THE CAPITAL MARKETS (COMMODITY MARKETS) REGULATIONS, 2020

(*LN 41 of 2020*)

THE KENYA NATIONAL MULTI COMMODITIES EXCHANGE (KOMEX) RULES, 2023

6th September 2023

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THE CAPITAL MARKETS (COMMODITY MARKETS) REGULATIONS, 2020

IN FULFILMENT OF the requirement under Regulation 6 of the Capital Markets (Commodity Markets) Regulations, 2020, the Kenya National Multi Commodities Exchange Limited makes the following Rules—

KENYA NATIONAL MULTI COMMODITIES EXCHANGE (KOMEX) RULES, 2023

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PART I—PRELIMINARY

Citation. 1. These Rules may be cited as the Kenya National Multi Commodities Exchange (KOMEX) Rules, 2023 and shall become effective upon approval by the Capital Markets Authority.

Interpretation.

2. In these Rules, unless the context otherwise requires—

"Act" means the Capital Markets Act, Cap.485A;

"Affiliate Member" means a person admitted as a member of KOMEX conferring a right to trade in goods or services on KOMEX on their own behalf or to offer support to members of the KOMEX Eco-system;

"Approved User" means a person who is a non-member of KOMEX who is granted limited or unlimited access rights by KOMEX to the KOMEX Trading System and may include designated officials of a National or County Government Ministry, Department or Agency;

"Authorized Representative" means a person authorized through a power of attorney (in the case of individual members) or by letter of appointment (in the case of Body Corporates) by a member to represent and act on behalf of that member;

"Authority" means the Capital Markets Authority established under the Act;

"authority" means any National or County Government Ministry, Department or Agency empowered by statute to regulate an economic sector or economic activity;

"Board" means the Board of Directors of the Kenya National Multi Commodities Exchange Limited;

"Body Corporate" means any entity which is registered or incorporated under any law and has a legal personality distinct from its members or shareholders, and includes partnership, trust, cooperative society, savings and credit cooperative society, community based organization or any other association of persons recognized as a corporate body under any law in Kenya;

"Buy Order" means an order to buy a commodity permitted for trading on the KOMEX;

"Buyer" includes the client engaged in the act of purchasing, or a KOMEX member who acts in the capacity of an agent on behalf of the purchasing client, or is conducting the purchase on their own account;

"Certified Warehouse" means a warehouse approved and designated by the KOMEX for making deliveries to and taking deliveries from in fulfilling contractual obligations resulting from transactions in commodities;

"Certified Warehouse Receipt" means a receipt issued to a member of KOMEX by a certified warehouse registered by KOMEX, evidencing proof of ownership of a stated quantity of commodities;

"Clearing House" means Clearing House of KOMEX, or an entity designated, providing the services of settlement of transactions to the KOMEX members, and guaranteeing settlement by delivery or otherwise of the obligations to the clearing members, on behalf of the KOMEX;

"Clearing Member" means a member of the KOMEX who has the right to clear transactions in commodities that are executed in the trading system of the KOMEX;

"Client" means a registered member of KOMEX on whose account a commodity broker carries on trading in any spot commodity contract, but does not include directors, key personnel, representatives and related companies of the commodity broker;

"Commodity" means —

a) agricultural, livestock, fishery, forestry, mining or energy goods or any product that is manufactured or processed from any such goods;

b) financial instruments;

c) an index, right, or interest in any such commodity;

d) such other thing as the Cabinet Secretary may, by notice in the Gazette, determine to be the subject of a commodity contract;

"Commodity Dealer" means a Member that is engaged in the buying, selling, trading, or brokering of commodities, either for their own account or on behalf of others;

"Contract" means standardized agreement to buy or sell a specified commodity, detailing the amount, grade and price of the commodity and the date on which the contract will mature and become deliverable for purposes of trading on the KOMEX;

"Counter Member" means an opposite party in a contract or financial transaction;

"Daily Official Price List" means the publication in whatever mode issued by or under the authority of the KOMEX containing details of prices and quantities of the commodity traded on any given day, and any other relevant information;

"Delivery" means the tender and receipt of warehouse receipts or any other document of title to goods by issue of delivery order in settlement of a transaction;

"Delivery Centers" means the designated centers where the commodities permitted for trading on the KOMEX can be delivered by the seller for sale at the KOMEX platform or collected by the buyer;

"Dormancy" means the state of a KOMEX Member's account remaining inoperative for a consecutive period of 12 months;

"Grading" means the inspection and assignment of certain quality parameters as specified by the KOMEX for each commodity class;

"Grading Certificate" means a document that contains the quality of the commodity accepted for deposit as per the grading specifications of the KOMEX and is issued by approved agency to the depositor;

"KOMEX Eco-system" means all the connected dynamic participants interacting with the KOMEX Trading System and support systems and the political, economic and social environment within which the KOMEX Trading System exists. It includes: the legal, regulatory and administrative frameworks; operational environment; regulators, commodities, warehouses, warehouse operators, collateral managers, infrastructure, traders/brokers, farmers, associations, mineral producers, processors, end users, settlement banks and other stakeholders;

"Limit Order", in the case of a buy order, means the rate at or below which the order may be matched on the trading system and in the case of a sale order, means the rate at or above which the order may be matched on the system;

"Market Order" means an order for a specified quantity of a commodity to be bought or sold at the best available order/quote prevailing on the trading system of the KOMEX at the time of entry of the order on the trading system of the KOMEX;

"Market Type" means different markets in which trading is allowed in the trading system or any other trading system allowed by the KOMEX;

"Member" means any person admitted to membership of KOMEX and includes the trading member, commodity broker, clearing and settlement member, and affiliate member;

"Market Participant" means trading participants, clearing members, trading members, market makers, or any other person admitted by the KOMEX;

"Order" means an offer to buy or sell any commodity through the trading system or any other trading system permitted by the KOMEX

"Pay-in" means making available funds to the clearing house by the KOMEX members in accordance with the applicable settlement schedule notified by the clearing house from time to time;

"Pay-out" means release of funds by the clearing house to the KOMEX members who become entitled to receive them to the extent of and upon their fulfilling their pay-in obligations into the clearing house, in accordance with the applicable settlement schedule notified by the KOMEX or clearing house from time to time;

"Quote" means a bid price or an offer price given by a KOMEX member for a commodity on the trading system or any other trading system allowed by the KOMEX;

"Rate" means the price of unit of quote specified in the contract specifications for a commodity transacted on the trading system or any other trading system allowed by the KOMEX;

"Register of Members" means the data or register containing the names and other details of the Members of the KOMEX;

"Regulations" means the Capital Markets (Commodity Markets) Regulations, 2020;

"Sale Order" means an order to sell a commodity permitted for trading on the KOMEX;

"Seller" includes the selling client, and the selling KOMEX member acting as an agent on behalf of such selling client and denotes the selling KOMEX member when they are dealing on their own account;

"Security Deposit" means a cash deposit or bank guarantee required for trading on the KOMEX;

"Security Deposit Fund" means a Fund established by KOMEX for collection of Security Deposits required for trading on the KOMEX;

"Settlement" means matching outstanding buy and sell instructions by transferring ownership of commodities against funds between buyer and seller;

"Settlement Bank" means a bank approved by KOMEX to facilitate the maintenance of a segregated account and settlement of transactions executed on a commodity exchange;

"Settlement Guarantee Fund" means a Statutory Fund established by KOMEX for collection of deposits, contributions required for membership, trading on the KOMEX;

"SDF" means the Security Deposit Fund;

"SGF" means the Settlement Guarantee Fund;

"Special Board" means a dedicated trading window or market segment established by KOMEX for trading of specified categories of commodities under special membership, trading, clearing and settlement rules approved by the Authority on the recommendation of KOMEX;

"Trade" means a transaction for purchase and sale of a commodity resulting from the matching of a bid to buy or a part of a bid to buy with an offer to sell or a part of an offer to sell, or vice versa on the trading system or any other trading system permitted by the KOMEX;

"Trading Member" means a person who is admitted by KOMEX as a member conferring a right to trade on the KOMEX Trading System and who may be allowed to make deals for themselves for settlement through the Clearing House of KOMEX;

"Trading-cum-Member" means a person who is admitted by KOMEX as a member of the KOMEX conferring a right to trade through the Clearing House of KOMEX and who may be allowed to make deals for themselves as well as on behalf of the clients and settle such deals only;

"Trading System" means any system provided by KOMEX, which makes available to the members of KOMEX, by whatever method, quotations in commodities for trading or any other instruments and disseminates information regarding trades effected, volumes and such other notifications as be placed thereon by KOMEX;

"Trading session" of a working day means the hours of that day during which the sale and purchase of commodities are permitted by KOMEX;

"Transaction" means a contract of purchase and sale of commodities on KOMEX;

"Warehouse Operator" means the warehouse service provider registered with the KOMEX and licensed by the relevant authorities;

"Warehouse Receipt" means a receipt issued by a certified warehouse operator in accordance Warehouse Receipt System Act, 2019 attesting to the storage of a specified quantity and quality of commodities within such certified warehouse for the purposes of trading on KOMEX.

Purpose of the Rules.

3. The purpose of these Rules is to—

(a) ensure effective functioning and operations of KOMEX;

(b) provide details of trading, clearing and settlement systems to be adopted on trading on KOMEX;

(c) regulate the functioning and activities of the Members, their authorised representatives and approved users;

(d) determine trading and delivery specifications for commodities and price indices permitted for trading on KOMEX including methods of trading, clearing, settlement and other operations.

Operational Directives.

4. (1) The Board of KOMEX may from time-to-time issue operational directives consistent with these Rules as may be expedient to actualise the purpose of these Rules.

(2) These Rules and directives issued thereon are binding on officers of the exchange, members and employees and any person utilising the services of a member or who concludes a transaction with a member in the course of that member's business.

(3) The authority for interpreting these Rules and operational directives issued rests with the management of KOMEX.

(4) The responsibility for enforcing these Rules and operational directives resides with the Board.

PART II—THE MANAGEMENT OF KOMEX

Oversight role of the Board.

5. The Board shall exercise overall oversight and governance over the management, operations and commodities transactions conducted on KOMEX.

Committees of the Board.

6. (1) In accordance with the Regulations, the Board shall appoint the following Committees for managing the affairs of the KOMEX—

(a) Audit and Risk Assurance Committee;

(b) Strategy, Operations and Information Technology Committee;

(c) Finance, Human Resource and Nominations Committee; and

(d) Compliance Committee.

(2) The composition, quorum, functions and powers of the committees outlined under paragraph (1) are as set out under the First Schedule.

(3) The Board may co-opt such number of Members and or Experts on the Committees as may be expedient for the conduct of business of the Board.

(4) The Board may constitute any other committee or organ of the Board constituting such members, quorum, functions and powers as the Board may deem necessary to actualize the purpose of these Rules.

(5) The members of the Committees of the Board or any other organ established shall hold office for the period as may be specified in their instrument of appointment, or as the Board may otherwise resolve.

(6) If a member of the Committee is not appointed at a meeting of the Board, the existing members shall continue until the successors are validly appointed by the Board.

(7) A member of any Committee, who holds a position on the Committee by virtue of being a Member of KOMEX, shall be required to vacate such position in the event that they cease to be a Member of KOMEX, or if they are subject to suspension, expulsion, or are declared in default by KOMEX.

(8) The KOMEX shall establish guidelines governing the appointment, tenure, and code of conduct for independent external persons, and may provide for the extension of tenure for such independent external persons upon the expiration of their initial term.

Code of Conduct and Ethics.

7. The code of conduct and ethics for the Directors and Key Management Personnel of KOMEX is as set out under the First Schedule.

Role of the Chief Executive officer.

8. The Chief Executive Officer of the KOMEX shall be responsible for the day-to-day management and affairs of the KOMEX, including to—

(a) enforce the provisions of the Act, Regulations and these rules report any of their violations to the Board and the Authority;

(b) ensure the orderly conduct of operations, transactions, and all affairs of KOMEX, including the management of listings and the fulfillment of continuous reporting obligations; and

(c) carry out any other functions as may be assigned or delegated by the Board.

PART III—MEMBERSHIP OF KOMEX

Classes of membership.

9. (1) KOMEX may classify the membership admitted in different categories according to their roles on the exchange.

(2) The categories of membership that may be constituted include—

(a) commodity broker;

(b) trading member;

(c) clearing and settlement member;

(d) affiliate member;

(e) any other category as may be designated by KOMEX with the approval of the Authority.

(3) A commodity broker shall have the right to execute trades both on their own account and on behalf of their clients.

(4) A trading member may be constituted as either an individual or as a body corporate. Individual members can only trade through duly licensed Commodity Brokers.

(5) A clearing and settlement member shall encompass the roles of warehouse operators, collateral managers, central registries, and settlement banks.

(6) Affiliate Member may include association with KOMEX for the purpose of provision of financial, commercial and professional services such as trade finance, transportation, insurance, business advisory, data services, payment gateways, agriculture extension services or as a development partner of KOMEX;

(7) Trading members shall be required to maintain an affiliation with any of the Clearing Members who possess clearing rights on the KOMEX.

Qualifications for membership.

10.(1) A person is qualified to be a Member where such a person —

(a) is a natural person or a body corporate;

(b) complies with the capital adequacy or minimum net worth requirements as determined by KOMEX depending on their category of membership; and

(c) fulfills any other directive as may be issued by KOMEX.

(2) A person shall not be eligible to be a Member, if—

(a) the person has been declared insolvent under the Insolvency Act or other applicable law from another jurisdiction;

(b) any of its directors and key personnel has, been convicted by a competent court of a financial crime.

(c) the person does not meet the requirements of fit and proper test under section 24A of Act;

(d) the person's license, registration or permit has been revoked by the Authority or any other relevant body;

(e) any of its directors and key personnel has been barred by their relevant bodies.

Application for registration.

11.(1) A person seeking registration as a member shall—

(a) apply for membership in form KMX 1 set out under the Second Schedule; and

(b) pay the application fee as set out under the Fee Schedule.

(2) KOMEX shall evaluate the application and make a determination within fourteen (14) days of receipt of a complete application and communicate such decision to the applicant within three (3) days of the determination being made.

Registration.

12.(1) If an application is approved, the applicant shall gain admission to KOMEX as a Member, subject to fulfilling any other requisite conditions for admission.

(2) KOMEX shall notify the Authority and publish the list of newly admitted members on its official website.

(3) In the event that the application is rejected, the applicant may, within seven (7) days of receiving the decision, seek a review through KOMEX's internal dispute resolution mechanism.

(4) Following the internal review, if the applicant remains dissatisfied, they have the right to appeal to the Authority within seven days of receipt of the internal review decision.

Certificate of Registration.

13.(1) Upon registration and admission, KOMEX shall issue the Member with a Certificate of Membership within three (3) days of approval.

(2) The Certificate of Membership shall delineate the terms and conditions, as well as the rights and privileges accorded to a Member.

Register of members.

14.(1) KOMEX shall maintain a register of Members.

(2) A Member must promptly notify KOMEX in writing of any changes in the particulars initially provided.

(3) Upon receipt of such notification, KOMEX shall update the register accordingly.

(4) A Member who fails to provide notice of changes in particulars shall be subjected to a disciplinary process as outlined in these Rules.

Privileges of members.

15.A Member shall be eligible to exercise such rights and privileges as attached to their membership certificate for dealing on the KOMEX.

(2)the membership rights and privileges of members shall only be used in accordance to the Rules.

(3) A Member shall not transfer, assign, mortgage, pledge, or charge their membership or any rights and privileges attached.

Subscriptions.

16.(1) A Member shall pay the annual membership subscription fee as set out in the Fourth Schedule.

(2) If any Member fails or neglects to pay the membership subscription fee, as required by KOMEX for a continuous period of six months, KOMEX may declare such Member as a defaulter within the meaning of these Rules.

Fees, Commissions, Taxes and Levies.

17.(1) A Member who uses the services of KOMEX shall pay such fees and commissions as set out in the Fee Schedule.

(2) A transaction on KOMEX shall attract such applicable taxes and levies as set out in applicable tax law.

(3) Where any change arises in the amount of fees, commissions, taxes or levies payable by a member, such changed fees, commissions, taxes or levies shall apply from their respective effective dates.

(4) A member shall be deemed to be a defaulter if they fail to make payment of a required fee, commission, tax or levy within one month of it falling due.

(5) KOMEX shall collect for remittance and disbursement any such application fees, membership subscription fees, transaction fees, trading fees, commissions, statutory transaction levies and taxes, clearing fees, delivery fees and/ or settlement fees as may be payable by the members of KOMEX for transactions on KOMEX.

Trading names.

18. A trading name for a member shall be as registered on KOMEX

Authorized Representatives.

19.(1) Any Member shall be entitled to be represented by an authorized representative in any official transaction.

(2) KOMEX shall notify other Members of any power of attorney granted by a Member or any change relating to the appointment made thereof.

(3) A Member shall be responsible for the acts or omissions of the person granted the power of the attorney or any other authorized representative.

Conduct of a Member.

20.(1) A Member shall be responsible to promote the objects and interests of KOMEX, their clients and adhere to the Code of Conduct and Ethics in the Second Schedule.

(2) KOMEX shall require a Member to provide a risk disclosure statement to all the clients willing to trade through them, which shall contain all the risks relating to trading.

(3) A member shall access any notice, order or instruction issued by the KOMEX and shall relay relevant information to their clients.

(4) A Member shall—

(a) act in good faith and in the best interest of their client;

(b) furnish to their client the information pertinent to trade as notified by the KOMEX;

(c) Explain the role of the clearing house of the KOMEX and the scope and benefits of the same to their clients.

(5) A director of a company that is a Member shall not carry-on business in commodities trading and clearing, as a director of any other company which is a Member, except with the prior approval of KOMEX.

Termination of membership.

21. Membership may be terminated through—

(a) death;

(b) dissolution;

(c) dormancy;

(d) expulsion;

(e) surrender;

(f) revocation of license;

(f) being declared as a defaulter; or

(g) becoming ineligible for membership.

Termination, transmission and surrender.

22.(1) Where a Member being an individual or a sole proprietor trading in their own name dies, their legal or authorized representative, if any, shall not continue carrying on any business of the deceased Member except for the purpose of winding up the Membership.

(2) After the death of an individual Member, their legal representative may request the KOMEX to transmit the membership of the deceased to a beneficiary of their estate if otherwise eligible for the membership of the KOMEX.

(3) KOMEX shall have an absolute discretion on whether to allow the transmission of the membership to a beneficiary of a deceased individual or sole proprietor Member.

(4) A fresh membership admission fee shall not be charged from the person in whose name the membership is transmitted to under this Rule.

(5) A Member is entitled to apply to the KOMEX to surrender their membership.

(6) Where a request for surrender is approved by KOMEX, the surrendered membership shall lapse and vest with the KOMEX.

(7) An application for surrender of membership, once filed, shall be irrevocable and irreversible.

(8) After approval by the KOMEX, the erstwhile member shall be entitled to get their refundable security deposit, subject to settlement of all pending dues and claims, if any and also subject to minimum lock in period as may be specified by the KOMEX.

(9) A Member whose application for surrender of membership has been lodged with the KOMEX shall have no right to exercise the right to nominate another person as their successor to the membership.

(10) A Member shall be entitled to nominate another person as their successor to the membership subject to the conditions and restrictions under the Regulations.

(10) A nominee may apply for registration as a Member only if qualified and eligible for membership under these Rules.

(11) Upon death of a member without a nominee, the appointed administrator shall assume responsibility of a Member's obligations.

(12) An administrator or liquidator appointed under the Insolvency Act shall assume responsibility of a Member's obligations

Nomination.

