiently manage, distribute and supply medicines, medical supplies and medical equipment having regard to national needs and to the special nature of the goods in question in accordance with the National Drug Policy;

(6) To co-ordinate all medicines, medical supplies and equipments donations to the Trust and Government;

(7) To timely and accurately inform the health authorities of all data related to the supply to public health institutions to facilitate planning and budgeting;

(8) To develop and maintain an information policy which aims to contribute to transparency towards both the Ministry and clients; and

(9) to properly perform such additional tasks or duties complementary or necessary to the performance of its objects.

ARTICLE 5
FUNDS OF THE TRUST

The funds of the Trust shall initially be provided by the Government and donors.

ARTICLE 6
VESTING OF THE FUND

The Trust Fund is hereby vested in the Trustees upon trust to apply the capital and any income thereof for any purpose or purposes connected with or relating to the objects of the Trust.

ARTICLE 7
BOARD OF TRUSTEES AND APPOINTMENT OF NEW TRUSTEES

(1) The Trust shall be administered by a Board of Trustees which shall consist of the following members appointed by the Minister, after consultation with the organizations or interest groups they represent –

- (a) The Secretary for Health or the designated representative (ex-officio);
- (b) The Secretary to the Treasury or the designated representative (ex-officio);
- (c) The Executive Secretary for the National Local Government Finance Committee (ex-officio);
- (d) One representative of Christian Health Association of Malawi (CHAM);
- (e) One representative from the Society of Accountants in Malawi (SOCAM);

- (f) One representative of the Malawi Law Society (MLS); and
- (g) One representative of the Pharmaceutical Society of Malawi.

(2) No person shall be appointed, or continue to act as a Trustee who -

- (a) is, under any law in force in Malawi, adjudged or otherwise declared to be of unsound mind;
- (b) has been absent from three consecutive meetings of the Board, of which he has been given notice, without the leave of the Chairperson;
- (c) has been dismissed from any office in the public sector or from any office of trust on account of misconduct;
- (d) has been convicted of an offence involving breach of trust, fraud, moral turpitude or dishonesty;
- (e) is un-discharged bankrupt, having been adjudged or otherwise declared to be bankrupt under law in force in Malawi;
- (f) has not attained the age of twenty-one years;
- (g) is a politician; or
- (h) Ceases to be ordinarily resident in Malawi.

(3) The validity of any proceedings of the Board shall not be affected by any vacancy among the members thereof or by any defect in the appointment of any member provided that there is a quorum.

ARTICLE 8

ARTICLE 8
TENURE OF OFFICE OF THE TRUSTEES

(1) A Trustee, who is not a Trustee ex-officio shall hold office for a maximum period of two terms of three years each, provided he or she is re-appointed after the first term of three years.

(2) A Trustee may resign his or her office by giving notice in writing to the Chairperson.

(3) The Board of Trustees may, and after following the rules of natural justice, suspend any Trustee from office as Trustee and any person so suspended shall forthwith execute and do all such deeds and things, if any, as may be necessary for vesting in the persons who after his suspension are the Trustees for the time being of any part of the Trust property which may be vested in him whether alone or jointly.

ARTICLE 9
VACANCIES ON THE BOARD OF TRUSTEES

(1) A vacancy on the Board of Trustees shall arise on -

- (a) the expiry of the term of office of a Trustee;
- (b) resignation of a Trustee after giving notice in writing;
- (c) the death of a Trustee;
- (d) a Trustee leaving Malawi for more than one year;
- (e) a Trustee failing to attend, without valid excuse, three consecutive meetings of the Board of which he has had due notice;
- (f) a Trustee being convicted of a criminal offence involving breach of trust, fraud, moral turpitude or dishonesty; and

(g) a Trustee having been disqualified from acting as a trustee under the Laws of Malawi.

(h) A Trustee ceasing to represent the organization or interest group which nominated him or her.

(2) A vacancy due to any of the above shall be filled in accordance with Article 7 of this Trust Deed.