23.(1) A notice of any proposed nomination shall be posted on the website of KOMEX.

(2) Where a nominee is not eligible or has been rejected by KOMEX, a fresh nomination may be submitted to the KOMEX.

Default by a Member.

24.(1) A Member shall be declared by the KOMEX a defaulter where they fail to meet obligations to KOMEX, Members or their Clients.

(2) In case a member does not clear their liability on the KOMEX and such liability is more than their available security deposits and other assets available with the KOMEX, then KOMEX may declare the person a defaulter until the member clears their liabilities.

(3) Upon a Member being declared a defaulter, the member shall be notified in writing and a notice to that effect shall be published on the KOMEX website.

(4) A defaulter shall submit to KOMEX such statement of accounts, information and particulars of their affairs as KOMEX may stipulate, and if summoned, shall appear before KOMEX to reply to summons on the default.

(5) Upon declaration of a default, all monies, commodities, securities, bank guarantees lying with KOMEX, the Warehouse Operator, Settlement bank or the defaulter in respect of the default shall vest with KOMEX for the purpose of clearing the default.

(6) KOMEX shall deal with such monies, commodities, securities or bank guarantees and claims, as provided in these Rules or as guided by the Authority.

(7) A defaulting Member shall be at liberty to apply for re-admission as a Member by complying with these Rules as applicable to admission members.

(8) The suspension of a defaulting member under this Rule shall be lifted where the defaulting Member complies with the directives of KOMEX thereby meeting their obligations to KOMEX, Members or their Clients.

(9) A defaulting Member who fails to comply with the directives of KOMEX within a period of 180 days from the date of declaration of default, shall be liable for expulsion under Rule 27.

Consequences of default.

25.(1) A Member who is declared a defaulter shall cease to enjoy their rights and privileges of membership.

(2) The rights and privileges of a defaulting Member shall vest in KOMEX.

(3) A Member who has been declared a defaulter may be suspended from KOMEX for a period of 90 days from the date of such declaration and shall not be readmitted before expiry of the suspension period.

(4) A suspended member may be readmitted upon meeting the requirements for readmission and paying such fees as may be stipulated by KOMEX.

(5) Any suspended member who has been denied readmission shall have the right to appeal through the dispute resolution mechanism of KOMEX.

(6) KOMEX shall—

(a) allow client's of a defaulter the opportunity to nominate another commodity broker and/ or a member of the Clearing House;

(b) allocate client's account(s) to other commodity broker(s) and/ or member(s) of the Clearing House in the case a client fails to nominate a commodity broker and/ or a member of the Clearing House under (a);

(c) sell the interests of a suspended Member who fails to comply with the directives of KOMEX within a period of 180 days following declaration as a defaulter through auction or such other process as may be decided by KOMEX; and

(d) Auction the membership slot of a defaulting Member who fails to be readmitted within 180 days to person who offers the highest bid.

(7) KOMEX shall put a notice of the auction or disposal of the interests and/ or membership slot of a suspended member detailing the terms and conditions at least fourteen (14) days before the date fixed for the auction or disposal.

(8) The auction proceeds shall be used to settle the outstanding obligations of the defaulter.

(9) In settling of debts and obligations—

(a) obligations to the KOMEX shall rank in priority to all other claims;

(b) the debts to other Members shall rank equally and be entitled to have a charge on the residue thereof, if any, subject to such first charge;

(c) after payment thereof, the residue, if any, shall be charged with all dues to any person under any award made in any arbitration; and

(d) the residue thereof, if any, shall be paid to the defaulter.

Attachment Order.

26.(1) Where any security deposit or other payments made by a Member has been attached or encumbered in accordance with any applicable law, a Member shall have such encumbrance cancelled or removed within three working days of a notice by KOMEX notifying the Member of such placing of the encumbrance.

(2) Where, upon notice, a Member fails to have the encumbrance removed or cancelled, the KOMEX shall declare the member a defaulter.

Investigation and Enforcement

27.(1) KOMEX shall institute an investigation mechanism for complaints, violations and offences.

(2) KOMEX may reprimand, fine, suspend or expel a Member who—

(a) Fails to abide by these Rules or any directives issued by KOMEX;

(b) acts in any manner detrimental to the interest of KOMEX, Members or their Clients;

(c) violates or disregards the provisions of the Act, any relevant Regulations, or any order issued thereto;

(3) Where a complaint is made on a Member, KOMEX shall document and give notice in writing to such member requiring them to reply within fourteen (14) days.

(4) KOMEX shall grant a hearing to the parties. KOMEX may issue:-

(a) a reprimand with or without a fine;

(b) a suspension for a period not exceeding 180 days; or

(c) an expulsion to a member.

(5) A suspended member shall:-

(a) during the period of suspension be ineligible for the rights and privileges of membership, except in respect of transactions outstanding at the time of suspension a member is bound to fulfil; and

(b) be liable to pay any fines, calls, subscriptions, and other monies due or to become due during their suspension in the same manner as if the Member had not been suspended.

(6) A member expelled by the KOMEX shall forfeit all the rights and privileges of membership and cease to be a member as from the date of the expulsion, but shall be liable to fulfil any obligations outstanding before expulsion.

(7) A member suspended or expelled by the KOMEX shall have the right of appeal through the dispute resolution mechanism of KOMEX or to seek redress through the relevant licensing body of the member or tribunal or court.

Effect of a Member Suspension.

28. The suspension of a Member of the KOMEX shall have the following consequences—

(a) the suspended Member shall be ineligible for the rights and privileges of membership but shall not affect the rights of the KOMEX or other members;

(b) the suspended member shall cease to hold any office at KOMEX;

(c) the suspended member shall be bound to fulfil contracts outstanding at the time of suspension; and

(d) the suspended Member shall not clear and register any contracts at the KOMEX, except closing out any outstanding transaction with permission of the KOMEX.

Effect of a Member Expulsion.

29.(1) The expulsion of a Member shall have the following consequences —

(a) forfeiture of their rights and privileges of membership; and

(b) expulsion from any office or position held at KOMEX.

PART IV—DEALINGS IN COMMODITIES

Client Onboarding.

30. Before on-boarding of a client, a commodity broker or trading Member shall register the client in the Know Your Client Registration Form and sign a written agreement with the client, as per the procedure and in the format prescribed in the Third Schedule.

Authority of the KOMEX.

31.(1) KOMEX shall specify eligible commodities and develop commodity admission and listing specifications as per the parameters of the regulations including categories and subcategories for spot commodities contracts, auctions and related instruments subject to approval by the Authority.

(2) All commodities admitted for listing on the KOMEX shall meet the quality and quantity specifications as prescribed by KOMEX.

(3) A Trading Member or a registered warehouse operator may apply to the KOMEX for admission of a new commodity or commodity categories for trading.

(4) Where such application is made, KOMEX shall review the application in line with quality standards of the commodity set by relevant standard setting authorities and make a determination within fourteen days and if approved shall admit within fourteen days.

(5) KOMEX may delist a commodity subject to obtaining no objection from the Authority and shall issue a notice thereof on the KOMEX website.

(6) Where a decision to delist a commodity is made, KOMEX shall take measures to ensure protection of the rights holders and depositors of the commodities already sold.

(7) A Member shall execute and clear transactions only on contracts that have been specified by the KOMEX.

(8) Despite these Rules, the dealings in commodities shall be subject to conditions contained in relevant regulations on the specified commodities.

Executing trade in commodities.

32.(1) Before executing a trade for a client, a commodity broker or trading member shall ensure that they have received firm, irrevocable and recorded instructions from the client as per the relevant regulations.

(2) All transactions in commodities permitted on the KOMEX shall be cleared, registered and settled by the Clearing House.

(3) A Commodity Broker shall issue a contract for each transaction done by them for their respective clients on KOMEX in the prescribed format

(4) A Commodity Broker shall not issue a contract for any transaction which has not been executed through the KOMEX trading system

(5) A Contract not issued in accordance with sub-rule 4 shall be invalid.

Eligibility to clear transactions.

33. (1) All transactions traded on KOMEX shall be cleared and settled through the Clearing House.

(2) Only the Clearing Members shall be eligible and qualified to obtain directly the clearing, settlement and guaranteeing services of the Clearing House.

(3) A Clearing Member of KOMEX shall enter into an agreement to clear, register and settle transactions on commodities permitted for trading on KOMEX, for any Member who has trading rights on KOMEX.

(4) A copy of the agreement signed between a Clearing Member of KOMEX and their Client shall be given upon request to Members of the Clearing House for the settling of transactions on KOMEX.

(5) A Clearing Member of KOMEX shall not clear and settle trades without a valid agreement with the commodity broker or trading member of the KOMEX.

(6) All outstanding transactions in commodities shall in general be for compulsory delivery at any one or more delivery points or warehouses approved, certified and designated by the Clearing House.

Rates and Prices for a Contract.

34.(1) Rates or prices of the commodities permitted for trading in KOMEX shall be quoted in accordance with the contract specifications for that commodity.

(2) The rates and prices shall be for the grade variety of the commodity and for the base center or place specified in the clauses of contract specification of that commodity.

(3) Price limits may include floor and ceiling price for a day or for a specific period and may be defined in the contract specifications and approved by the Authority before listing.

(4) KOMEX shall develop a fee schedule for transactions on the exchange which shall be approved by the Authority.

(5) KOMEX may specify the maximum and minimum fees a clearing member may charge from other members of KOMEX, and members from their clients.

Position limits.

35.(1) KOMEX shall, have the right to determine, specify and modify the position limits with respect to the commodities permitted, trading quantities and prices on KOMEX.

(2) A position limits specified may differ for membership categories or differ from member to member and exceptions may be provided by KOMEX.

(3) Position limits and exceptions may be outlined in the contract specifications for each commodity and approved by the Authority before listing.

Entering into a contract.

36.(1) KOMEX shall prescribe the commodity contract specifications including the quality, quantity, packaging and place of delivery.

(2) Members shall enter into contracts only on the terms and conditions prescribed under these Rules and the circulars and notices issued there under.

(3) No member shall enter into a contract before trading has been commenced or after trading therein has ended in accordance with these Rules.

(4) No member shall enter into a contract for trading or enter into transactions on KOMEX on behalf of a non-member of KOMEX.

(5) Any member of the KOMEX transacting in any contract and varieties that are not specified by the KOMEX shall be liable to disciplinary action in accordance with these Rules.

(6) A Member shall maintain a record of all their transactions in all commodities permitted by KOMEX.

(7) A Member shall maintain separate records of their own account transactions and those of registered clients, including orders from registered clients for execution of transactions in commodities.

(8) A Member shall preserve the records of registered clients' orders for transactions separately with—

(a) the time and date of receipt of order.

(b) details of executed transactions for each registered client; and

(c) Books of accounts relating to the same, for a period of seven years for production whenever required by KOMEX.

(d) Any member who infringes or attempts to breach or who assists any breach or attempted breach of these Rules in respect of such trades shall be liable for suspension or expulsion from membership of KOMEX or any other action that the KOMEX may take in accordance with Rule 27 or the Regulations.

(9) The laws of Kenya shall apply to the contracts entered between the members of KOMEX, and jurisdiction shall be the courts in Kenya.

(10) The death of any party to a contract made subject to these Rules shall not discharge the legal representatives of the deceased from fulfilling the obligations or enjoying the benefits of a transaction.

Conditions for Warehouses for KOMEX.

37.(1) KOMEX shall specify standards for the structure to be used for the conduct of warehouse business.

(2) KOMEX shall not designate any structure as a warehouse for KOMEX unless the structure satisfies the following conditions—

(a) that the warehouse operator managing or in possession of the warehouse is a legitimate tenant or owner;

(b) such tenant or owner has signed an agreement for providing collateral management services to KOMEX and is properly licensed by the relevant authority;

(c) that the warehouse is suitable for warehousing of respective goods in accordance with regulations made under any applicable law;

(d) that the warehouse and the goods which are or may be kept therein are fully insured in respect of fire, theft and burglary.

(e) that the warehouse operator has been licensed by the relevant regulator and is a registered Member of KOMEX.

(f) Complies with the requirements and specifications for registration of warehouses, warehouse operators and collateral managers as detailed in the Draft Master Warehouse Service Provider Agreement under the Third Schedule.

Responsibilities of a depositor.

38. The depositor shall ensure that—

(a) Commodities delivered to KOMEX's designated warehouse are of the quantities and quality as per the contract specification; and

(b) The commodities are packed as per relevant standards.

Responsibilities of a Warehouse Operator.

39.(1) The warehouse operator shall be responsible for—

(a) receiving, accepting, storing and dispatching commodities;

(b) preparing inventory of the commodities;

(c) Issuance and on-boarding of warehouse receipts onto the KOMEX trading system; weighing, grading, quality testing, sorting, verification and issuance of quality certificates and on-boarding on KOMEX;

(d) not accepting for warehouse depositing, any substandard commodities; and,

(e) any other duty or responsibility as may be specified in these Rules from time to time.

(2) The warehouse operator shall ensure that the commodities which are kept therein are at all times fully insured in respect of fire, theft, burglary and other risks provided for under a comprehensive cover.

(3) The warehouse operator shall ensure that the depositor is fully compensated in the event of an insurable loss.

(4) The warehouse operator shall ensure that records of commoditiesdeposited, stored and delivered to buyers trading under the warehouse receipt on KOMEX are kept in the prescribed format for atleast seven years. .

Terms of the Warehouse Receipt or Goods Received Note

40.(1) Upon receipt of commodities deposited in a registered warehouse for trading on KOMEX, an acknowledgement of deposit in the form of Goods Received Note and or a Warehouse Receipt shall be issued by a warehouse operator to the depositor.

(2) Any Warehouse Receipt or Goods Received Note issued by a warehouse operator shall be a proof of the holder having proprietary rights in the commodities of that person in respect of which such Warehouse Receipt was issued.

(3) In relation to Warehouse Receipts or Goods Received Notes, a person acquires proprietary rights in the commodities if that person is entitled to ownership of the commodities—

(a) in return for a binding commitment to extend credit or extension of an immediately available credit, whether or not drawn; and

(b) as security for or in total or partial satisfaction of a pre-existing contract for a purchase; or in return for any consideration sufficient to support a pre-existing contract.

(4) A Warehouse Receipt or Goods Received Note listed for trade on KOMEX shall contain the following information—

(a) the location of the warehouse where the commoditiesare stored;
(b) the date of issue of the receipt;
(c) the serial number of the receipt;
(d) the quality and quantity of thecommodities;
(e) a statement confirming that the commoditiesreceived are negotiable;
(f) a short description of the commoditiesor the packages containing them;
(g) the registration number, signature and stamp of the authorized warehouse operator;
(h) the nature and fact of ownership of thecommodities, whether solely or jointly or commonly owned with others;
(i) a statement confirming that the depositor has accepted to have the commodities traded on KOMEX and that the commodities received will be delivered to a buyer nominated by KOMEX; and
(i) a statement as to any amount of advances made and liabilities incurred.

(5) A warehouse operator may insert in a Warehouse Receipt or Goods Received Note, any other terms and conditions which are not contrary to the provisions of these Rules and relevant laws, which do not impair obligations of delivery or duty of care.

Obligation of a Warehouse Operator.

41. A warehouse operator shall deliver goods upon presentation of the warehouse receipt by the buyer in accordance with the specifications on the instructions given by KOMEX, subject to these rules and relevant regulations.

PART V—TRADING ON KOMEX

Trading Days.

42.(1) KOMEX shall be open for trading on all working days excluding the gazetted public holidays as set out in the Sixth Schedule or any additional public holiday as may be gazetted.

(2) In exceptional circumstances and in consultation with the Authority, for reasons to be recorded in writing, KOMEX may close the trading in any one or more or all commodities on the trading system of KOMEX for not more than one trading day.

Trading divisions

43.(1) KOMEX may constitute different divisions for a group of agricultural commodities, metals and other commodities categories or instruments, as well as for different centres of delivery.

(2) KOMEX may admit commodities for dealing on a respective divisions of the KOMEX trading.

Restrictions on Trading.

44. (1) KOMEX may, from time to time, impose such restrictions on trading in such spot commodity contracts, or on such members relating to risk management and trading on KOMEX.

(2) Individual members can only trade through duly licensed Commodity Brokers.

Trading Sessions.

45.(1) KOMEX shall—

(a) prescribe different trading sessions for different trading segments on the trading system of KOMEX.

(b) decide on the timings and operational requirements for the same as may be necessary from time to time.

(2) KOMEX may upon approval of the Authority, introduce a Special Board for spot trading or auction of such listed categories of commodities as may become necessary upon receipt of a written request from a Government Ministry, Department or Agency or KOMEX Member.

(3) Where a Special Board is introduced under rule 45(2), KOMEX shall upon approval by the Authority, issue a prior public notice on its website and other relevant media channels,and may suspend the regular trading of the specified commodity or commodities for such specified duration.

(4) The eligible members to trade as well as the admission, listing, pricing, trading, clearing and settlement of commodity categories approved under a Special Board under rules 45(2) and 45(3) shall be subject to such terms and conditions as shall be specified by KOMEX and approved by the Authority.

(5) KOMEX shall upon approval by the Authority, issue a public notice on its website to reduce, extend or otherwise alter the timings of trading sessions for any particular trading day.

(6) Where KOMEX has reduced, extended or otherwise altered the timing of any trading session or sessions, on the trading system of KOMEX, the reasons for the same shall be recorded in writing.

Permission To Trade.

46.(1) a) Any member, their authorized representatives or approved user shall only trade through the trading system of the KOMEX where the Member has a relevant license to either buy or sell a particular commodity available for trading at the trading system of the KOMEX.
b) A trading member shall not take the positions of buy and sell simultaneously for the same transaction.

(2) The members of the KOMEX shall be solely responsible for all the transactions done by them or through their respective representatives on the system of the KOMEX.

(3) KOMEX members shall furnish their clients in writing with such reports at such intervals as may be specified by theKOMEX.

(4) A person who has not been admitted as a member of KOMEX, or a member who has been suspended or expelled shall not be allowed to trade on the KOMEX.

(5) The KOMEX may, upon adequate notice, refuse any person to trade on the trading system and may, at any time, withdraw or terminate the right of trading of any such person if found to contravene the provisions of these rules or Regulations.

Trading System.

47. The ownership and management of the trading system of the KOMEX shall be under the charge of KOMEX.

Prices of the commodities.

48.(1) KOMEX shall specify the manner in which prices of the commodities dealt with on the trading system shall be recorded.

(2) No prices shall be recorded for any transaction done on KOMEX, unless it is made in the regular course of trading on the trading system of KOMEX.

(3) The final settlement prices will be recorded on the KOMEX Market Information System.

(4) A contract specification shall include the methodology for determining the daily and final settlement prices with provisions for adjustments in contract prices to compensate for allowable adjustments in quality, and quantity.

(5) A daily price index will be published on the KOMEX Market Information System.

Daily Official Price List.

49.(1) A daily official price list of prices shall be issued by or under the authority of the KOMEX.

(2) KOMEX may publish indicative market prices of listed commodities for reference by the Members.

(3) Such daily official list of prices shall be published on the official website of the KOMEX and provided in such other media, as may be decided by the KOMEX from time to time. .

Access to the KOMEX Trading System .

50.(1) The KOMEX shall provide access to the trading system to its members, their authorized representatives and approved users.

(2) The permission to use the trading system of the KOMEX shall be given to a KOMEX member, subject to compliance with such terms and conditions as the KOMEX may require from time to time, which may include payment of such deposits or charges.

(3) A Member shall not use the facilities of KOMEX or share any information without prior approval of the KOMEX.

(4) A Member shall allow an authorized representative to trade in the trading system.

(5) The KOMEX may, at its discretion, deregister any authorized representative of Member for failure to comply with these Rules, or any circular or notice issued there under.

(6) Despite paragraph (3), a Member concerned shall continue to be liable for acts of commission or omission of the authorised representative prior to de-registration by the KOMEX or any damage consequent to the de-registration.

(7) KOMEX shall have the right to disallow any person from being registered as an authorized representative or may allow registration with such conditions, as may be deemed necessary.

(8) No person shall be appointed at any time as an authorised representative by more than one KOMEX member.

Operational Parameters for Trading.

51.(1) The KOMEX may stipulate from time to time the operational parameters, with approval of the Authority, transactions in commodities traded on the KOMEX trading system or any other approved trading system.

(2) The operational parameters contemplated under paragraph (1) may include—

(a) determination of the procedure and norms for trading on any other approved trading system of the KOMEX.

(b) fixation of units of trading, minimum or maximum quantity of commodities or order which may be offered to be bought or sold or the limits on price fluctuations permitted in a day or period;

(c) fixation of tick sizes and levels for providing alerts;

(d) determination of the types of trades permitted for a member and for a commodity;

(e) specifications of different order books, types of orders, order conditions and other details related to orders and trades;

(f) maintenance of record of transactions executed and the manner of reporting transactions in the prescribed form to the KOMEX;

(g) other matters, which may affect smooth operation of trading in commodities permitted on the KOMEX.

(3) The parameters may vary for commodity categories and spot contract specifications.

Closing out of transactions.

52.(1) A Member shall—

(a) be accountable for the closing out of transactions effected by the KOMEX, due to non-payment or non-compliance of the member, on their account; and

(b) Indemnify the KOMEX against any loss or cost arising out of or incidental to such close-out of transactions either directly or indirectly.

Order Management.

53. (1) KOMEX shall provide specifications for order management in fifth schedule which shall include—

(a) conditions and procedures to be followed by a Member or his authorised representatives and approved users for entering, amending or cancelling orders on the trading system;

(b) The details to be entered compulsorily at the time of order entry including client code, type of order, symbol or commodity code;

(c) The procedures and conditions for trading on any other trading system of the KOMEX and must be followed by a Member, his authorized representative or approved user; and

(d) The standard minimum parameter requirement for commodities.

Trade Management.

54.(1) Trading shall be allowed on the trading system of the KOMEX in such commodities as may be admitted to dealings on the KOMEX.

(2) A trade shall be allowed for categories of members, trade types, market types, and settlement periods and for such trading hours as the KOMEX may specify from time to time.

(3) A KOMEX member shall be liable for all the trades executed on the trading system of the KOMEX, arising out of orders entered into the system by him.

(4) A Member shall be solely responsible for all the acts of authorized representatives, employees and other persons deployed by such member.

(5) Where a member satisfies the KOMEX that the action or the trade took place due to fraud or misrepresentation by any person, KOMEX may issue such directives as it considers just and reasonable.

(6) A directive by KOMEX may include referring the matter to dispute resolution on trades affected ,, after first granting the parties involved an opportunity to be heard. –

(7) Subject to these Rules, a trade executed on the trading system approved by the KOMEX are irrevocable and locked-in and shall be cleared and settled in accordance with these Rules.

Annulment of a trade.

55.(1) The KOMEX may by a notice annul the trades on an application by a Member or their clearing member on their behalf, if the KOMEX is satisfied that the trades require to be annulled on account of fraud or willful misrepresentation or material mistake in the trade.

(2) In line with these Rules, KOMEX shall, to protect the interest of clients and public and for proper regulation of the market, annul trades on its own motion at any time, if it is satisfied for reasons to be recorded in writing that such trades are vitiated by—

(a) fraud, material mistake or misrepresentation;

(b) market or price manipulation; or

(c) Designing artificial or false market trades with a design to recover monies or dues or to defraud or misuse the trading system.

(d) Any market offence as stipulated in the Act and Regulations.

(3) An annulment may be for the full or part quantity of a trade.

(4) Any annulment of the trades shall be final and binding upon the members of the KOMEX.

(5) In such an event, the related contracts issued by the KOMEX members to their clients shall stand cancelled and the clients shall be bound by such annulment.

(6) The member found liable to have caused such annulment shall be required to compensate the aggrived parties for the loss suffered as shall be directed KOMEX.

(7) Any party aggrieved by decision of KOMEX referred to in (6) above shall have the right of appeal to the relevant licensing body.

Order Matching and Validation.

56.(1) Orders on the trading system approved by the KOMEX shall be subject to such validation checks relating to quantity, price, value etc., as may be required by KOMEX

(2) KOMEX may from time to time specify in the principles to be applied for matching orders on the trading system of the KOMEX, which may vary for different order books.

(3) Unless otherwise specified, the orders shall be matched electronically on price-time priority.

KOMEX as a Counter Party.

57.(1) KOMEX shall act as a legal counter party on all transactions that may be executed for that purpose.

(2) A decision taken by the KOMEX on the clearing, settlement, suspension, revocation or annulment of a transaction and/ or deposit and delivery of such commodities as may be traded on the KOMEX shall be binding on all the parties concerned, including the clients.

Use of Technology.

58.(1) The KOMEX shall provide the requirements on the use of technology ensure, safety, security, reliability, accessibility, and integrity of the trading system provided by the KOMEX.

(2) The technology platform that shall be provided by KOMEX shall include capabilities for integrations with third party technology platforms operated by KOMEX Members relating to—

(a) Member Registration and Management;
(b) Warehouse Inventory and Collateral Management;
(c) Warehouse Receipt System;
(d) Central Registry;
(e) Trading Platform;
(f) Banking, Payment Gateways, Clearing and Settlement System;
(g) Market Information System; and,
(h) Market Surveillance and Risk Management System;
(i) Any other system as may be deemed necessary by KOMEX

Trading System.

59.(1) The KOMEX shall provide a Trading System for Members to access and carry-on trading in the commodities admitted to dealings on the KOMEX.

(2) A Trading System shall be available for facilitating trading in commodities permitted by the KOMEX.

(3) KOMEX shall provide for systems integration capabilities in the KOMEX trading system to facilitate the members of KOMEX and regulators to establish connectivity.

(4) KOMEX shall have right to specify the maximum system access period that may be allotted to a KOMEX member who has trading rights in the KOMEX and the conditions for such allotment.

(5) KOMEX shall provide—

(a) the procedure for registration and cancellation of the registration of a person as an authorized representative or approved user or client;

(b) the conditions required to be fulfilled before a person can be registered as an authorized representative or approved user;

(c) the conditions required to be fulfilled before an authorized representative or approved user may have access to the trading system of the KOMEX;

(d) the maximum number of persons who may be allowed to have access to the trading system on behalf of a KOMEX member;

(e) the procedure for provision and modification of a password used by an authorized representative or approved user to access the trading system; and

(f) the circumstances under which KOMEX may refuse, withdraw, or cancel the permission to an authorized representative or approved user to have access to the trading system of the KOMEX, either indefinitely or for a specified period or until the fulfillment of conditions, as may be specified by KOMEX from time to time.

(6) All the orders for purchase or sale of commodities by a KOMEX member shall be entered only through the KOMEX trading system or any other approved trading system by KOMEX.

(7) KOMEX shall develop and adopt a policy on IT & Cyber Security, Anti-Money Laundering and Counter Terrorism Financing in line with existing regulations.

Codes and Operational Parameters.

60.(1) KOMEX shall provide for an appropriate mechanism for specification, alteration and rescission of the unique codes for—

(a) trades; and,

(b) KOMEX members, authorized representatives, participants and clients.

(2) Operational parameters, for tick sizes, trading units, order types, order attributes, order matching logic, market view contents, participation rules for trading through the trading system.

Market surveillance.

61. (1) The KOMEX shall be responsible for the functions relating to compliance, surveillance, investigation, enforcement and any other market related activities. KOMEX may outsource these functions.

(2) KOMEX shall be responsible for ensuring compliance, surveillance and investigation of trading practices and financial transactions of commodity brokers and their clients; and

(3) The provisions relating to surveillance, market watch system, investigation, any other market related activities and KOMEX members database shall be specified in the relevant Circulars and Notices issued hereunder.

Appropriation of the Clients Order.

62. (1) No Member shall, in respect of any commodity permitted for trading on the KOMEX, enter into any contract on their own account with a client, unless a Member has secured the consent of such client in writing and disclosed in the note, memorandum, agreement or any other form of contract that they will buy or sell the commodity as the case may be, on their own account and in accordance with the operational procedures and parameters as laid down by the KOMEX.

(2) Any contract entered into in violation of these Rules shall entail disciplinary action by KOMEX.

(3) A member who enters into a contract in violation of these Rules shall be liable to KOMEX and the affected member(s) for such legal and commercial costs, awards, taxes and/ or losses incurred as a direct consequence of the violation.

Orders on Trading

63.(1) The trading system for KOMEX shall be operated as per the trading, clearing and settlement rules, procedures, terms and conditions developed by KOMEX and approved by the relevant authority.

(2) Subject to the approved policy and these Rules, KOMEX may issue directives for trading on the trading system which include—

(a) determination of trading sessions and proceedings in such trading sessions to be used in the trading system the trading system or any other system allowed by KOMEX, for specified commodities or price indices permitted by KOMEX;

(b) determination of units of quotation and trading and variations in bids and offers and minimum and maximum size of orders;

(c) suspension of trading in one or more commodities permitted for trading in KOMEX after being duly approved by the Authority;

(d) procedure for settlement of disputes relating to quality, weight, price, payment and delivery as outlined in the Dispute Resolution Mechanism under the Ninth Schedule;

(e) Manner of operations and interface with the Clearing House and the settlement banks of KOMEX

(g) any other matter relating to trading on KOMEX.

(h) A transaction in KOMEX is subject to risk management and surveillance which may include an order for KOMEX members' responsibility to maintain proper books of accounts.

Nairobi as place of contracting.

64.(1) All transactions entered into or executed through the trading system of the KOMEX shall be deemed to have taken place in Nairobi City.

(2) The place of contracting as between the members of the KOMEX shall be in Kenya, irrespective of the locations of the Trader Workstations of the members connected thereto.

Records For Evidence.

65.(1) The records of the KOMEX maintained in any manner or in any accepted media, shall constitute the agreed and authenticated record in relation to any transaction entered into or executed through the trading system.

(2) The records as maintained by the KOMEX shall, for the purpose of any dispute or claim between the Members or any other party regarding trading, clearing or settlement of any deal or transaction carried out on the trading system or any other trading system of the KOMEX and reported to the KOMEX, constitute valid evidence between and among the parties.

PART VI – SECURITY DEPOSIT FUND

Security Deposit Fund (SDF).

66.(1) The KOMEX shall establish a Security Deposit Fund (SDF).

(2) The SDF shall consist of—

(a) contributions from trading members, warehouse operators of KOMEX and other members as may be determined by KOMEX.

(b) such sums of money as received for purposes of the SDF from any other source approved by KOMEX.

(3) The member of KOMEX may be required to provide additional deposits as may be determined by KOMEX.

(4) The money in the SDF shall be applied in the manner provided in these Rules.

(5) KOMEX may specify the amount of deposit to be made by each member and category of clearing members, which may, inter alia, include the minimum amount to be provided by each clearing member.

(6) KOMEX shall guarantee a refund of the deposit to the depositor once obligations arising out of the contract have been fulfilled by such a member under such terms and conditions as may be specified by KOMEX.

(7) Any amount deposited or paid by the trading member may be refunded provided further that such amount is in surplus and there is no actual crystallized or contingent liability or a claim from any client or settlement bank to be discharged by the clearing member.

(8) The total amount of security deposit and additional deposit shall be maintained by KOMEX or its appointed Clearing House.

Lien on security deposits or SDF

67.(1) The security deposit, margin for trading, and any additional funds to the security deposit fund, arising under these Rules shall be charged net of all debts, expenses, taxes and statutory obligations of such member to KOMEX or any other Members of KOMEX, the Clearing House of the KOMEX and any person arising out of contracts entered into or transacted under these Rules.

(2) All such debts and obligations to KOMEX shall rank in priority to all other claims.

(3) Debts to the clients shall rank *pari passu* and be entitled to have a charge on the residue thereof, if any, subject to such first charge.

(4) After payment, the residue, if any, shall be charged with all dues to any person under any award made in any arbitration proceeding held under the provisions of these Rules.

(5) A residue, if any, shall vest unconditionally with KOMEX for allocation to the depositor.

Shortfall above the allowable threshold

68. Whenever a trading member or warehouse operator has a delivery shortfall above the allowable threshold in a physical delivery of a commodity in respect of a matched order, or if a member is declared a defaulter, KOMEX may utilize the SDF to meet the unfulfilled obligations of the contributing member.

PART VII—CLEARING HOUSE OF THE KOMEX

Clearing House of KOMEX

69.(1) The operations of a Clearing House shall be under the management of KOMEX.

(2) KOMEX may from time-to-time delegate such responsibility to any member of the Clearing House as deemed fit by the Board.

(3) All transactions in KOMEX shall be cleared and settled by the Clearing House of KOMEX and whenever required closed out in accordance with these Rules.

(4) Participation of KOMEX trading members shall be as follows—

(a) all and such other category of members as may be decided by KOMEX shall be members of KOMEX;

(b) trading members, and such other category of members, who have been given clearing rights, shall only be eligible and qualified to directly obtain the clearing, settlement, closing out and guaranteeing services of the Clearing House of KOMEX; and

(c) all transactions in KOMEX shall be downloaded by KOMEX to the Members of the Clearing House for settlement in the manner specified in the Rules or Notices issued here under.

(5) In respect of transactions in KOMEX, a corporate member of the Clearing House shall not clear and settle or close out open position without a valid agreement with relevant trading members.

(6) A copy of the agreement shall be given to KOMEX, and until the termination of the agreement, such trading members shall be the constituent members of the corporate member of the Clearing House for the purpose of clearing, settling, and closing out of their open position.

(7) A trading member may be a constituent member of not more than one corporate member of the Clearing House.

(8) Members of the Clearing House shall forthwith notify KOMEX of any addition to or deletion from the list of constituent members.

Clearing and settlement of transactions.

70.(1) In relation to clearing and settlement of transactions, KOMEX may issue orders on—

(a) procedure for determination of settlement prices;

(b) clearing and other settlement forms and returns, delivery and receive orders, statement of accounts and balance sheet, norms and procedures for clearing and settlement of transactions and delivery and payment;

(c) processes and procedures for establishment and functioning of Clearing House for clearing and settlement of trades;

(d) supervision of Clearing House and framing of Business Rules for supervision of clearing and settlement activities of the members of the KOMEX;

(e) processes and procedures for availing of banking services from settlement banks for clearing and settlement of trades as provided in Sixth schedule;

(f) processes and procedures for availing services from warehouses and warehouse operators for physical delivery of commodities and from quality certification agencies or laboratories for quality certification of commodities deposited with warehouse operators and of commodities tendered for delivery against commodities traded in the KOMEX;

(g) Any other matter relating to clearing and settlement of transactions and deliveries thereto, including surveys and sampling for quality testing;

(h) Appointment of quality assurance officers, quality testing laboratories and other appropriate authorities and agencies for settling quality disputes arising out of deliveries.

(i) Procedure for dissemination of information and announcements to be broadcasted by the KOMEX on the trading system or its computer system or internet shall have prior approval from the Authority

(j) Issuance of guidelines for advertisements, booklets or circulars to be published by the members of the KOMEX in connection with their business activities shall have prior approval from the Authority

(k) Appointment of compliance, surveillance and investigation functions for monitoring of trading at the KOMEX in different commodities;

(l) Any other matter, as may be decided by the Board of Directors of the KOMEX from time to time.

Discontinuing a Clearing House Member.

71.(1) A member of the Clearing House may at its discretion discontinue clearing or settling services of any constituent member with whom the member of the Clearing House has an agreement to provide clearing and settlement services.

(2) A member of the Clearing House shall communicate the reasons for discontinuing the services in writing to the constituent member and to KOMEX;

(3) The discontinuation of such services shall become effective as soon as the member of the Clearing House notifies KOMEX and obtains the approval of KOMEX and after the outstanding positions are settled.

(4) A Clearing House may, after examining the reasons for the discontinuation and upon receipt of a written application from the member, facilitate the provision of clearing and settlement services to the member by another corporate member of the Clearing House who has no objection to provide such services.

(5) If a corporate member of the Clearing House ceases to be a member of the Clearing House KOMEX shall novate the clients of the member of the Clearing House to another corporate member of the Clearing House to provide such services, then the client concerned shall continue to work as a trading member provided the reasons for the discontinuation are such that they do not pertain to violation of the Rules for KOMEX or notices issued hereunder.

KOMEX to guarantee transactions.

72.(1) KOMEX shall guarantee contracts and transactions in respect of commodities, or price indices, as may be determined, traded and cleared by KOMEX and shall be deemed to guarantee the net outstanding financial obligations to members of the Clearing House.

(2) If any party to such contract defaults in respect of their financial obligations or fails to deliver commodity on maturity of the contract, defaulting member shall be liable for appropriate disciplinary action by KOMEX and their contract will be closed out.

(3) KOMEX shall guarantee to recover dues of any defaulting member from his security deposit and other funds, if any lying with KOMEX, as also from his debtor members and appropriate the amount so recovered for distribution amongst their creditor members on pro rata basis.

(4) KOMEX shall be deemed to guarantee —

(a) the financial obligations of a defaulting clearing member to other members, who are doing clearing and settlement through him;

(b) the financial obligations of any member of KOMEX to their clients; and

(c) the delivery, the title, genuineness, quality or validity of any commodities or any documents passing through the Clearing House of KOMEX.

Obligations of Members for transactions.

73. (1) Every KOMEX member shall—

(a) ensure that its authorized representatives comply with these Rules and Regulations

(b) notify KOMEX immediately upon becoming aware that it or its authorized representatives have breached a provision of these Rules;

(c) notify KOMEX immediately upon becoming aware that a regulatory body is investigating or instituting proceedings against it;

(d) cooperate with KOMEX or persons appointed by the Exchange in allowing KOMEX to carry out inspection of records concerning the member's trading and financial position, whether on its own account or on behalf of its clients;

(e) comply with requests of a Settlement Bank to inspect its records, when the request is made in coordination with KOMEX;

(f) give access to KOMEX to enter its offices upon request for the purposes of supervision and monitoring compliance with these Rules or any other Regulations issued by KOMEX or the Authority.

(g) promote, to the best of its ability, the objects and interests of KOMEX

(h) protect and safeguard the interests of its Clients.

(i) furnish to all potential and current clients a risk disclosure statement related to trading or other statement as prescribed by KOMEX.

(j) ensure that all clients read and sign the risk disclosure or other required statement before agreeing to participate in trading.

(k) know the contents of all Rules, notices, circulars, orders and instructions issued by KOMEX, and also provide all relevant information to clients before executing any order on behalf of the client.

(l) provide to its clients written disclosure of information pertinent to trade as specified and required by KOMEX.

(2) In respect of transactions taking place in KOMEX and then cleared, settled, and closed out by the Clearing House, the procedure in these Rules shall apply.

(3) Every member of KOMEX shall be fully responsible for all their commitments and other statutory obligations to KOMEX, members of the Clearing House and clients irrespective of whether one or more clients with whom he has dealings with have defaulted.

(4) A default of any one or more clients shall not affect the rights of the member of the Clearing House or the rights of other clients with whom that KOMEX member has dealings with but who are not in default.