ARTICLE 10

GENERAL POWERS OF TRUSTEES

In addition to the powers conferred upon the Trustees elsewhere in this Trust Deed and under the Trustees Act, Cap 5:02 of the Laws of Malawi, the Trustees shall have the following powers-

- a) to oversee and guide the procurement and distribution of quality medicines and related medical supplies in Malawi;
- b) to raise and receive funds and donations for the procurement of quality medicines and related medical supplies;
- c) to co-operate with the Government, donors and other organizations and agencies in the procurement of medicines;
- d) to publish any technical or other information as they deem necessary or expedient for the clients of the Trust;
- e) to administer, hold, manage and invest any money forming part of the Trust Fund, in Treasury Bills, fixed deposits, savings deposits or investment shares in or of any bank, building society or other financial institutions for the time being operating in Malawi;

- f) with the prior approval of the Minister responsible for Finance, to borrow money upon the security of any part of the Trust Fund and to deal with such money in any manner in which capital money forming part of the Trust Fund may be dealt with;
- g) to appoint managers, officers and other staff of the Trust and to do all such other lawful things as in the opinion of the Trustees may be requisite for the effective management of the Trust and the Trust Fund and to give effect to the objects of the Trust;
- h) to determine the financial programme of the Trust for each year and the programme for implementing the objects set out in this Trust Deed;
- i) to formulate and review the policies of the Trust having regard to its purposes and functions as set out in this Trust Deed;
- j) to appraise and evaluate the performance of the Management of the Trust and to determine their levels of remuneration and other conditions of service;
- k) subject to the approval of the Minister, to vary and to amend this Trust Deed;
- l) subject to the approval of the Minister, to dissolve the Trust and to determine the manner of disposing of any assets after the discharge of all debts and other obligations of the Trust;
- m) to operate bank accounts in any reputable financial institution registered in Malawi;

- n) to decide how to deal with any financial surplus that the Trust may realize to improve the accessibility of quality medicines and medical supplies for the general population;
- o) to be responsible for the procurement of all drugs in accordance with any relevant written law regulating procurement in Malawi;
- p) to make by-laws and regulations for the good governance of the Trust;
- q) to do all such other lawful acts, matters and things as the Trustees may deem necessary in order to achieve and give effect to the objects of the Trust; and
- r) The Trustees shall have power to appoint committees consisting of such number of Trustees or other persons as the Trustees shall consider appropriate and to delegate to such committees the powers and duties exercised by the Trustees under this Trust Deed except the power to make rules and execute documents conferred by Articles 16 and 22 respectively.

ARTICLE 11

INTEREST OF TRUSTEES

- (1) A Trustee shall declare any interest which he or she has or may have in any business which may be a party to any contract with the Trust and shall, in such event, retire from that part of the meeting of the Trustees or any committee of the Trustees at which the matter is being discussed.

- (2) Failure by a Trustee to make the declaration referred to in sub article (1) above shall render the decision of the meeting on the matter null and avoid.

ARTICLE 12

SERVICE OF PROCESS

The postal address shall be Private Bag 55, Lilongwe and the physical address shall be the Central Medical Stores Compound off Mzimba Street, Lilongwe at which service of process and notices may be affected against them.

ARTICLE 13

MEETINGS OF TRUSTEES

- (1) The Trustees shall elect a Chairperson to preside over the meetings of the Trust from amongst their number. The Chairperson shall hold office for the period of one year and shall be eligible for reappointment.
- (2) In the absence of the Chairperson, the Trustees shall elect amongst themselves one person to preside at the meeting.
- (3) The Trustees shall hold ordinary meetings at least once in every three months and every notice for such meeting shall be in writing and shall specify the agenda, time and place of the meeting.
- (4) The Trustees shall hold an annual general meeting on a date not less than 120 days and not more than 180 days from the Trustee's year end and at that meeting the accounts and annual report shall be considered.

(5) Notice for all meetings shall be in writing and given twenty-one days prior to the date of the meeting, unless the Trustees unanimously agree to dispense with such notice.