(5) No member of the Clearing House shall fail to effect clearance or settlement in the manner specified by the Clearing House or fail to pay damages to the Clearing House of KOMEX or fail to effect delivery merely on the ground of default of others including his constituent members of KOMEX and clients.

(6) No member shall fail to effect clearance or settlement in the manner specified by the Clearing House or fail to pay damages to their respective members of the Clearing House with whom he has an agreement or fail to effect delivery merely on the ground of default of others including his clients.

(7) The Clearing House shall, in the manner specified by KOMEX, have the responsibility of receiving and maintaining payments, monitoring open positions, and transmission of documents, payments and certified warehouse receipts amongst its trading members and corporate members of the Clearing House.

Clearing and settlement.

74.(1) The Clearing House shall provide clearing and settlement services for the transactions of trading in commodities permitted on KOMEX.

(2) In order to facilitate smooth clearing and settlement, all members of KOMEX participating in trading shall be required to open such types and number of bank accounts with designated Settlement Banks as may be advised by KOMEX.

(3) All such members shall be required to strictly follow instructions of KOMEX in respect of operation of such bank accounts, minimum balance, segregation of clients' funds and own funds and any other instructions KOMEX may deem proper.

(4) A member shall—

(a) submit an irrevocable mandate in writing enabling KOMEX to debit and credit their account electronically;

(b) be required to keep the accounts adequately funded, so as to enable KOMEX to recover its dues by debiting their respective bank accounts.

(5) Each clearing member shall submit or cause to be submitted all trades executed by constituent members or clients with whom he has an agreement to provide clearing and settlement services for their transactions and assist the Clearing House to provide clearing a facility to the members of the Clearing House.

(6) The Clearing House shall process all transactions submitted to the Clearing House and shall accept for substitution of KOMEX only the net liability of the Clearing member to the Clearing House.

(7) An order to buy or sell shall become a matched transaction only when it is matched in the Trading system and the Clearing House does not find the order to be invalid on any other consideration and further after verifying that the following are in agreement or in order—

(a) Commodity contract specification;

(b) price indices; and

(c) Transaction quote.

(8) All outstanding transactions shall be binding upon the original contracting parties, that is, the members of KOMEX until issue of delivery notice or delivery order or payment for delivery, as the case may be.

Modes of Settlement.

75.(1) Each trading day shall be a settlement day unless it is declared otherwise by KOMEXupon approval by the Authority. .

(2) All transactions in commodities permitted on KOMEX shall be subject to and settlement through the Clearing House, at intervals specified by KOMEX except on public holidays when there is no trading and clearing.

(3) KOMEX shall have the right to effect marking to market and settlements through the Clearing House more than once during the course of a working day, if deemed fit on account of the market risk and other parameters.

(4) Settlement of differences due on outstanding transactions shall be made by clearing members through the Clearing House.

(5) End of day closing price of a commodity shall be determined by KOMEX based on the average spot price, average auction price and/ or average price quotations for transactions executed in accordance with the terms of the commodity contracts and information available on the daily official list of commodities traded.

Delivery Instruction.

76.(1) The delivery instruction from KOMEX to the warehouse operator shall include—

(a) the quality and quantity of commodity to be delivered;

(b) delivery Order Rate to be filled in by the Clearing House;

(c) name of the seller issuing the Delivery Order;

(d) period of delivery; and

(e) address or addresses of the warehouse or any storage place where the commoditiesare kept and the quantity thereof at each warehouse.

(2) Members and the clients or constituents dealing through them shall strictly abide by the delivery procedure, methods of sampling, survey, transportation, storage, packing, weighing and final settlement procedures, as may be specified by KOMEX from time to time.

(3) Any violation of such method will be dealt with by KOMEX in the manner, according to the disciplinary procedure of KOMEX.

(4) A buyer shall be required to takedelivery from the specified warehouse within the period prescribed by KOMEX as per the delivery order assigned to him.

(5) In case of failure to do so, he shall be required to pay the warehouse charges, insurance charges, demurrage charges and other expenses relating to storage for the incremental period and a penalty in addition thereto.

(6) KOMEX may appoint a panel of inspection officers or agencies including laboratories, for the purpose of quality and weighment / quantity certification of commodities tendered.

(7) Failure to give delivery of goods by the seller or the failure to make payment by the buyer under the Delivery Order assigned to him shall render such seller or buyer a defaulter and the Clearing House shall forthwith square off all his outstanding positions in contracts for all commodities traded by him.

(8) The amount due from such defaulting seller or buyer, including the total financial loss, if any, in respect of all their outstanding positions squared off by the Clearing House shall be recovered from his Clearing Member out of the defaulters security deposits, margins, receivables in all commodities, standing to his credit.

(9) If after such adjustments, there is a shortfall, the said Clearing Member shall also be declared as a defaulter and shall be liable for such disciplinary action as KOMEX may decide in the matter.

(10) The shortfall, if any, on account of such defaulting clearing member shall be distributed among all other Clearing Members who have to receive payment from the Clearing House on pro rata basis according to the amounts payable to each of them.

(11) KOMEX shall decide the inward and outward payment days in respect of commodities, which are fulfilled by issue of delivery orders by the sellers.

(12) KOMEX shall have the power to extend the period of delivery or provide for a longer period of delivery in the Delivery Orders itself if in its opinion, such an extension of time has become necessary due to force majeure or labour strike or for any other reason as the KOMEX deems fit, the reasons for which shall be recorded and the Authority shall advise the Clearing House of such exercise of power.

Report of trades.

77.(1) In respect of all trades done by a Member, KOMEX shall forward reports to the respective member, including settlement obligations relating thereto, which shall be binding on a Member.

(a) A Member shall provide KOMEX with such reports that KOMEX may seek from the members from time to time.

(b) A report shall be in the form as KOMEX may from time to time provide.

(c) A clearing member shall notify KOMEX of any incident, which may endanger the clearing member's capital requirements or interfere with the clearing member's ability to conduct its business in the best interests of KOMEX.

(d) All Members and other market intermediaries shall be required to maintain such books of accounts, registers, statements and other records, either in physical or electronic form, as may be specified by KOMEX.

(e) The documents and records shall be kept in good order and preserved at least for seven years, or higher as may be specified by KOMEX.

(f) All such documents and records shall be made available to KOMEX by the member for inspection, whenever required.

(g) A Member shall submit itself to audit and investigation and furnish all books, records, files and such other information as required upon the direction of KOMEX.

(h) The audit and investigation shall be restricted to the affairs of the KOMEX member as a provider of trading, clearing and settlement services to their client as also in respect of his trading, either directly or through another member of the Clearing House.

(i) In case of any dispute or difference of opinion originating from or pertaining to orders or trades due to a mismatch between the member's report and KOMEX's report, the report as per records of KOMEX shall be final and conclusive, subject to the right of dispute resolution.

PART VIII—SETTLEMENT GUARANTEE FUND

Settlement Guarantee Fund (SGF)

78.(1) KOMEX shall maintain a SGF in respect of different commodity segments of KOMEX for such purposes as the Authority may approve.

(2) KOMEX shall specify the rules, procedures, terms and conditions governing the SGF to be approved by the Authority and specifying -

(a) the amount of deposit or contribution to be made by each member to the SGF;

(b) the terms, manner and mode of deposit or contributions;

(c) conditions of repayment of deposits or withdrawal of contribution from the SGF;

(d) expenses eligible for coverage by the SGF; and

(d) exclusion of SGF charges for utilization of penalties and disciplinary actions for non-performance.

(3) KOMEX shall prescribe the minimum amount to be deposited or contributed to the SGF by a member before commencement of trading by that member.

Contribution to the SGF

79.(1) The SGF shall consist of—

(a) Minimum amount made by a member as may be determined by KOMEX;

(b) contributions from KOMEX and its clearing house;

(c) contributions from settlement banks of KOMEX as may be determined by the board, with the approval of KOMEX.

(d) sums of money accrued from interest and profits from investing the assets of the SGF;

(e) such sums of money as accrued from interest and profits from investing the SGF's monies;

(f) a levy for every transaction through the spot contracts as specified by the KOMEX;

(g) such contribution from the revenue of the KOMEX as its Board may from time to time determine;

(h) money recovered by or on behalf of KOMEX from entities whose failure to meet their obligations to investors results in payments from the SGF; and

(i) such sums of money as received for purposes of the SGF from any other source approved by KOMEX

(2) The money in the SGF shall be applied in the manner provided in these Rules.

(3) KOMEX may specify the amount of additional contribution or deposit to be made by each member and category of clearing members, which may, inter alia, include the minimum amount to be provided by each clearing member.

(4) KOMEX shall guarantee financial settlement of such transactions to the extent it has acted as a legal counter party, as may be provided in the relevant rules, circulars, and notices.

(5) The total amount of security deposit and additional deposit, maintained by a clearing member with the Clearing House of KOMEX shall form part of the SGF.

(6) The amount deposited by any clearing member towards the security deposit shall be refundable, subject to such terms and conditions as may be specified by KOMEX.

(7) Any amount deposited or paid by the clearing member may be refunded provided further that such amount is in surplus and there is no actual crystallized or contingent liability or a claim from any client or settlement bank to be discharged by the clearing member.

(8) KOMEX shall keep proper accounts and records of the SGF and in every financial year, prepare a statement of accounts showing the movement and financial position of the SGF in its annual report.

(9) The accounts referred to in paragraph (8) shall include all sources of income and contributions to and expenses or disbursements of the SGF and any investments of the SGF.

(10) The accounts and records of the SGF shall be audited by an auditor appointed by KOMEX for its annual accounts.

(11) KOMEX shall make rules on the operation and maintenance of the SGF.

Form of Contribution.

80.(1) KOMEX may permit a member to contribute to or provide the deposit to be maintained with the SGF, in the form of either cash, fixed deposit receipts, bank guarantees or in such other form as the KOMEX may specify.

(2) By giving a suitable notice to KOMEX and subject to such conditions as may be specified by KOMEX, a member may withdraw fixed deposit receipts or bank guarantees given to KOMEX, representing the member's contribution towards the SGF.

(3) In making a withdrawal, a Member shall, simultaneously with such withdrawal of fixed deposit receipts or bank guarantees with the Clearing House or KOMEX or made contribution through a mode approved by KOMEX, make a deposit of such funds in cash to the SGF as shall be adequate to maintain the member's contribution towards the SGF at the levels specified by KOMEX.

Investment of monies in the SGF.

81. Monies in the SGF may be invested in forms of investments as may be provided for by KOMEX.

Administration and Utilization of the SGF.

82.(1) The SGF may be utilised for purposes provided in these Rules, which may include—

(a) defraying the expenses of creation and maintenance of the SGF;

(b) temporary application of the Fund to meet shortfalls and deficiencies arising out of the clearing and settlement obligations of clearing members in respect of such transactions;

(c) payment of premium on insurance cover for the SGF which KOMEX may take from time to time;

(d) meeting any expenses of KOMEX arising out of clearing and settlement operations of such transactions, as may be provided in these Rules;

(2) The KOMEX shall have authority to create an interest in—

(a) the cash or fixed deposit receipts of the SGF, securities or other instruments in which the cash amount of SGF is invested; or

(b) bank guarantees or any other instrument issued on behalf of a clearing member in favour of the KOMEX towards deposit to the SGF.

Utilization for Failure to Meet Obligations

83.(1) Whenever a Member fails to meet a settlement obligation to KOMEX arising out of clearing and settlement operations in respect of a transaction, or if a Member is declared a defaulter, KOMEX may utilize the SGF to meet the unfulfilled obligations.

(2) In utilizing the SGF and other monies of a Member under paragraph (1), the KOMEX shall follow the following order—

(a) any amount that may have been paid by the defaulter member other than bank guarantees or, deposited with or retained by KOMEX for the purpose of meeting the clearing and settlement obligations;

(b) the proceeds, if any, recovered from disposal of any security deposited by the defaulter member, other than those deposited towards security deposit or additional deposit by the member with the Clearing House or KOMEX;

(c) any contribution or deposit made by the defaulter member towards additional deposit to the Settlement Guarantee Fund, in the form of cash or fixed deposit receipts or bank guarantee;

(d) any amount that may have been paid by the defaulter member towards margin in the form of bank guarantees and deposited with KOMEX;

(e) any amount that may have been deposited by the defaulter member towards additional deposit in the form of bank guarantees with KOMEX;

(f) any amount that may have been deposited by the defaulter member towards security deposit in the form, other than bank guarantees, with KOMEX;

(g) any amount that may have been deposited by the defaulter member towards security deposit in the form of bank guarantees with KOMEX;

(h) the amount lying to the credit of the defaulter with KOMEX to the extent not appropriated by KOMEX towards the obligations of the defaulter to it;

(i) the proceeds, if any, recovered from auctioning or disposing of the member's KOMEX membership right vested in KOMEX, subject to deduction of the expenses relating or incidental to the auction or disposal, as the case may be;

(j) the fines, penalties, penal charges, interest on delayed payments, interest or other income, if any, earned by investment or disinvestments of the SGF or interest earned on margin moneys that form part of the SGF to the extent, as may be decided by the Clearing House or KOMEX; and

(k) the profits available for appropriation in the SGF in the year in which the member is declared a defaulter.

Insufficient monies in the SGF by Member

84.(1) If the cumulative amount is not sufficient—

(a) the balance obligations shall be assessed against all the clearing members in the same proportion as their total contribution and deposit towards security deposit; and

(b) the clearing members shall be required to contribute or deposit the deficient amount in the SGF within such time, as KOMEX may specify.

(2) If a pro-rata charge is made against a member's actual contribution or deposit, and as a consequence, the clearing member's remaining contribution and deposit towards the SGF falls below his required contribution and deposit, the clearing member shall make additional contribution or cash deposits towards the shortfall in the SGF within such time as the KOMEX may specify.

(3) Where any clearing member, is required to contribute or deposit and fails to do so, KOMEX may charge such rate of interest on the shortfall, and take suitable disciplinary action, including imposition of fines and penalties against the clearing member.

(4) Any disciplinary action which KOMEX may take pursuant to the provisions or the clearing member ceasing to be a KOMEX member, shall not affect the obligations of the clearing member to the Clearing House or KOMEX or any other remedy to which KOMEX or Clearing House may be entitled to under these Rules.

Repayment to the Clearing Member on Cessation.

85.(1) A member shall be entitled to repayment of the actual amount of deposit, if any, made by to the SGF provided it is not part of the admission fee after—

(a) the member ceases to be a KOMEX member on account of any reason whatsoever.

(b) all pending transactions at the time the member ceases to be a member, which may result in a charge to the SGF, have been closed and settled;

(c) all obligations to KOMEX for which the member was responsible have been satisfied, or have been deducted from the member's actual deposit;

(d) a suitable amount, as may be determined by KOMEX, has been set aside for taking care of any loss, liability, or obligation arising out of his past transactions; or

(e) a suitable amount, as may be determined by KOMEX, has been set aside towards such other obligations, as may be perceived to exist or to arise in future.

(2) KOMEX may specify rules for repayment of deposit including the manner, amount and period within which it may be paid.

(3) The repayment amount, at no point of time, will exceed the actual deposit available to the credit of the clearing member after deducting the necessary dues or charges payable by such clearing member from time to time, including the initial deposit.

(4) Any obligation of a member to KOMEX, remaining unsatisfied at the time a member ceases to be a clearing member, shall not be affected by his cessation of KOMEX membership.

Recovery of Loss and Re-distribution.

86.(1) If a loss charged pro-rata is afterwards recovered from the assets of the defaulter or the expelled member, whether directly or otherwise, by KOMEX or the Clearing House, in whole or in part, other than through insurance, the net amount of recovery shall first be credited to the clearing members from whom the loss was charged in proportion to the amounts actually charged.

(2) The amount of recovery made through insurance shall be dealt with in accordance with the terms and conditions of the insurance cover obtained by KOMEX or the Clearing House from time to time.

Limitation of Liability.

87.(1) The liability of KOMEX resulting from the deemed contracts of members with KOMEX and to losses in connection there from shall be limited to the extent of contribution made by the affected member(s) to the SGF.

(2) The SGF shall not be available for—

(a) obligations of a non-clearing member;

(b) obligations of a member to a non- clearing member; or

(c) obligations of a member to another member of KOMEX towards transactions to which KOMEX is not a counter party.

Clearing Limits.

88.(1) KOMEX shall specify the limits of open positions applicable to the clearing members of KOMEX based on the deposits made by them or contributions made by the members to the Fund or any other fund established by KOMEX.

(2) KOMEX shall specify different clearing limits for different commodities.

(3) KOMEX shall close-out the positions of clearing a member who has failed to comply with the notification issued under these Rules.

(4) The aggregate monetary value of commodities shall be determined on the basis of—

(a) the net open positions in each of the commodity for which transactions have been cleared by the clearing member; and

(b) the respective settlement prices.

PART IX—GENERAL PROVISIONS

Powers To Handle Emergencies

89. (1) The Clearing House may effect special clearance of outstanding positions that have been registered or impose additional or special margins or take such other measures that the CEO of the KOMEX may decide, whenever the KOMEX, considers that—

(a) there is an emergency, corner or crisis in the nature of manipulation;

(b) it appears that the commodities are transacted for the purpose of inducing a false or artificial appearance of activity or upsetting the price equilibrium;

(c) the business is being conducted in a manner prejudicial to the interest of the trade or the interest and welfare of the KOMEX.

Power to call for information.

90.(1) The KOMEX shall have power at any time and from time to time to call upon all or any member to submit detailed statement giving information relating to commodities traded by a member in such form and in such manner as may be specified.

(2) In particular and without prejudice to the generality of the foregoing power, such information may relate to the following matters—

(a) transactions entered into by a member with another member on his own-account and transactions entered into by a member on behalf of others;

(b) open positions of a member and of others on whose behalf the member has entered into transactions;

(c) stocks of commodities held by a member or their clients;

(d) export and import commitments, and export and import orders on the other hand in respect of a member or their clients; and

(e) physical purchases or sale of a member and their clients.

(3) The KOMEX shall have power for the purpose of verifying or checking any statement submitted by a member of the KOMEX under these Rules, to call for the production of the books of any member or call for explanation from any member.

(4) A member failing or neglecting to submit any such statement or to produce any such books to give any such explanation shall be liable to be dealt with under the provisions of these Rules.

(5) If, in the opinion of the KOMEX, an emergency has arisen or exists, or it is expedient in the general interest of the trade so to do, KOMEX shall prohibit—

(6) all transactions in commodities at a rate above a maximum or below a minimum as may be specified; or

(7) all transactions in one or more commodities, until further notice as may be specified.

(8) If the KOMEX is of the opinion that continuation of transactions in a specific commodity or commodities is detrimental to the interest of the trade or to the public interest or to the larger interest of the economy, trading in such commodity may be suspended, but the position outstanding in such commodities will be settled by way of delivery and payment, as may be decided by the KOMEX.

Trade Finance.

91.(1) The KOMEX, may notify the procedure regarding the facility for availing finance by the KOMEX members and their constituents against pledge of warehouse receipts.

(2) Such procedure may specify the rate of interest, haircut deductions, maximum permissible limit per commodity, maximum permissible limit per member, maximum tenure of loan, consequences of non-repayment in time and all other applicable conditions.

(3) A member willing to avail such loan shall submit a written undertaking to abide by the conditions specified and also specifying such request for availing such trade finance.

(4) In order to facilitate such trade finance, the KOMEX may enter into financial arrangements with banks for availing lines of credit or cash credit or any other mode of finance.

Dispute Resolution Mechanism.

92.(1) The CEO of KOMEX shall be responsible for interpreting these Rules.

(2) In a claim or disputes on any aspect relating to these rules, parties may adopt conciliation proceedings subject to the these Rules and the Act.