(6) A quorum at a meeting of the Trustees shall be constituted by four Trustees including the Chairperson or designate.

(7) Trustees may attend meetings by proxy.

(8) The Chairperson or a simple majority of the trustees may call for an extraordinary meeting of the Board.

(9) (a) The following resolutions shall be passed by a two-thirds majority vote of all the Trustees –

- i. resolutions altering the objects of the Trust;
- ii. resolutions for amalgamating the Trust with any other trust or body; and
- iii. resolutions concerning the sale or other disposal of any assets of the Trust.

(b) Any resolution passed by the Trustees under sub-paragraph (a) shall be subject to approval by the Minister.

(10) Decisions of the Trustees shall be reached by consensus failing which such decisions shall be taken by a majority of the Trustees present and the Chairperson shall have a casting vote in addition to his or her deliberative vote.

(11) Any decision of the Trustees made or taken otherwise than in accordance with the provisions of this Article shall be null and void.

(12) The Trustees may at any time for any period invite any person to attend any meeting of the Trustees and take part in the deliberations of the meeting but such person shall not be entitled to vote at the meeting.

(13) The Secretary to the Board shall keep Minutes of the proceedings of all meetings and such Minutes or an extract therefrom, signed by the Chairperson of the Board or of the meeting concerned at which the Minutes were adopted, shall be proof of such proceedings and the due convening and holding of the meeting and the validity thereof, unless the contrary is proved.

ARTICLE 14

APPORTIONMENT OF TRUST MONEYS

- (1) The Trustees may, in accordance with appropriate accounting principles, determine whether any moneys accruing to the Trust are to be considered as capital or income and may allocate funds, consolidate investments and determine all questions or matters arising in the administration of the Trust.
- (2) All costs, charges and expenses of the Trust shall first be paid out of the incomes of the Trust Fund and only out of capital of the Trust Fund if the incomes of the Trust Fund are inadequate for that purpose.

ARTICLE 15

LIABILITY FOR LOSS

In carrying out their duties, the Trustees or any one of them shall not be liable to the Trust or to any beneficiary for any loss which may occur as a result of any investment made in good faith by the Trustees or occasioned by any

mistake or omission made in good faith by the Trustees or any of them or as a result of any negligence, dishonesty or fraud of any agent or employee of the Trust appointed by the Trustees in good faith, unless such loss arises from any neglect, dishonesty or fraud of the Trustees or any of them.

ARTICLE 16
POWER TO MAKE RULES

The Trustees shall have power to make such rules as they may consider proper for the regulation of their meetings and for the management of the affairs of the Trust and may, from time to time, alter, rescind or amend such rules.

ARTICLE 17
COMMITTEES

Any committee may co-opt to its meetings any person whose knowledge of any subject under discussion is considered by the Committee to be useful but such person shall not be entitled to vote.

ARTICLE 18
AGENTS FOR TRUSTEES

Trustees shall be entitled from time to time, to engage and employ such persons, including Legal Practitioners, as the Trustees may deem necessary, to assist in any business of whatever nature required to be done pursuant to this Trust Deed. The Trustees shall be entitled to pay all such charges and expenses so incurred as a first charge and shall not be responsible for the default of any such persons or for any loss occasioned by such employment.

ARTICLE 19
CONFIDENTIALITY

Every Trustee, donor, co-opted person or consultant to the Trust who attends a meeting of the Trustees or of a committee of the Trustees shall regard and deal with as confidential all information which may come to his or her knowledge in the course of his or her dealings with the Trust.

ARTICLE 20
CHIEF EXECUTIVE OFFICER AND OTHER EMPLOYEES OF THE TRUST

- 1) There shall be an Chief Executive Officer and other employees of the Trust.
- 2) The Chief Executive Officer shall be appointed on such terms and conditions, by the Trustees and approved by the Minister.
- 3) The Chief Executive Officer shall be the managing officer of the Trust and shall, in addition, perform such duties as the Trustees shall assign to his office and ensure the effective administration of the Trust.
- 4) Without derogation from the generality of sub-article (2), the Chief Executive Officer shall-
 - (a) Regularly brief the Trustees on the policy framework and strategies of the country's medicines procurement, storage and availability and related services, and recommend policy changes to facilitate and improve the implementation of the Trust's work programme;
 - (b) Manage and direct all programmes and projects of the Trust with focus on the effective and efficient utilization of human and financial resources and materials;

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- (c) Oversee the recruitment and selection of staff of the Trust in accordance with the provisions of this Trust Deed;
- (d) Collaborate and maintain effective linkages with relevant Government Ministries and Departments, Non-governmental Organizations and other private voluntary agencies on medicines availability and related services; and
- (e) Together with the management team of the Trust, be the executing arm of the Trust.
4. The Trustees may appoint, on such terms and conditions as they determine, such other employees, subordinate to the Chief Executive Officer , to assist the Chief Executive Officer in discharging his duties and responsibilities.
5. The Trustees may delegate to the Chief Executive Officer the appointment of employees of such junior ranks as the Trustee shall specify.
6. The Chief Executive Officer or, in his absence, such other officer of the Trust as the Chief Executive Officer may designate in writing, shall attend meetings of the Trustees and of any committee of the Trustees, but shall not vote on any matter, provided that the person presiding at any meeting may, for good cause, require the Chief Executive Officer or such other officer to withdraw from such meeting.
7. The Chief Executive Officer shall be the secretary to the Trust and shall, on the instructions of the Chairperson, convene meetings of the Trust.

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8. An officer of the Trust duly designated in writing by the Chief Executive Officer shall be secretary to a committee of the Trustees and shall, on the instruction of the chairperson of the committee, convene meetings of the committee.

ARTICLE 21

COMMON SEAL

- (1) The common seal of the Trust shall not be affixed to any instrument except by the Chief Executive Officer and a Trustee, or by two Trustees for the time being authorized in that behalf by the Board of Trustees and both shall sign the instrument to which the common seal is affixed in the presence of each other.
- (2) The common seal of the Trust shall be kept under lock and key and there shall be kept and maintained a register of all instruments to which seal has been affixed.

ARTICLE 22

EXECUTION OF DOCUMENTS

All documents, other than those requiring the common seal, made in the name of the Trust and all decisions of the Trustees shall be signified under the hand of the Chairperson or any duly authorized Trustee or under the hand of the Chief Executive Officer.

ARTICLE 23
FINANCIAL YEAR

The financial year of the Trust shall be from 1st July in each year to 30th June the following year. The period between the date of this Trust Deed and the 30th June next shall be deemed to be the financial year of the Trust and the accounts for that period shall be audited pursuant to Article 25 as if they were for a full financial year.

ARTICLE 24
RECORDS AND BOOKS OF ACCOUNT

(1) The Trustees shall cause to be kept proper records and accounts of the sums of money received or expended by the Trust and the matters in respect of which such receipt or expenditure takes place and of the property, credits and liabilities of the Trust and such accounts shall be open to the inspection of the members; and

(2) All books, vouchers and accounts of the Trust shall be kept at the Headquarters of the Trust or any other location considered appropriate by the Chief Executive Officer.

ARTICLE 25
AUDIT

(1) The accounts of the Trust shall be audited annually in accordance with generally accepted principles by a professionally qualified and independent auditor who is practicing in Malawi, appointed by the Trustees;

- (2) The auditor shall be appointed at the Annual General Meeting; and
- (3) The auditor shall be entitled to examine books of account, vouchers and any other records owned or controlled by the Trust and may require from employees or any agent of the Trust such information as he considers necessary for the proper performance of his duties.

ARTICLE 26
HONORARIA AND SITTING ALLOWANCE

- (1) The Trustees shall, while carrying out their duties as Trustees be paid such honoraria as the Trustees may determine in general meeting, with the approval of the Minister.
- (2) The Trustees shall be paid such sitting allowance out of the Trust Fund as may be determined by the Trustees in general meeting with approval of the Minister, for attending meetings of the Trust.