(3) The KOMEX may provide for procedures for the conciliation process including—

(a) Procedure for appearance, hearing, filing of claims and counter claims and taking witnesses and evidence of assessors and experts;

(b) Procedures for issuance of a settlement;

(c) Procedure for implementation of a settlement.

(4) Where the dispute is not settled through conciliation, it may be subject to arbitration facilitated by the Nairobi Centre for International Arbitration.

Violation of Rules and Consequences.

93.(1) A Members or any other persons interacting with KOMEX is obligated to comply with these Rules

(2) Where a person violates these Rules, KOMEX may undertake one or more of the following enforcement actions, based on the severity and impact of the violation—

(a) Issue a reprimand to the offending party;

(b) Where applicable and if the violation has caused loss or damage, order the offending party to provide compensation to the affected party;

(c) Levy an administrative penalty against the offending party, the amount of which shall be determined based on the nature and severity of the violation.

(3) Prior to imposing any sanction, KOMEX shall provide the violating party with written notice of the alleged violation and an opportunity to be heard.

(4) KOMEX shall consider the facts and circumstances surrounding the violation and make a determination in accordance with the principles of fairness and proportionality.

(5) A party aggrieved by the decision of KOMEX to impose a sanction may appeal the decision through the internal dispute resolution mechanism at KOMEX within a prescribed period.

Limitation of Liability on KOMEX officers.	94. No officer, employee or representative of the KOMEX and the clearing house or any member of the clearing house shall be liable for any loss sustained by, or damage caused to any person as a result of anything done or omitted by them in the bona fide performance of any function under or in terms of these Rules.
Confidentiality.	95.(1) The KOMEX shall take necessary steps to preserve and protect the details, particulars, data or information available in the trading system and its computer system.
	(2) The KOMEX shall cause its employees who, in the normal course of discharge of their duties, are likely to have access to details, particulars, data or information relating to any business transactions of the members of the KOMEX to maintain complete confidentiality in respect of all those details.
	(3) The KOMEX may provide data or information relating to any business transactions of its members or in respect of any commodity to fulfil a regulatory requirement or pursuant to an order of the court.
Force Majeure.	96.(1) The KOMEX shall provide its services on best effort basis and it shall not be liable for any harm, loss, damage and injury caused to any person arising in any way out of causes beyond its control.
	(2) Any failure on the part of the KOMEX out of causes beyond its control shall not limit or affect the liability of a member of the KOMEX in respect of any transaction entered into or executed through the trading system or any other trading system of the KOMEX by such member.
	(3) Any delay or failure to observe or comply with any requirement, either in full or in part under these Rules that are not as a result of (1) and (2) above may be dealt with by the KOMEX as a violation of the Rules.

SCHEDULES OF KOMEX RULES 2023

FIRST SCHEDULE - **COMMITTEES OF THE KOMEX BOARD**

SECOND SCHEDULE - **MEMBERSHIP OF KOMEX**

THIRD SCHEDULE - **ON-BOARDING KOMEX CLIENTS**

FOURTH SCHEDULE - **KOMEX CONTRACT SPECIFICATIONS**

FIFTH SCHEDULE - **KOMEX FEES SCHEDULE**

SIXTH SCHEDULE - **KOMEX TRADING SCHEDULE**

SEVENTH SCHEDULE - **ON-BOARDING OF KOMEX SETTLEMENT BANKS**

EIGHTH SCHEDULE - **KOMEX RISK DISCLOSURE STATEMENT**

NINTH SCHEDULE - **KOMEX DISPUTE RESOLUTION MECHANISM**

FIRST SCHEDULE

1.1 COMMITTEES OF THE KOMEX BOARD

The Board of the KOMEX shall establish committees to assist the Board in the execution of its duties, powers and authorities. The committees will consist of :-

1. Audit & Risk Management Committee;
2. Strategy, Operations and ICT Committee;
3. Finance, Human Resource & Nominations Committee; and
4. Compliance Committee.

1. Audit and Risk Management Committee:

The Audit and Risk Management Committee will be composed of its chairman and at least one director with relevant experience and competencies relevant to the mandate of the committee. At least one member of the committee shall be an independent director. The CEO, Chief Financial Officer and representatives of the internal and external auditors shall attend meetings of the committee by invitation from the Chairperson. The Committee may invite other KOMEX staff and or members of the KOMEX to attend its meetings by invitation from the Chairperson. The Board may by written resolution co-opt into its meetings, such limited number of representatives of KOMEX Membership Categories or Officials of Government Ministries, Departments and Agencies, as to provide expert advice on matters under the committee's deliberation. The committee's functions and responsibilities shall be guided by the Board Charter.

2. Finance, Human Resource and Nomination Committee:

The KOMEX Board's Finance, Human Resource and Nomination Committee will be composed of its chairman, the CEO and at least one director with relevant experience and competencies relevant to the mandate of the committee. At least one member of the committee shall be an independent director. The Committee may invite KOMEX staff and or members of the KOMEX to attend its meetings by invitation from the Chairperson. The Board may by written resolution co-opt into its meetings, such limited number of representatives of KOMEX Membership Categories or Officials of Government Ministries, Departments and Agencies, as to provide expert advice on matters under the committee's deliberation. The committee's functions and responsibilities shall be guided by the Board Charter.

3. Strategy, Operations and ICT Committee:

The KOMEX Strategy, Operations and ICT Committee will be composed of its chairman, the CEO and at least one director with relevant experience and competencies relevant to the mandate of the committee. At least one member of the committee shall be an independent director. The Committee may invite KOMEX staff and or members of the KOMEX to attend its meetings by invitation from the Chairperson. The Board may by written resolution co-opt into its meetings, such limited number of representatives of KOMEX Membership Categories or Officials of Government Ministries, Departments and Agencies, as to provide expert advice on matters under the committee's deliberation. The committee's functions and responsibilities shall be guided by the Board Charter.

4. Compliance Committee:

The KOMEX Compliance Committee will be composed of its chairman, the CEO and at least one director with relevant experience and competencies relevant to the mandate of the committee. At least one member of the committee shall be an independent director. The Committee may invite KOMEX staff and or members of the KOMEX to attend its meetings by invitation from the Chairperson. The Board may by written resolution co-opt into its meetings, such limited number of representatives of KOMEX Membership Categories or Officials of Government Ministries, Departments and Agencies, as to provide expert advice on matters under the committee's deliberation. The committee's functions and responsibilities shall be guided by the Board Charter.

1.2 CODE OF CONDUCT AND ETHICS FOR THE DIRECTORS AND KEY MANAGEMENT PERSONNEL OF THE KOMEX

1. The 'Code of Conduct and Ethics' for the Directors and key management personnel of KOMEX, is aimed at improving the professional and ethical standards in the functioning of KOMEX thereby creating better investor confidence in the integrity of the market.

2. Objectives and underlying principles- The Code of Ethics for directors and key management personnel of the KOMEX seeks to establish a minimum level of business/ professional ethics to be followed by these directors and key management personnel, towards establishing a fair and transparent marketplace.

3. The Code of Ethics is based on the following fundamental principles:

(a) Fairness and transparency in dealing with matters relating to the stock exchange or Clearing Corporation and the investors.

(b) Compliance with all laws/rules/regulations laid down by CMA/other regulatory agencies/KOMEX.

(c) Exercising due diligence in the performance of duties.

(d) Avoidance of conflict of interest between self-interest of directors/key management personnel and interests of KOMEX and investors.

4. Ethics - the KOMEX Board shall by a resolution, assign the role for overseeing implementation of the Code of Ethics to a committee of the Board

5. General standard:

(a) Directors and key management personnel shall endeavour to promote greater awareness and understanding of ethical responsibilities.

(b) Directors and key management personnel, in the conduct of their business shall observe high standards of commercial honour and just and equitable principles of trade.

(c) The conduct of directors and key management personnel in business life should be exemplary which will set a standard for other members of the KOMEX.

(d) Directors and key management personnel shall not use their position to give/get favours to/from the executive or administrative staff of the KOMEX, technology or service providers and vendors of the KOMEX, or any recognised Warehouse operator for the KOMEX.

(e) Directors and key management personnel shall not commit any act which will put the reputation of the KOMEX, in jeopardy.

(f) Directors, committee members and key management personnel of the KOMEX, should comply with all rules and regulations applicable to the Commodity Exchange.

6. Disclosure of dealings in commodities by key management personnel of the KOMEX.

(a) Key management personnel of the KOMEX shall disclose on a periodic basis as determined by the KOMEX (which could be monthly), all their dealings in Commodities or related securities (like Derivatives on the Commodities), directly or indirectly, to the governing board/ethics committee/Compliance Officer.

(b) The dealings in commodities shall also be subject to trading restrictions for commodities about which key management personnel in the KOMEX may have non-public price sensitive information. Requirement laid down under various regulations of Capital Market Act pertaining to the insider trading may be referred in this regard.

7. Disclosure of dealings in commodities by directors of the KOMEX

(a) All transactions in commodities by the directors and their family shall be disclosed to the governing board of the KOMEX.

(b) All directors shall also disclose the trading conducted by firms/corporate entities in which they hold twenty per cent. or more beneficial interest or hold a controlling interest, to the Ethics Committee

(c) Directors who are Govt. of Kenya nominees or nominees of Govt. of Kenya's statutory bodies or financial institutions and are governed by their own codes shall be exempt from this requirement.

8. Avoidance of conflict of interest - No director of the governing board or member of any committee of KOMEX shall participate in any decision making/adjudication in respect of any person /matter in which he is in any way, directly or indirectly, concerned or interested. Whether there is any conflict of interest or not in a matter, should be decided by the governing board.

9. Disclosures of beneficial interest.

(a) All directors and key management personnel shall disclose to the governing board, upon assuming office and during their tenure in office, whenever the following arises:-

(b) any fiduciary relationship of self and family members and directorship/partnership of self and family members in any trading member or clearing member;

(c) shareholding, in cases where the shareholding of the director, directly or through his family exceeds 5 per cent. in any listed company or in other entities related to the securities markets;

(d) any other business interests.

10. Role of the Chairperson and Directors in the day-to-day functioning of the KOMEX-

(a) The Chairperson and directors shall not interfere in the day to day functioning of KOMEX and shall limit their role to decision making on policy issues and to issues as the governing board may decide.

(b) The Chairperson and Directors shall abstain from influencing the employees of the recognized commodities exchange or recognized clearing corporation in conducting their day-to-day activities.

(c) The Chairperson and Directors shall not be directly involved in the function of appointment and promotion of employees unless specifically so decided by the governing board.

11. Access to information.

(a) Directors shall call for information only as part of specific committees or as may be authorised by the governing board.

(b) There shall be prescribed channels through which information shall move and further there shall be audit trail of the same. Any retrieval of confidential documents/ information shall be properly recorded.

(c) All such information, especially which is non-public and price sensitive, shall be kept confidential and not be used for any personal consideration/gain.

(d) Any information relating to the business/operations of the KOMEX, which may come to the knowledge of Directors/key management personnel during performance of their duties shall be held in strict confidence, shall not be divulged to any third party and shall not be used in any manner except for the performance of their duties.

12. Misuse of position: Directors/committee members shall not use their position to obtain business or any pecuniary benefit in the organization for themselves or family members.

13. Ethics committee to lay down procedure: The ethics committee shall lay down procedures for the implementation of the code and prescribe reporting formats for the disclosures required under the code. The Compliance Officer shall execute the requirements laid down by the ethics committee.

14. While the objective of this Code is to enhance the level of market integrity and investor confidence, it is emphasized that a written code of ethics may not completely guarantee adherence to high ethical standards. This can be accomplished only if directors and key management personnel of the recognised stock exchange or recognised clearing corporation commit themselves to the task of enhancing the fairness and integrity of the system in letter and spirit.

SECOND SCHEDULE

Form ***(KMX1)***

2.1 APPLICATION/RENEWAL FORM FOR KOMEX MEMBERSHIP

Serial No………………

KENYA NATIONAL MULTI COMMODITIES EXCHANGE LIMITED

THE CAPITAL MARKETS (COMMODITY MARKETS) REGULATIONS, 2020

(*LN 41 of 2020*)

THE KENYA NATIONAL MULTI COMMODITIES EXCHANGE (KOMEX) RULES, 2023

Please note that only a complete and accurate application will be processed by the Kenya National Multi Commodities Exchange Limited (KOMEX). An application is regarded as complete, once the KOMEX has received all the requisite details and any other documents which may be requested for the purpose of processing an application. All documents submitted must be in English and given in original or certified true copies. The signatures on all the documents must be in ink.

Keeping in mind the risks associated with the commodities trading, all the members are required to take an insurance policy for the risks associated with their business operations. This should be complied with, by all the members prior to membership approval by the KOMEX.

Completed application form and the relevant attachments may be submitted to the Exchange at the following address:-

The Chief Executive Officer
Kenya National Multi Commodities Exchange Limited (KOMEX)
Head Office: 1st Floor, KIBT Plaza, Ojijo Road, Parklands, Nairobi
Tel: +254-(0) 20-315001/2-4 Fax: +254(0) 20 310983
P. O. Box 30430-00100 NAIROBI - KENYA
Email: komexkenya2019@gmail.com

Website: www.komex.co.ke

Form ***(KMX1)***

A – Particulars of Application:

Particulars	Details
Name of Applicant	
ID/Alien/Passport Number	
Nationality	
Gender (Male/Female)	
Year of Birth (YYYY)	
Business/Trading Name	
Physical Address of Business/Farm	
L.R. No.	
Rented/Leased/Owned	
Postal Address	
Postal/Zip Code and Town	
Village/Nearest Market Centre	
Sub-County/Constituency	
County/Province/Region	
Country	
Telephone	
Mobile	
Email	
Website	
Business Registration Cert. Number	
KRA PIN	
NSSF Registration No.	
NHIF Registration No.	
NITA Registration No.	

Form ***(KMX1)***

Type of Business Registration	Details	
Registered Business Name (Individual)		Tick ✔ only one box as appropriate
Registered Business Name (Partnership)		
Registered Self Help Group		
Registered Cooperative Society		
Incorporated Company		
Cooperative Society		
Registered Non-Governmental Organization		
National Government Ministry/Department/Agency		
County Government Ministry/Department/Agency		

Particulars	Details		
Type of Application			
Application for New KOMEX Membership		Tick ✔ only one box as appropriate	
Renewal of KOMEX Membership			
Period of Application/Renewal			
Year of Membership (YYYY)			
Membership Starting/Renewal Month (e.g. January)			
Membership Category/Sub-category			
Trading Member (Individual)	KTM1		Tick ✔ only one box as appropriate
Trading Member (Cooperative/Society)	KTM2		
Trading Member (Community Based Organization)	KTM3		
Trading Member (Company)	KTM4		
Trading Member (Affiliate)	KAM1		
Trading-cum-clearing Member (Commodity Broker)	KTCM1		
Clearing Member (Warehouse Operator)	KCM1		
Clearing Member (Central Registry/Regulator)	KCM2		
Clearing Member (Settlement Bank)	KCM3		

Form (KMX1)

B – Format of Particulars of Commodities to be traded (Projections):

NAME OF COMMODITY	PRODUCTION SEASONS/YEAR	VOLUME PER MONTH/SEASON	VALUE PER MONTH/SEASON

Notes:

- Provide a schedule in case of additional commodities to be traded;
- To be completed by Trading Members and Trading-Cum-Clearing Members

C – Membership Checklist:

1. Attach copy of ID/Alien Card/Passport Bio Page and 2 coloured passport size photographs for applicant
2. Proof of net worth (e.g. a copy of your latest bank statements within the last 3 months, or a banker's reference letter dated within the last 12 months).
3. Proof of residential address (e.g. any current, not more than 3 months, utility bill of home address or business premises).
4. Proof of membership of business or professional association, if any.
5. Name(s) of individual(s) who has/have ultimate controlling interest in the company/firm including their nationality, identification/passport number, occupation and executive directorship in any corporation.
   (A person having ultimate controlling interest is anyone other than those shown as Director or Shareholder or partner of the applicant who directly or indirectly exercises or has the power to exercise controlling influence over the management and policies of the applicant)
6. Fit and Proper Declaration of all Directors, trustees, partners and key officers (e.g. Head of Trading).
7. A copy of the license from the regulatory authority of home country, if applicable.
8. The net worth of the applicant is KES______________________ as at date _____________ (dd/mm/yyyy).
9. The principal bankers and branch of the applicant: _________________________________

*Form **(KMX1)***

Date: ______________________

To: Kenya National Multi Commodities Exchange Limited

____ Application for Membership: (indicate applicable membership category)

I/We, ____ hereby apply for the above category of membership with KOMEX and confirm that all information and documents contained in this application are true, accurate and complete. I further undertake to provide all such information and documents that may be required to process this application and warrant that such additional information and documents shall be true, accurate and compete in all respects.

I have read and undertake to adhere to the Rules of KOMEX ("the Exchange Rules") and acknowledge that in the event any information or documents given in this application is not true, accurate or complete, the Exchange may expel, suspend, terminate or take any other disciplinary action in accordance with the Exchange Rules. I/We authorise the KOMEX to obtain information from sources that it deems appropriate in order to adequately evaluate and process this application. I/We further authorize the KOMEX to share or reveal all or any of the information contained in this application form and the attachments or any other information concerning me/us as shall be received by the Exchange from time to time to my appointed Clearing Member or to such Government or Governmental authority or such other person as the laws and regulations permit for such purpose as the Exchange shall deem necessary.

I/We note that there may be restrictions on jurisdictions from where KOMEX Members may operate, and regulatory approvals may be required when conducting business in Kenya. I confirm that I/We have ensured that, where relevant, I/We have obtained the appropriate regulatory authorisation(s) to conduct business on the Exchange. I am aware that the Exchange Rules require me/we to satisfy the Guidelines on Fit and Proper Criteria set by the Capital Markets Authority of Kenya. In addition to the response to the questionnaire stated below, I/We confirm that I/We have examined the Relevant Guidelines and confirm that I/We satisfy the requirements under the Relevant Guidelines.

Declaration

I hereby declare that the particulars which we have given are true and accurate to the best of my/our knowledge and information.

Name of authorized applicant ……………………………………Designation …………………

Signature…………………………………………… Date …………………………………………

Company Stamp (Organizations):

Form ***(KMX1)***

FOR OFFICIAL USE ONLY

General Manger/Manager

Membership and Capacity Enhancement, KOMEX.

Name:……………………………………Signature……………………………Date……………

Comments (Approved/Not Approved)

Official stamp

Chief Executive Officer, KOMEX.

Name:……………………………………Signature……………………………Date……………

Comments (Approved/Not Approved)

Official stamp

Requirements

a) Duly filled application form;
b) Copy of current Tax compliance Certificate;
c) Copy of Certificate of good conduct issued within past 12 months;
d) Personal details – Copies of ID, PIN No.,
e) Copy of Insurance policy for warehouse operators and transporters;
f) Copy of Valid regulatory license as applicable;
g) In the case of a company, Copy of certificate of incorporation/Registration and CR12 issued within the past 3 months;
h) Copy of previous years membership certificate in case of renewals
i) Payment of requisite application/membership fee

2.3 CODE OF CONDUCT AND ETHICS FOR THE MEMBERS OF THE KOMEX

1) Standards of Integrity:

A member shall, in the conduct of its business, observe high standards of integrity and fair dealing. It must:

a. not provide, or accept material inducements of a non-business nature to, or from any person to obtain business;

b. not knowingly circulate information or submit information to the KOMEX or the clearing house which is false or misleading, or which affects or tends to affect unfairly the price of any derivative security;

c. knowingly countenance any attempt to manipulate the market, nor to influence persons for such a purpose;

d. not be a party to or facilitate or enter into a trade which is fictitious or which has a dishonest or unlawful motive;

e. conduct its activities in a manner that is compatible with the objects of the Act and with full respect for the dignity of the KOMEX; and

f. not participate in any dealings with other members, clients, the media or other persons, which may be of such a nature as to discredit the KOMEX.

2) General conduct towards clients. In its dealings with clients, a member shall:

a. act honestly and fairly;

b. act with due skill, care and diligence, and in the interests of clients;

c. exercise independent professional judgment;

d. act promptly on and in accordance with the instructions of a client, and exercise any discretion in a responsible manner;

e. avoid conflicts of interest and when they cannot be avoided, ensure fair treatment to clients by disclosure, confidentiality or declining to act. A member shall not unfairly place its interests above those of its clients; and

f. not make any statement, promise or forecast which it knows to be misleading or is likely to be misleading and that has the effect or may have the effect of inducing a client to enter into a client agreement.

3) Furnishing of investment advice and exercise of discretion in providing investment advice to a client, other than a professional client, or exercising discretion in relation to the management of KOMEX authorised investments, a member shall:

a. take reasonable steps to seek from the client information regarding the client's financial situation, investment experience, particular needs and objectives in connection with the services required, to enable the member to provide the client with sound investment advice or make an appropriate investment decision;

b. conduct an analysis, based on the information obtained, for the purpose of advising the client or making an investment decision;

c. .identify the KOMEX authorised investments that will suit the client's risk profile and financial needs, subject to the terms of any client agreement entered into between the client and the member or any other mandate provided to the member by the client;

d. take reasonable steps to ensure that the client understands any investment advice that has been provided, as well as the nature and material terms and risks involved in the relevant transaction, so as to enable the client to make an informed decision; and

e. ensure that any investment advice provided or discretion exercised is not for the sole purpose of maximising the income of the member.

4) Disclosure to clients:

a) In rendering a service to a client, any representations made and information provided

i) by a member: must be factually correct;

ii) must be provided in plain language, avoid uncertainty or confusion and not be misleading;

iii) must be adequate and appropriate in the circumstances of the particular service, taking into account the factually established or reasonably assumed level of knowledge of the client;

iv) must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein, be reflected in specific monetary terms, provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably pre-determinable, its basis of calculation must be adequately described;

v) need not be duplicated or repeated to the same client unless material or significant changes affecting that client occur, or the relevant service renders it necessary, in which case a disclosure of the changes must be made to the client without delay.

b) A member:

i) must disclose full and accurate information about the fees and any other charges that may be levied on clients;

ii) may not disclose any confidential information acquired or obtained from a client about such client, unless the written consent of the client has been obtained beforehand or disclosure of the information is required to further the objectives of the Act or is required under any law;

iii) must advise a client in advance of any restrictions or limitations that may affect the access of that client to their funds or KOMEX authorised investments.

5) Maintenance of client records:

a) A member must maintain proper, complete, accurate and secure records in relation to the services rendered to its clients.

b) A member must have appropriate procedures and systems in place to store and retrieve, in a manner safe from destruction, a record of all:

I. communications relating to a service rendered to a client, including instructions given by the client to the member;

II. transaction documentation relating to clients;

III. contractual arrangements between the member and its clients, including client agreements and mandates prescribed by the rules; and

IV. client particulars required to be provided in terms of the rules or which are necessary for the effective operation of client accounts.

c) The client records in rule 4(c)(ii) may be kept in printed, electronic or voice-recorded format.

d) Members need not keep the records in 4(c)(ii) themselves but must be capable of making such records available for inspection within seven days.

e) All instructions given by clients to execute transactions must be kept for a period of at least six months after the relevant transactions and all other client records in 16.1.5.2 must be kept for at least seven years after the rendering of the services concerned.

6) Contact with the member - A member must provide for the necessary resources and functionality to ensure that clients are able to readily contact the member.

7) Waiver of rights - A member may not request or induce in any manner a client to waive any right or benefit conferred on the client by or in terms of this code or the Derivatives Rules or recognise, accept or act on any such waiver by the client, and any such waiver is void.

8) Adequacy of financial resources- A member shall ensure that it maintains adequate - financial resources to meet its business commitments and to withstand the risks to which its business is subject.

9) Internal resources and risk management - A member shall employ effectively the resources and procedures that are necessary for the proper performance of its business activities and to eliminate, as far as is reasonably possible, the risk that clients will suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions. It shall organise and control its internal affairs in a reasonable manner and keep proper records. Its staff shall be suitable, adequately trained and properly supervised.

10)Co-operation with regulators - A member shall deal with the KOMEX as its regulator in an open co-operative manner and keep the NSE promptly informed of anything concerning the KOMEX which might reasonably be expected to be disclosed to it. A member shall also provide reasonable co-operation to any other regulatory body or any law enforcement agency in respect of any matters which are the subject of an investigation by such body or agency relating to an alleged contravention of the Act, or any equivalent foreign legislation or any other law governing the activities of the member.

11)Enforcement of code on employees- A member shall enforce the provisions of this code on all its employees.

Unsolicited calls

12)A member may enter into a transaction with or on behalf of a person where the transaction is as a result of an unsolicited call, provided that the member has complied with the requirements set out in rules 3 and.4 and the provisions of the Capital Markets (Conduct of Business) (Market Intermediaries) Regulations, 2011 on cold calling.

Advertising by members

13)Advertising material of a member:

a) must provide accurate, complete and unambiguous information about any KOMEX authorised investment or any service rendered by the member;

b) must emphasize the risk of loss and uncertainty of future results;

c) must discern fact from opinion;

d) may not be comparative in relation to another member; and

e) may not make the statement or suggest that trading in derivatives securities on the KOMEX is appropriate for all persons.

14)An advertisement by a member-

a) may not contain any statement, promise or forecast which is fraudulent, untrue or misleading;

b) must, if it contains:

i) performance data (including awards and rankings), include references to their source and date;

ii) illustrations, forecasts or hypothetical data:

(1) contain support in the form of clearly stated basic assumptions (including, but not limited to, any relevant assumptions in respect of performance, returns, costs and charges) with a reasonable prospect of being met under current circumstances;

(2) make it clear that they are not guaranteed and are provided for illustrative purposes only; and

(3) also contain, where returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence;

iii) a warning statement about risks involved in buying or selling a KOMEX authorised investment, prominently display such statement; and

iv) information about past performances, also contain a warning that past performances are not necessarily indicative of future performances; and

c) must, if the investment value of a KOMEX authorised investment mentioned in the advertisement is not guaranteed, contain a warning that no guarantees are provided.

In the event that the KOMEX considers that a member has failed to conform to any of the advertising requirements published by the KOMEX under its rules, it may at its discretion (without prejudice to its other powers under these Rules) require that no further advertising material or other promotional or marketing material shall be published by or on behalf of such member unless it has been submitted to the KOMEX in advance and the KOMEX has notified the member that the material is suitable for publication.

15) Contraventions to be reported - Every member shall report to the KOMEX any contravention of the Act, the Derivatives Rules and directives and any other relevant KOMEX rules that come to its attention.

THIRD SCHEDULE

3.1 PROCEDURE FOR ONBOARDING KOMEX CLIENTS

1 Client identification

Client identification is an essential element of Know Your Client (KYC) standards. A client would include the person or entity that maintains an account with the Member / Market Intermediary or those on whose behalf an account is maintained (i.e., beneficial owners). The Member / Market Intermediary should undertake the following processes for proper identification of clients:

- Identifying the client and verifying that client's identity using reliable, independent source documents;
- Identifying the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner such that the Member / Market Intermediary is satisfied that it knows who the beneficial owner is;
- In case of high value transactions, obtaining information on the purpose and intended nature of the business relationship; and
- Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the Members/ Market Intermediaries knowledge of the client, their business profile and risk profile, including, where necessary, the source of funds.

2 Know Your Clients

Every member of the Kenya Commodities Exchange ('the KOMEX') must comply with the 'Know Your Client' (KYC) norms of the KOMEX, before starting trading on behalf of the clients. KYC norms include:

. a) Client Registration Form – A member should take details of every client in the specified format. Refer clause 2.3 for further details.

. b) Member-Client Agreement – A Member should sign an agreement with the client in the specified format. Refer clause 2.4 for further details.

. c) Risk Disclosure – A Member should disclose the risk associated with trading and advise every client to sign the document in the specified format. Refer clause 2.5 for further details.

2 Client Registration

Refer to the Rules of the KOMEX.

When establishing a relationship with a new client, the members of the KOMEX must take reasonable steps to assess the background, genuineness, beneficial identity, financial soundness of such person, and his trading objectives by registering the client with them in the prescribed Know Your Client Application Form, as per annex 1. In case of a corporate client, the member should also obtain an attested copy of the board resolution permitting trading in the commodities.

3 Member – Client Agreement

Refer to the Rules of the KOMEX.

Every member of the KOMEX shall enter into an agreement with each of her/his clients, before accepting or placing orders on their behalf. Such agreement shall be as per the format specified in the annex 2. The member will be free to add more clauses in the specified agreement, however, no additional clause should in any way dilute the content or purpose of the clause stated in the specified agreement by the KOMEX. The responsibility of the member shall not in any way be reduced due to non-execution of agreement with the clients.

4 Risk Disclosure

Refer to the Rules of the KOMEX.

4.1 The member of the exchange shall provide extracts of relevant provisions governing the rights and obligations of clients as clients of members of the KOMEX, relevant manuals, notifications, circulars any additions or amendments thereto of the Exchange, or of any regulatory authority, to the extent it governs the relationship between members of the KOMEX and clients, to the clients at no extra cost.

4.2 The member of the Exchange shall make the client aware of particulars of member's registration number allocated by the Exchange, employee primarily responsible for the clients' affairs, the precise nature of business to be conducted, the risk associated with business in trading in commodities listed in the exchange including any limitations on that liability and the capacity in which the member of the Exchange acts and the client's liability thereon.

4.3 The member of the KOMEX shall also bring to the notice of his clients, any indictments, strictures or disciplinary actions taken against him by the KOMEX or any other regulatory authority.

4.4 A member of the KOMEX shall make adequate disclosures of relevant material information in the dealings with its/ his clients, and also by issuing a copy of the 'Risk

Disclosure Document', as per the format specified in the annex 3.

4.5 A member of the KOMEX shall make adequate disclosures of relevant material information in his dealing with her/his client including the current best price of order and trade or order quantities on the trading platform, any relevant announcement from the KOMEX relating to margin, trading restrictions as to price, quantity or whether the member of the KOMEX is the counter party to a trade executed on the exchange with the client.

5 Trading on behalf of the Clients

The clients can participate on the trading platform of the KOMEX through members of the KOMEX. But before allowing a client to trade, she/he should be allotted a client ID.

In order to trade on the trading platform of the KOMEX, the clients should give confirmed order instructions with all the details. The member or his representative should place order based on such instructions along with the client ID.

On confirmation of the order and its execution on the trading platform, the member should provide order and trade details to her/his client. Then, a contract note should be issued to every client at the end of the trading day. Refer annex 1 for the format of the contract note.

6 Margin from the Clients

The members of the KOMEX should collect margins from its clients before trading on their behalf, if required by the KOMEX, i.e., deposit of commodities as per contract specifications by a seller and deposit of the funds by a buyer. The members should have a prudent system of risk management to protect themselves from the clients' default. Margins are likely to be an important element of such a system.

7 Settlement

(a)Pay-in: The clients should make the funds / delivery available to the concerned member before the specified time, so that the member can complete the pay-in of the KOMEX on time.

(b) Pay-out: On receipt of pay-out from the KOMEX, the member should pass on the pay-out to all his clients.

3.2 KOMEX CLIENT REGISTRATION FORM

Paste your photograph and sign across the photograph

To

(Name of the Member)

Membership ID

Address of the Member

We request you to register us as your client. The Details of Registration is as under:

(1) Full Name: ______________________________

(2) Date & Place of Birth: ______________________________

(date in dd/mm/yyyy format)

(4) Occupation: ______________________________

(5) Nationality: ______________________________

(6) Identification Number: ______________________________

(7) Passport details:

- No.: ______________________________
- Country of issue: ______________________________
- Expiry date: ______________________________

(8) Country of residence: ______________________________

(9) Correspondence Address:

- Address: ______________________________

  ____
- City: ______________________________
- Code: ______________________________
- Country: ______________________________
- Telephone no.: ______________________________
- Cell no.: ______________________________
- Fax no.: ______________________________
- Email ID: ______________________________

(10) Residential Address:

- Address: ______________________________

  ____
- City: ______________________________
- Code: ______________________________
- Country: ______________________________
- Telephone no.: ______________________________
- Fax no.: ______________________________

(14) Tax Registration Details:

- Registration No.: ______________________________

(15) Depository Account Details:

- Depository ID: ____________________
- Client ID: ____________________

(16) Details of Registration with other Exchanges:

- Name of Exchange: ______________________________
- Name of Broker: ______________________________

The information furnished above is true to the best of my knowledge and belief.

I undertake to inform changes in any of the above points in writing immediately to the Exchange.

I enter into agreement to abide by all the terms and conditions of the Exchange.

____

Authorized Signature

Place: ______________________________

Date: ______________________________

For office Purpose:

Client Code: ______________________________

Verified by: _______________ Authorized by: _______________

Note : Each client will have to use separate form. In case of Joint names / family members, each client will have to use separate form for each person separately.

Documents to be submitted along with Client Registration Form:

1) Address proof
2) Proof of the Bank Account
3) Annual report in case of firm / corporate / institution
4) Proof of constitution in case of firm / corporate / institution

3.3 KOMEX MEMBER-CLIENT AGREEMENT FORM

This agreement is made at..................................... this .... day of .... 20……
between ...., a company / firm / individual or any other body duly formed and registered under …………………..................... Act, hereinafter called MEMBER OF THE KENYA NATIONAL MULTI COMMODITIES EXCHANGE LIMITED, having its registered office address
at………………………………..,
and ...., a company / firm / individual or any other body duly formed and registered under the Relevant Act, hereinafter called CLIENT, having its registered office address
at ....…………………

Witness:

Whereas the member is registered as MEMBER OF KENYA NATIONAL MULTI COMMODITIES EXCHANGE LIMITED (hereinafter called 'the KOMEX').

Whereas the CLIENT is desirous of trading in those commodities admitted for dealing on the KOMEX as defined in the Rules of the KOMEX.

Whereas the CLIENT has satisfied itself of the capability of the MEMBER OF THE KOMEX to deal in those commodities admitted for dealing on the KOMEX and wishes to execute his orders through him and the CLIENT shall continue to satisfy him of such capability of the MEMBER OF THE KOMEX before executing any orders through him.

Whereas the MEMBER OF THE KOMEX has satisfied and shall continuously satisfy himself about the genuineness and financial soundness of the CLIENT and trading objectives relevant to the services to be provided.

Whereas the MEMBER OF THE KOMEX has taken steps and shall take steps to make the CLIENT aware of the precise nature of the MEMBER liability for business to be conducted, including any limitations on that liability and the capacity in which it acts.

In consideration of your handling transactions carried out on the KOMEX, I agree that -

1) I understand the trading and the risks involved in the trading these instruments and am fully responsible for my dealings in these instruments.

2) I shall be bound by the Rules, Regulations, and Customs of the KOMEX and the Clearing House of the KOMEX.

3) I shall deposit with you monies, Warehouse Receipts or other property, which may be required to open and/or maintain my account or maintain my position.

4) I shall not, acting alone or in concert with others, directly or indirectly, hold and control excess number of permitted commodities as fixed from time to time by the KOMEX.

5) I shall not exercise a long or short position where, acting alone or in concert with others, directly or indirectly I will have exercised in excess of the number of permitted commodities as may be fixed from time to time by the KOMEX. All monies, Warehouse Receipts or other property, which you may hold on my account, shall be held subject to a general lien for the discharge of my obligations to you under this agreement.

6) I hereby authorize you at your discretion, should you deem it necessary for your protection to buy, sell or close out any part or all of the commodities held in my account with you. I will reimburse any or all such incidental expenses incurred by you.

Now, THEREFORE, in consideration of the mutual understanding as set forth in this agreement, the parties thereto have agreed to the terms and conditions, as follows:

1. The agreement entered into between the Member and the CLIENT shall stand terminated by mutual consent of the parties by giving at least one-month notice to each other. Such termination shall not have any effect on the transactions executed before the date of notice of termination and the parties shall enjoy same rights and shall have same obligations in respect of such transactions.

2. In the event of the death or insolvency of the CLIENT or his otherwise becoming incapable of receiving and paying for or delivering or transferring Commodities which the CLIENT has ordered to be bought or sold, the Member may with the approval of the KOMEX, close out the transaction of the CLIENT and the CLIENT or his legal representative shall be liable for any losses, costs and be entitled to any surplus which may result therefrom.

3. All trades and transactions in the commodities are subject to the Rules and Regulations of the KOMEX and shall be deemed to be and shall take effect as wholly made, entered into and to be performed in the Kenya for the purpose of giving effect to the provisions of the Rules of the KOMEX.

In WITNESS THEREOF, the parties to agreement have caused these presents to be executed as of the day and year first above written.

SIGNED for and on behalf of	**SIGNED for and on behalf of**
The Member:	The Client: ....
By:	By: ....
Signature:	Signature: ....
Title:	Title: ....
Witness:	Witness: ....

3.4 KOMEX CLIENT ORDER MANAGEMENT FORM

1. Conditions for Order placement

1. Identity conditions

This condition confirms that the customer record is captured as indicated below;

User Name……………………………………..

User Code………………………………………

2. Commodity Conditions

This condition confirms the correctness of the commodity details as entered below;

Commodity Type……..

Commodity code….

3. Order Matching Conditions

This condition confirms that the order details are as below

Price Quote…………………………………………… **Warehouse location ………………………………..………..**

Quality…………………………………………………. **Quantity …………………………………………………………**

Grade……………………………………………………. **Shelf life …………………………………………………………**

2. Conditions for order processing

This conditions confirms that the order placed can be processed effectively as follows;

"Inventory check by the exchange"

"Capital Availability on the buyer"

1.2.1 Conditions for clearing and settlement

Clearing and Settlement:

Delivery of commodity……………………….. Place of Delivery…………………………………………………….

Transfer of funds………………………………… Account to Settle………………………………………………..

3.5 MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT

This Master Warehouse Service Provider Agreement is made and executed at Nairobi on this

_______ day of ___________ 20__

Between

(Name and Address of the Warehouse service provider) Hereafter known as WH SERVICE PROVIDER

(which expression shall unless be repugnant to the context or meaning thereof mean and include his heirs, legal representatives / successors /executors or Administrator)

(which expression shall unless it be repugnant to context or meaning thereof be deemed to mean and include the partners constituting the said firm, the survivors or survivors of them and executor, administrators or assign of the last surviving partner).

(which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns) of the First Part.

AND

Kenya National Multi Commodities Exchange Limited, a company incorporated and registered under the Companies Act. No. 17 of 2015, and having its address as P.O. Box 30418-00100, NAIROBI (hereinafter referred to as the "KOMEX" which expression shall, unless excluded by or repugnant to the context or meaning thereof be deemed to include its successors and assigns).

WHEREAS

I. As a part of exchange activities, KOMEX proposes to grant/permission to its customers/ constituents (referred to as ________________________________ trading rights on the exchange of agricultural crops/goods/products ("hereafter referred to as commodities" for sake of brevity) as mentioned hereafter in the Agreement.