ARTICLE 27
REIMBURSEMENT OF COSTS

The Trustees shall be reimbursed out of the Trust Fund for the cost of travelling to attend meetings of the Trust and reasonable costs of accommodation incurred wholly, exclusively and necessarily in the attendance of such meetings.

ARTICLE 28

SETTLEMENT OF DISPUTES

In case any dispute or difference shall arise, at any time during the continuance in effect of this Trust Deed or upon or after its termination, bearing on this Trust Deed or its construction or effect as to the rights, duties or liabilities of the Trustees or beneficiaries herein or by virtue of this Trust Deed or otherwise arising out of or in relation to the subject matter of this Trust Deed, the same shall be referred to a single arbitrator to be agreed upon by the parties hereto or, in default of such agreement, to be appointed by the Chairperson for the time being of the Malawi Law Society. Such arbitrator's appointment and all arbitration proceedings shall be in accordance with the Arbitration Act, Cap 6:03 of the Laws of Malawi.

ARTICLE 29

MODIFICATION AND AMENDMENT OF TRUST DEED

Subject to the approval of the Minister, the provisions of this Trust Deed, except for the objects of the Trust, may at any time be modified or amended by written declaration to that effect by all the Trustees, signed by all the Trustees and sealed with the common seal.

ARTICLE 30

TRANSITIONAL PROVISIONS

- 1) All land, buildings, property, assets, rights, stocks, liabilities or obligations existing at the date of incorporation of the Trust and vested in, or acquired by or on behalf of the Government in respect of the Medical Stores Fund established under the Finance and Audit Act, cap. 37:01 of the Laws of Malawi shall, upon the incorporation of the Trust, vest in or be acquired by or on behalf of the Trust.

- 2) Where the transfer of any property vested in the Trust under sub-article (1) required by any written law to be registered, the Trust shall apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Trust or any person by way of registration fee, stamp or other duties-
 - a) make such entries in the appropriate register as shall give effect to the transfer;
 - b) where appropriate, issue to the Trust a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and
 - c) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.
- (3) Any person who becomes an employee of the Trust shall enter into such employment contract on the terms and conditions of service that will be applicable to employees of the Trust.

ARTICLE 31

DISSOLUTION OF THE TRUST

The Board of Trustees may, with the approval of the Minister, dissolve the Trust, provided that before such dissolution, the Board of Trustees shall decide the allocation of any remaining assets of the Trust to another Trust or organization with objects similar to those set out in Article 4 of this Trust Deed.

Signed, Sealed and delivered by the)
EXECUTIVE SECRETARY FOR THE) *Wzi Mjoro*
NATIONAL LOCAL GOVERNMENT)
FINANCE COMMITTEE)

In the presence of

Name:

Signature: *[Signature]*
Address: **Mphatso Kachule
Legal Practitioner &
Commissioner for Oaths
Malawi Energy Regulatory Authority
Private Bag B-496
Lilongwe 3
Malawi**
Occupation:

Signed, Sealed and delivered by the) *W. Mwanite 19/11/11*

Signed, Sealed and delivered by the)
REPRESENTATIVE OF THE) *[Signature]*
CHRISTIAN HEALTH)
ASSOCIATION OF MALAWI) *CANAN KARONGA PHIRI*

In the presence of

Name:

Signature: *[Signature]*
Address: **Mphatso Kachule
Legal Practitioner &
Commissioner for Oaths
Malawi Energy Regulatory Authority
Private Bag B-496
Lilongwe 3
Malawi**
Occupation:

Signed, Sealed and delivered by the)
SECRETARY TO THE TREASURY)



In the presence of

Name: Mphatsso Kachule

Signature: 

Address: **Mphatsso Kachule**
Legal Practitioner &
Commissioner for Oaths
Malawi Energy Regulatory Authority
Private Bag B-400
Lilongwe 8
Malawi

Occupation:



CENTRAL MEDICAL STORES TRUST