II. As a condition precedent for the grant of such facilities, the KOMEX shall require each such depositor to deposit quantity and quality of commodities to be traded (as per KOMEX's requirements for such facilities) with KOMEX designated Warehouses.

III. The depositor shall store the commodities proposed to be traded in warehouses identified and approved by the KOMEX from time to time for the purpose ("Storage Area"). The Storage Areas may either be owned by the Warehouse Service Provider or by any other third party managed by the WH Service Provider or its agent recognized by KOMEX. In case of Storage Area is rented by WH Service Provider, necessary Lease Agreement shall be executed by WH Service Provider with the respective owner/lessee ("Owner") of such Storage Area in a form and manner acceptable to KOMEX.

IV. The KOMEX is concerned about the deposits (deposited commodities) held by it through the WH Service Provider and desires that there should be adequate supervision, monitoring and control of pledged commodities at the designated / demarcated Storage Areas.

V. WH Service Provider has good experience and expertise in the handling, overseeing / supervising, monitoring and storage of commodities and therefore the KOMEX has agreed to appoint WH Service Provider to handle, oversee and monitor the storage of the commodities and provide integrated warehouse Services (including collateral management services) to its traders across Kenya at the Storage Areas for the benefit of the KOMEX and also for providing such other services including comprehensive risk management services relating to commodities as may be mutually agreed upon and WH Service Provider has agreed and consented to its services to KOMEX on the terms and conditions mentioned hereinafter.

ARTICLE - I

APPOINTMENT OF WAREHOUSE SERVICE PROVIDER

1.1 The KOMEX hereby appoints WH SERVICE PROVIDER to receive, inspect and monitor the commodities at the Storage Areas and further provide and perform the integrated Warehousing and collateral management services to its members and clients as may be intimated/ directed from time to time through-out Kenya.

1.2 The WH SERVICE PROVIDER hereby accepts its appointment by the KOMEX and agrees to receive the commodities for storage and handling for the benefit of the KOMEX, and provide and perform integrated warehousing and collateral management services to its members and clients as may be intimated from time to time.

ARTICLE - II

DEPOSIT AND WAREHOUSE

2.1 The KOMEX shall intimate to WH SERVICE PROVIDER the location of the intended warehouse proposed to be used as the Storage Areas for storage of the commodities. The WH SERVICE PROVIDER shall upon receipt of such intimation provide to KOMEX its warehouses and / or arrange any other warehouses in the said location readily available for storage purpose.

2.2 The KOMEX for, any warehouse proposed to be used as a Storage Area other than a certified warehouse of the service provider, shall inspect the said Storage Area for its suitability of use as a storage area for the commodities and on being satisfied, shall certify the same to KOMEX in form of “Certificate of Worthiness”.

2.3 In the event that after an inspection of a Storage Area other than service provider’s certified warehouse, KOMEX is of the opinion that the Storage Area is not suitable for the storage of the commodities, it shall forthwith inform the service provider in writing of such unsuitability with reasons along with a detailed list of the deficiencies found by KOMEX (“Failure Certificate”). Upon the receipt by the Service Provider of a Failure Certificate from KOMEX, the Service provider shall either have the deficiencies detailed in the Failure Certificate remedied / removed / rectified by the respective owner or shall identify alternative location(s) for use as a Storage Area.

2.4 In the event that the deficiencies of a Storage Area as detailed in a Failure Certificate shall be remedied, KOMEX shall re-inspect the Storage Area in question and shall, upon completion of the above-mentioned inspection, either issue a Certificate of Worthiness or a Failure Certificate as the case may be.

2.5 In the event that any alternative location(s) as set forth in Article 2.3 above shall be intimated to the KOMEX for use as a Storage Area(s), KOMEX shall inspect such alternative location(s) and either issue to the Service Provider a Certificate of Worthiness or a Failure Certificate as the case may be giving reasons therefore.

2.6 If after the issue of a Certificate of Worthiness, a Storage Area shall become inadequate or is likely to become inadequate area for the storage of the commodities or shall otherwise become unavailable for any reason whatsoever, WH Service Provider will promptly arrange alternative warehouse(s) for use as Storage Area(s) and intimate the same to the KOMEX. Such alternative warehouse(s) may be only used for storage of the commodities after KOMEX has issued a Certificate of Worthiness in this regard.

2.7 Apart from its employees, agents, servants, representatives or contractors, WH Service Provider shall not admit any other persons in the storage area unless directed by the KOMEX

2.8 WH SERVICE PROVIDER shall permit the KOMEX's authorized representatives or agents to conduct such inspections, verifications and checks on the quality, quantity and weight of part or all of the commodities as the KOMEX deems necessary in its absolute discretion. The cost of all such inspections and checks shall be as per terms negotiated at the time of the appointment of the WH SERVICE PROVIDER.

2.9 The WH SERVICE PROVIDER shall on behalf of the KOMEX, receive delivery of the commodities (proposed to be traded) from client at Storage Area.

The WH SERVICE PROVIDER shall mark in its books the commodities deposited in favor of KOMEX and delivered by a client in accordance with the provisions of Article 2.9 above and shall release such deposited commodities only upon the receipt by of appropriate instructions from the KOMEX. WH SERVICE PROVIDER shall, prior to such release of the deposited commodities, verify KOMEX's instructions.

ARTICLE - III

SERVICES

3.1 In addition and without prejudice to any other duties and obligations as mentioned herein above, WH SERVICE PROVIDER shall also render the services specified in Appendix I to the present MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT.

ARTICLE - IV

UNDERTAKINGS, WARRANTIES, REPRESENTATIONS AND COVENANTS

4.1 Good Industry Practice

The WH SERVICE PROVIDER agrees, undertakes, warrants and covenants that it shall at all times, control and manage the commodities at the designated Storage Area(s) and provide the services outlined in Appendix I as per good industry practice and shall diligently and faithfully provide its services in accordance with the best practice followed in provisioning services and shall use its best endeavours to improve the goodwill of KOMEX in the service area in accordance with the Business rules, which are subject to change from time to time.

"Good Industry Practice" for the purpose of this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT means the exercise of degree of skill, diligence and prudence which is expected from a highly skilled, experienced and well recognized and reputed service provider engaged in the same type of undertaking as service provider under similar circumstances and acting generally in accordance with the prevailing laws, rules, regulations, codes and industry standards.

(a) Corporate Standing

It is a limited liability company duly organized, validly existing and in good standing under the laws of Kenya and is qualified to do business in all jurisdictions.

(b) No violation of law: litigation

The formation and performance of Service Provider is in accordance with the law of the country and that SERVICE PROVIDER is not prevented or any way legally disentitled to enter into present MASTER SERVICE PROVIDER AGREEMENT. There is no pending litigation by or against any governmental or regulatory authority, which, if adversely determined, could reasonably be expected to have a material adverse effect on the financial condition, operations, prospects or business of the WH SERVICE PROVIDER or its ability to perform the obligations under this MASTER SERVICE PROVIDER AGREEMENT.

(c) No Breach

Neither the execution and delivery of this MASTER SERVICE PROVIDER AGREEMENT, nor the consummation of the transactions herein contemplated or compliance of any terms and provisions hereof, will conflict with or result in a breach of any applicable laws or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument or arrangement to which WH SERVICE PROVIDER is a party.

(d) Corporate Action

The WH SERVICE PROVIDER has all necessary power and authority to execute, deliver and perform its obligations under this MASTER SERVICE PROVIDER AGREEMENT; and that this SERVICE PROVIDER AGREE-MENT has been duly and validly executed and delivered by WH SERVICE PROVIDER and constitutes legal, valid and binding obligations of WH SERVICE PROVIDER enforceable in accordance with its terms.

(e) Necessary skills and expertise

The WH SERVICE PROVIDER possess necessary skills, knowledge, experience, expertise, required capital net worth, adequate and competent personnel, systems, equipment and procedures and capability to duly perform its obligations in accordance with the terms of this MASTER SERVICE PROVIDER AGREEMENT.

4.2. Other representations and warranties

The WH SERVICE PROVIDER further represents and warrants and covenants that:

(a) They possess proper infrastructure, manpower and equipment(s) to render the services outlined in Appendix I;

(b) They possess electronic warehouse receipt system that can integrate with the exchange, Banks and the warehouse registry;

(c) They possess necessary facilities for accurate and efficient weighing, sampling, inspection and grading of commodities;

(d) They possess efficient personnel with knowledge and prior experience of Exchange based trading and storage practices and weighing, sampling, inspection and grading procedures;

(e) Its scales and grading equipment are maintained and calibrated regularly and is in accordance with the prescribed standards under applicable law;

(f) They have sound system for maintaining market information, for keeping the KOMEX well informed about price movements and other significant market developments;

(g) They shall immediately notify the KOMEX in writing of the occurrence of any event which may result in or which may give reason to believe that there is a necessity to change the Storage Area for protection and preservation of the commodities.

ARTICLE - V

WAREHOUSE RECEIPT

5.1 Upon the receipt of any commodities in Storage Area, WH Service Provider shall along with approved grading agency, if any, cause random inspection of the commodities to determine the type, quantity , weight and quality parameters of such commodities. On the completion of the inspection, grading and verification process, the WH SERVICE PROVIDER shall issue an appropriate deposit Acknowledgement to the concerned client which shall be substantially in the form approved by the KOMEX (“Deposit Acknowledgement Receipt ”) (or such other form as may be mutually agreed between WH SERVICE PROVIDER and the KOMEX) evidencing the physical delivery and deposit of such commodities at the designated Storage Area and the warehouse manager shall countersign all deposit Acknowledgement issued by WH SERVICE PROVIDER (in the format as mentioned herein above.) The Liability of the WH SERVICE PROVIDER shall be 100% in case of any loss is caused to the physical Commodity in the storage area.

5.2 In case of any dispute or difference raised client, the WH SERVICE PROVIDER shall be referred to KOMEX for resolution and settlement, on parameters relating to any commodities received at storage areas.

5.3 After the deposit is accepted, the WH SERVICE PROVIDER shall issue electronic Warehouse Receipt. The WH SERVICE PROVIDER shall on a daily basis share the status of electronic warehouse receipt with the KOMEX clearing house and any other agency as directed by the KOMEX.

5.4 On the instruction of the KOMEX’s Clearing house, the WH SERVICE PROVIDER shall transfer the titles of ownership to the electronic Warehouse Receipt and update the status of electronic ware.

ARTICLE - VI

INSPECTION, STORAGE AND REMOVAL /DISPOSAL OF COMMODITIES

6.1 Notwithstanding the provisions of Article 4.1 above, WH SERVICE PROVIDER shall be responsible for the carrying appropriate inspections, scrutiny and verification of the commodities at the time of deposit or delivery thereof. They shall also be responsible for conducting periodic inspections at regular intervals for ensuring quality and quantity of the commodity during storage period in accordance with prescribed standards or as directed by KOMEX. The WH SERVICE PROVIDER shall inform the KOMEX immediately in the event it foresees any possible loss to the commodities. Apart from the above, the WH SERVICE PROVIDER shall also provide periodic reports as may be agreed between the WH SERVICE PROVIDER and the KOMEX on the quality, quantity, condition, grade and kind of the commodities to the KOMEX.

6.2 In the event that any commodities are sent to the WH SERVICE PROVIDER in a damaged or defective condition, the WH SERVICE PROVIDER shall not take delivery of the same without the prior written consent of the KOMEX.

6.3 The WH SERVICE PROVIDER shall, with the permission of the KOMEX, use their best efforts to sell or otherwise dispose of any or all of the commodities prior to the expiry of the storage period, in case when such commodities are of nature not immediately disposed off, will be destroyed or otherwise become unusable and / or shall lose a significant portion of their value. In such an event, WH SERVICE PROVIDER shall furnish the entire proceeds of such sale to the KOMEX clearing house along with a detailed written explanation as to the reasons for such sale.

6.4 Commodities are to be delivered to and collected from the place of storage between 0900 hours and 1700 hours local time Monday to Friday and between 0900 and 1300 hours local time on Saturdays, excluding public holidays. The WH SERVICE PROVIDER, May at its discretion, also agree to perform such services outside these hours. The WH SERVICE PROVIDER will act upon a request for storage or delivery of commodities not later than the next working day after the receipt of the appropriate request plus receipt of any necessary documentation in order to implement and execute that request from the client of the KOMEX. Requests and documents received after 1700 hours local time shall be deemed to have been received the next working day. The WH SERVICE PROVIDER shall comply with any reasonable orders of the KOMEX to expedite any business hereunder.

ARTICLE - VII

TRANSFER OF COMMODITIES AND URGENT REMOVAL OF COMMODITIES

7.1 The WH SERVICE PROVIDER shall transfer any part or entire commodities to another storage place if it considers such transfer to be in the best interests of all the parties to this MASTER WH SERVICE PROVIDER AGREEMENT. The cost of this transfer and including the cost incurred for procuring comprehensive transit insurance policy shall be on the client's account, if the transfer was affected in the interest of the preservation of commodities. The payment of the dues for the client, will be paid to the service provider by the KOMEX. The WH SERVICE PROVIDER will ensure proper transit insurance and transportation for the transfer of the commodities.

7.2 The WH SERVICE PROVIDER shall require the removal of any commodities prior to the expiry period from storage Area without adhering to any notice, if they consider it to be urgent and that due to presence of any such commodities in a Storage Area, any loss and/or damage is likely to be caused to any other commodities stored in such Storage Area, to the Storage Area or to equipment, or there is sudden apprehension of any harm, loss or injury to any person or property, and further more if the commodities are of perishable nature or liable to inherent changes which in WH SERVICE PROVIDER considered opinion warrant the assumption of a decrease in value and the KOMEX has failed to give instructions for preventing or coping with this.

ARTICLE - VIII

COMMINGLING AND RELEASE OF COMMODITIES

8.1 For greater certainty, it is hereby stated and agreed that WH SERVICE PROVIDER shall not allow the release of any commodities without written instructions from the KOMEX.

8.2 As per the standard process of the KOMEX, any commodities stored hereunder will be commingled and warehoused as one general lot of fungible commodities provided that commodities commingled will be identical and of same grade . In such case: (a) the WH SERVICE PROVIDER shall be liable to each depositor or holder for the care and re-delivery of the share of the depositor and holder of the commingled commodities to the same extent and under the same circumstances as if the commodities had been stored separately; and (b) the client shall be entitled to such portion of the general lot of commodities as quantified and detailed by the appropriate Warehouse Receipt issued for each individual lot of commodities received at the Storage Area prior to such commingling.

8.3 At no time shall any commodities be removed out of the Storage Area without a gate-pass issued by the WH SERVICE PROVIDER in this regard.

ARTICLE - IX

COVENANTS

9.1 The WH SERVICE PROVIDER shall ensure that it has taken all risks insurance coverage (fire and allied perils including flood, or any other natural calamities or acts of god cover offered by the insurance policy on fire and allied perils, burglary, theft, earthquake, spontaneous combustion, riots, strikes and malicious damage) as may be reasonably required by the KOMEX for the value of commodities stored and same shall be endorsed in name of the KOMEX as the loss payee in respect of the insurance coverage obtained in respect of the such deposited goods/commodities. The KOMEX being the loss payee, shall be receiving the amount of insurance claim.

9.2 The WH SERVICE PROVIDER shall be liable for any loss or damage caused to the commodities or any liability arising thereof as a result of any negligence, misconduct and / or violation and/or breach of any of the terms of this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT by WH SERVICE PROVIDER, its officers, employees and agents.

9.3 The liability of the WH SERVICE PROVIDER under this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT shall be limited to the extent of claim received from any insurance company.

9.4 The WH SERVICE PROVIDER will be liable for damages caused due to any material discrepancy between the quantities or description of commodities as indicated in the Warehouse Receipt as against the actual quantity of commodities.

9.5 The WH SERVICE PROVIDER shall not be liable for any shortages in the weight of commodities on account of –

a. Reasonable changes in moisture levels of the goods (“moisture loss”).

b. Handling, sampling, re-packing, spillage, etc., ("handling loss") provided such handling losses do not exceed 0.50% (per stacking / de-stacking cycle) of the original deposited quantity in terms of weight or such limit as may be agreed from time to time between SERVICE PROVIDER and the KOMEX.

9.6 The WH SERVICE PROVIDER shall not be liable for losses occurring after the goods have been delivered as per the terms of this Agreement or arising as a result of any arrangement entered into by the KOMEX with the client.

9.7 The WH SERVICE PROVIDER will maintain various records and registers as may be required under the applicable law and will not object for inspection thereof to the KOMEX.

9.8 The WH SERVICE PROVIDER shall not delay the delivery of the commodities stored in the Storage Area without any justifiable reason.

9.9 The KOMEX shall have the right to carry out spot checks and do audit of the Storage Area and the premises where the commodities are stored. Procedures, personnel and records relating to the services rendered in terms of this MASTER SERVICE PROVIDER AGREEMENT will include surprise checks to satisfy themselves as regards quality of services provided / rendered / performed by WH SERVICE PROVIDER to the KOMEX and its clients.

ARTICLE - X

FEES AND TAXES

10.1 In consideration for the services provided by the WH SERVICE PROVIDER, the KOMEX will pay WH SERVICE PROVIDER the fees and charges as per the Gazetted Fees Schedule.

10.2 All fees and charges payable to the WH SERVICE PROVIDER shall be inclusive of all taxes charged or which may be imposed in the future on any of the services provided by the WH SERVICE PROVIDER under this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT. In the event that the KOMEX has paid any amount towards taxes, the KOMEX shall issue to the WH SERVICE PROVIDER, appropriate certificates evidencing the payment of such taxes on behalf of the WH SERVICE PROVIDER.

10.3 The WH SERVICE PROVIDER shall be responsible for intimating to the KOMEX, the applicable service charges, taxes, etc. that are required to be deducted by the KOMEX.

ARTICLE - XI

INDEMNITY

11.1 Indemnity by the WH SERVICE PROVIDER

The WH SERVICE PROVIDER agrees to indemnify and keep indemnified, defend and hold harmless the KOMEX and its officers, directors, employees and agents from and against any and all losses, liabilities, claims, obligations, costs, expenses arising before, during or after completion of services, which result from, arise in connection with or are related in any way to claims by third parties or regulatory authorities, and which directly arise due to following reasons:

(i) The SERVICE PROVIDER breach of the representations and warranties specified in this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT or;

(ii) Negligence, or misconduct by WH SERVICE PROVIDER; or

(iii) The fault or negligence of WH SERVICE PROVIDER, its officers, employees, agents, subcontractors and/or representatives;

For the purposes of this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT, the WH SERVICE PROVIDER shall include SERVICE PROVIDER, its personnel, employees, consultants, and/or other persons authorized to act on its behalf.

11.2 The KOMEX shall have no liability whatsoever for any injury to WH SERVICE PROVIDER and / or its personnel / staff caused or suffered in the course of performance of the obligations by in terms of this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT save and except by any action or inaction of the KOMEX.

11.3 Survival of Indemnity

The responsibility of the SERVICE PROVIDER to indemnify set forth in this Clause and the obligations there under, shall survive the termination of this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT for any reason whatsoever with regard to any indemnity claims arising out of or in relation to the performance hereof.

ARTICLE - XII

LIEN

12.1 Notwithstanding anything contained in this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT, it is expressly agreed that at no time, the WH SERVICE PROVIDER shall have any rights of lien, attachment, detention or arrest or similar other right of a like nature with respect to or over the commodities. The WH SERVICE PROVIDER hereby unconditionally and irrevocably waives any and all contractual and statutory rights that the WH SERVICE PROVIDER may have in relation to lien, etc. either under this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT or under applicable laws.

ARTICLE - XIII

DURATION AND TERMINATION

13.1 This MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT shall come into force on the date above written and can be terminated by either party by giving 60 (sixty) days written notice of their intention to do so. Notwithstanding the above, either party to this agreement shall be entitled to forthwith terminate this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT without the grant of any prior notice in the event of any breach or violation by the WH SERVICE PROVIDER of the terms and conditions of this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT.

13.2 In the case of termination by a party as provided in Article 13.1, the WH SERVICE PROVIDER shall continue to hold the commodities until such time as the KOMEX notifies WH SERVICE PROVIDER the name of the person to whom WH SERVICE PROVIDER shall deliver the commodities. If such person is not designated within 90 (ninety) days of the date of termination of this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT, the WH SERVICE PROVIDER may continue to hold the commodities in accordance with the terms and conditions of this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT provided that the KOMEX continues to make payment to WH SERVICE PROVIDER for such additional period in accordance with the terms and conditions of this MASTER SERVICE PROVIDER AGREEMENT .During the period of any holdover, the WH SERVICE PROVIDER shall always hold the commodities in accordance with the terms and conditions of this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT.

13.3 If any of the parties to this Agreement are prevented from performing any of their obligations under this Agreement by events of force Majeure, such as war fire, flood, earthquake, or any other event that is beyond the reasonable control of such party, the time period for performance of such obligations shall be extended by a period equal to the delay caused by such event and the parties hereto shall conduct friendly negotiations as soon as possible to find a mutually satisfactory solution to the problems caused by such events. No damages shall be claimed for such acts of force majeure.

ARTICLE - XIV

INTERPRETATION

14.1 The headings in this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT are for convenience only and shall not affect the construction thereof.

14.2 The validity of this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT shall not be affected by the invalidity of a provision thereof unless the results would be manifestly inequitable and unconscionable.

ARTICLE - XV

GOVERNING LAW AND JURISDICTION

15.1 This MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT shall be governed by, and interpreted in accordance with the substantive laws of Kenya and the Courts at Nairobi alone will have the exclusive jurisdiction to entertain, try and adjudicate any dispute between the Parties

15.2 The Parties do hereby agree that any claim, controversy, or other dispute between them relating to this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT or its interpretation will be submitted to arbitration in accordance with the provisions of the ARBITRATION ACT. NO. 4 OF 1995 (“Act”). The arbitration hearings, proceedings and all meetings held pursuant to this Clause shall be held in Mumbai, India and shall be conducted in English. The Arbitration shall be conducted by a single Arbitrator who shall be jointly appointed by the Parties. In the event, the Parties herein fail to agree on the choice of Arbitrator within 15 (fifteen) days after the date of a written demand made by any of the Parties for such appointment, a single Arbitrator shall be appointed in accordance with the provisions of the Act. The decision/award of the arbitrator shall be in writing and shall be rendered within 5 (five) days after the completion of the Arbitration proceedings. The decision of the Arbitrator shall be final and binding upon the Parties both as to law and to fact, and shall not be appealable to any court in any jurisdiction. The expenses of the Arbitrator shall be shared equally by the Parties, and each Party shall bear its own legal costs, unless the arbitrator determine in their award that their expenses, and/or the legal costs, shall be otherwise assessed.

ARTICLE - XVI

GENERAL PROVISIONS

16.1 All notices, requests, consents, waivers or other communication required or permitted hereunder shall be in writing and shall be deemed properly served: (i) if delivered by hand and received by an authorized employee or officer of the Party, (ii) 3 days after being given to a reputed courier with a reliable system for tracking delivery, (iii) upon receipt of confirmation receipt when sent by facsimile; or (iv) 14 days after the date of dispatch by certified or registered mail, postage prepaid, return receipt requested; (v) when sent by electronic mail. All notices and other communication shall be addressed as follows, unless changed and notified to the other parties:

WH SERVICE PROVIDER

Name:

Address:

Email:

Phone:

KOMEX

Name:

Address:

Email:

Phone:

16.2 The KOMEX shall have the right to assign this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT in whole or in part including any rights or obligations hereunder without the prior written consent of SERVICE PROVIDER.

16.3 Neither failure, refusal nor neglect of the WH Service Provider to exercise right under the present Agreement or to insist compliance thereof by the Agent nor any other waiver of any default of any provision of the present Agreement shall be deemed a waiver of any other default or breach of the same or any other provisions.

16.4 This Agreement shall not be changed or supplemented in any way except by properly executed documents signed by a representative or officer, duly authorized in writing by each of the parties hereto.

16.5 Either party and their agents, representatives and employees shall keep confidential any information concerning the business or business operations which may be discussed or disclosed in the course of the relationship created by this Agreement and will not disclose any such information to any third party without the written permission of the other parties.

16.6 The invalidation of any one of the terms, conditions or other provisions herein by judgment or court order shall in no way affect any other terms, conditions and provisions hereof, and the remainder of this Agreement shall remain in full force and effect.

16.7 All warranties and indemnities of the KOMEX and the SERVICE PROVIDER shall survive the termination of this Agreement.

16.8 This MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT and the Appendixes thereto, which form part thereof, shall constitute the entire MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT between the Parties with respect to its subject matter, all prior contracts, proposals, representations, negotiations and understandings, either orally or in writing being hereby superseded. Any amendment or modification hereof shall only be binding if it is made in writing and signed on behalf of each Party by its duly authorized representative(s).

16.5 This MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT may be executed in any number of counterparts and by the different Parties in separate counterparts, each of which, when executed, shall be deemed to be an original, and such counter parts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT (in duplicate) to be duly executed on the date, month and year herein-above written

Signed, sealed and delivered by within named	)
WH SERVICE PROVIDER	)
	)
	)
	)

Signed, sealed and delivered by within named	)
KOMEX	)
	)
	)
	)

APPENDIX I

1. DESCRIPTION OF SERVICES AND SCOPE OF WORK FOR THE WH SERVICE PROVIDER

In addition and without prejudice to any other duties and obligations of WH SERVICE PROVIDER as contained elsewhere in this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT, SERVICE PROVIDER shall act as the representative / agent of the KOMEX at each of the Storage Area(s) and shall take all necessary actions to ensure the safety, security and proper upkeep and maintenance of any and all commodities with particular reference to kind, quality maintenance, quantity, grade and weight same as may be inherited to the nature of the commodities so stored while the same are stored at the relevant Storage Area including but not limited to the following:

The WH SERVICE PROVIDER shall furnish a list of its certified warehouses to the KOMEX along with a list of authorized signatories in those warehouses, which list will be updated and revised from time to time by the WH SERVICE PROVIDER;

2) Facilitating a pre-storage survey of any proposed warehouse(s) for issues of a certificate by the KOMEX as to the suitability of each such Storage Area in accordance with the provisions of Article II of this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT.

3) Conducting of a quality certification of commodities through KOMEX specified process at the time of initial storage of such commodities at a Storage Area(s) and furnishing to the KOMEX certificate on the kind, quality, quantity, grade and weight of the commodities inspected in terms of the specifications on random sampling as detailed in Appendix II.

4) Supervision of unloading / weighing operations from trucks and other transport vehicles at a Storage Area of commodities to be deposited at a Storage Area on a continuous basis till completion of unloading of such commodities and till taking of the actual physical delivery thereof.

5) Advise the KOMEX about the necessity/requirement of fumigation and accordingly arrange for fumigation of the commodities on the instructions of the KOMEX before delivery at the sole cost and expense of the WH SERVICE PROVIDER...

6) Right tagging and ensuring the proper stacking and segregation of the commodities in the Storage Area(s).

7) Continuously monitoring the receipt /release of all commodities into the Storage Area(s).

8) Daily reporting on receipt and / or releases operations into/from all Storage Areas.

9) Notifying the KOMEX in case any supplemental stock in lieu of margin call has arrived as per prior intimation of the KOMEX to WH SERVICE PROVIDER

10) The signing of Deposit Acknowledgement Receipt issued as per the provisions of Article 5.1.

11) Issuing Electronic warehouse receipt for the deposits made by the clients of the KOMEX as per the provisions of Article 5.3

12) Performing regular stock monitoring of the commodities and furnishing written reports on the same to the KOMEX

13) Maintaining of stock ledgers on a daily basis for each Storage Area.

14) Receiving and verifying release instructions as may be given by the authorized officials from the KOMEX for any commodities.

15) Authorizing release of commodities from the applicable Storage Area(s).

16) Ensuring that the commodities to be delivered correspond with the specification stated on the Warehouse Receipts handed over by the KOMEX.

17) Upon completion of delivery, WH SERVICE PROVIDER will issue a report of delivery and / or certificate of delivery per lot delivered, in accordance with the instructions of the KOMEX, specifying the quantity of bags and other relevant details.

18) Overseeing the movement of commodities in and out of the Storage Areas after ensuring proper authorizations.

19) Protecting the commodities whilst in the custody of WH SERVICE PROVIDER from loss or damage through theft, burglary or from any form of wrongful acquisition or detention and ensuring that adequate security is provided for as may be required by the KOMEX by suitable Insurance cover.

20) Protecting the commodities after receipt of the same by WH SERVICE PROVIDER for storage from any significant or material adverse changes in quality quantity and weight same as may be inherited to the nature of the commodities or character to the commodities after such commodities are received by SERVICE PROVIDER for storage.

21) Protecting the commodities from any loss or damage arising out of any bulking, sampling, picking, washing, clearing, grading, sorting, re-packing or re-bagging operation carried out by WH SERVICE PROVIDER while the commodities are in the custody and control of WH SERVICE PROVIDER save and except where WH SERVICE PROVIDER has, prior to the carrying out of any of the above activities, notified the KOMEX in writing of the likelihood of such loss or damage and the KOMEX has given to WH SERVICE PROVIDER its prior written consent to proceed with such activity.

22) Assisting any client/ depositor with the completion of all documentation required to be completed by a client in favor of the KOMEX whether for and in relation to the deposit of any commodities at a Storage Area by such Client/ Depositor or otherwise and scrutinizing and verifying such documentation.

23) Inspecting each warehouse’s books of accounts and other records for the purposes of ensuring that appropriate entries are made by each manager and appropriate records are maintained by each manager with regard to the deposit, creation of the electronic warehouse receipt and release of all commodities deposited at each Storage Area managed by such manager.

24) Providing the reports and information detailed in Appendix to this MASTER WAREHOUSE SERVICE PROVIDER AGREEMENT.

25) Such other services as may be mutually agreed by the KOMEX and WH SERVICE PROVIDER from time to time.

APPENDIX II

CHARGES AND TERMS OF PAYMENT

WH SERVICE PROVIDER shall charge a comprehensive rate of KES _______ (Kenyan Shilling ___________) per ton per month. In the event that the commodities are not in complete ton, the fees payable by the KOMEX shall abate in proportion of the weight.

APPENDIX III

LIST OF REPORTS TO BE SUBMITTED

As per formats to be agreed between WH SERVICE PROVIDER and the KOMEX:

1. Indication of value of commodities at regular intervals/ Stock audit report: Warehouse Receipt wise
2. Price fluctuation reports
3. Scrutiny of insurance coverage
4. Disposal services as and when requested by the KOMEX
5. Copies of the stock register to be submitted regularly
6. Stock Storage space occupancy and requirement report
7. Warehouse performance report
8. Such other reports as may be required by the KOMEX from time to time

Warehouse Related Formats

1. Gate record for Arrival or dispatch of goods from KOMEX Warehouse. This record is maintained when truck arrives or departs from the warehouse gate.

Date	Driver Name	Truck No.	Name of Owner	From/To	Time of Arrival	Time of Departure	Commodity	Signature

2. Truck Log Register: The warehouse shall maintain the records of the trucks accessing the warehouse premises.

Date	Driver Name	Truck RegistrationNo.	Name of Owner/ Depositor	From	Name of the Commodity	Commodity Quantity	Parking Specifications	Signature of Warehouse Representative

3. Format of Weigh Bridge Receipt: The receipt of the truck with actual load capacity in warehouse will be issued in the following format.

PARTICULAR	DETAILS
DATE:	
COMMODITY:	
TRUCK NO.:	
ARRIVAL/ DEPARTURE:	
TOTAL WEIGHT:	
QUANTITY:	

Signature of Weighing Clerk ....

Stamp:

4. Format for Weight and grade certificate

1. Name of Depositor: ....

2.(a). Client ID Number :………………. 2.(b). Client Member Registration Number:..................

3. Contact details:

(a) Address: …………………………………………………………………..

(b) Telephone: …………………………………………………………………..

(c) Mobile No.: …………………………………………………………………..

(d) Email: …………………………………………………………………..

4. Warehouse KOMEX Registration Number: ....

5. Grain type ………………. and class:.................. 6. Number of bags............

7. Net weight (total):....................kg. 8. Scale ticket ref. ....

9. Identifying marks: ....

10. This certifies that the above consignment is free from objectionable odour, contains no live insects and was graded as follows:

Item	Description	% by Analysis
1	Moisture Content	
2	Foreign matter (total) of which: Inorganic matter Filth	
3	Broken grain	

4	Defective grains (total) of which: Pest damage Rotten and diseased grain Discoloured grain Immature and shrivelled grain	

11. The consignment conforms to one of the following grade

Grade 1 ☐ Grade 2 ☐ Grade 3 ☐ [Tick relevant grade if applicable]

OR the consignment is ungraded for failing to meet the following item(s) of the quality standard:

....
..

Name of Weigher: ....Signature: .... Date: ..../........./.........

Name of Grader: .... Signature: .... Date: ..../........../............
11.

Has lot been accepted into the warehouse (Tick which) ? YES ☐ or NO ☐

Name of warehouse manager: ....

Signature: .... Date: ....../........./.........

Name of Depositor/ Driver: ....

Signature:... Date: ....../........./.........

FOURTH SCHEDULE

FORMAT OF KOMEX COMMODITY CONTRACT SPECIFICATIONS

S/NO.	PARAMETER	SPECIFICATIONS
1	Symbol of the Contract	
2	Name of the Commodity	
Trading Parameters		
3	Trading Period	
4	Contracts	
5	Trading Days	Monday to Friday (except Exchange specified holidays)
6	Trading Unit	
7	Trading Unit	
8	Tick Size	
9	Price Quote	
10	Daily Price Range	
11	Initial Margin	
12	Special Margin	
13	Maximum Order Size	
14	Maximum Open Position	
Quality Specifications		
15	Applicable Standards	
Settlement Cycle		
16	Final Settlement	Rolling Settlement Cycle: a) Funds Pay-in: b) Commodity Pay-in: c) Commodity Pay-out: d) Funds pay-out:
Delivery Parameters		
17	Delivery Unit	
18	Delivery Margin	
19	Delivery Centre	
20	Delivery Period	

FIFTH SCHEDULE

KENYA NATIONAL MULTI COMMODITIES EXCHANGE (KOMEX) RULES, 2023

KOMEX FEES SCHEDULE

Note:

Refer to the Capital Markets (Commodity Markets) (KOMEX) (Fees) Regulations, 2023

SIXTH SCHEDULE

KOMEX TRADING SCHEDULE

Trading is open on KOMEX from Monday to Friday from 9:00 am to 3:00 pm East African Time (EAT).

Trading on KOMEX is open for a total of **6 hours** per day. KOMEX may however, from time-to-time specify business hours for different types of trades.

KOMEX will from time to time communicate pre-market and after-hours trading hours prior to commencement of or during regular trading schedule.

Any official changes to trading schedule on KOMEX will be communicated to KOMEX Members through the KOMEX website and other digital platforms.

Regular Trading Schedule*	**Auction Trading Schedule**
Monday-Friday: 9:00 am to 3:00 pm	**Monday:** 9:00 am to 12:00 pm

*The Regular Trading Schedule excludes Gazetted Public Holidays in Kenya during which KOMEX may be closed for Trading.

The following days are observed as public holidays in Kenya.

- New Year's Day 1st January
- Good Friday As per the Gregorian calendar
- Easter Monday As per the Gregorian calendar
- Labour Day 1st May
- Madaraka Day* 1st June
- Mashujaa Day* 20th October
- Jamhuri (Independence) Day* 12th December
- Christmas Day 25th December
- Boxing Day 26th December
- Idd – ul - Fitr (as gazetted)

SEVENTH SCHEDULE

PROCEDURE FOR ONBOARDING OF KOMEX SETTLEMENT BANKS

The KOMEX will empanel the Banks which shall act as a funds settling agency for the settlement of the transactions entered through the KOMEX, collection of margin money for all these transactions and any other funds movement between members and the KOMEX, and between members, as may be required by the KOMEX from time to time. The settlement account is to be used exclusively for clearing and settlement operations of the KOMEX. The KOMEX shall instruct these Settlement Banks as to the debits and credits to be carried out for the funds settlement between the members.

The KOMEX will empanel a select number of banks having presence across Kenya, for settlement of the transactions taking place on its online platform. It will sign agreement with the banks of repute and having international presence.

Criteria for empaneling the Banks

The Settlement Bank should meet the following requirements:

1. Be a national commercial bank with solid assets and sound reputations;
2. Have branches and business centers in major cities around the country;
3. Should have electronic data exchange facility with core banking solutions;
4. Should be willing to set-up and operate a secure link with the exchange for fund transfers;
5. Have advanced and fast means to transfer funds between different locations;
6. Have specialized professional personnel who understand commodities business and have strong sense for risk management; including liquidity provisions for settlement of commodities exchange deals; and
7. Have other qualifications that the KOMX has deemed as necessary.

A Settlement Bank that has satisfied the above qualifications and been endorsed by the Exchange, shall apply for Membership of the KOMEX Clearing House and sign an agreement with the KOMEX. This agreement thereof shall clarify the rights and obligations of each party to regulate each party's relevant business behaviour.

Rights and privileges of a Settlement Bank are:

1. to set up a Special Settlement Account for the KOMEX and its Clearing House members and other Trading Accounts for KOMEX Members;

2. to take deposit from the KOMEX and KOMEX Members; and
3. to inquire information concerning each member's financial integrity on the KOMEX.

The obligations of a Settlement Bank are:

1. to execute the fund transfers based on the instructions of the KOMEX;
2. to provide the KOMEX with the statements of funds in KOMEX Members' Settlement Accounts;
3. to give priority to the transfers of KOMEX Members' funds in accordance with the instructions provided by the KOMEX;
4. to assist the KOMEX to identify sources and destinations of KOMEX Members' trading funds;
5. to report unethical behaviors or risks related to KOMEX Members' dealings of fund settlements to the KOMEX promptly;
6. to assist the KOMEX to avert risks if the KOMEX has encountered a major risk situation;
7. to safeguard the KOMEX and KOMEX Members' confidential information; and
8. **Other obligations as the agreement with KOMEX may specify.**

The Settlement Banks shall obtain the appropriate regulatory approvals and licenses from the Central Bank of Kenya.

EIGHTH SCHEDULE

RISK DISCLOSURE STATEMENT

The Kenya National Multi Commodities Exchange Limited (KOMEX) / Capital Markets Authority (CMA) does not singly or jointly, expressly or impliedly, guarantee nor make any representation concerning the completeness, the adequacy or accuracy of this disclosure documents nor has the KOMEX / CMA endorsed or passed any merits of participating in the commodities trading. This brief statement does not disclose all of the risks and other significant aspects of trading. You should, therefore, study commodities trading carefully before becoming involved in it.

In the light of the risks involved, you should undertake transactions only if you understand the nature of the contractual relationship into which you are entering and the extent of your exposure to risk.

You must know and appreciate that investment in commodity contracts / or other instruments traded on the Commodities Exchange, which have varying element of risk, is generally not an appropriate avenue for someone of limited resources/ limited investment and/ or trading experience and low risk tolerance. You should, therefore, carefully consider whether such trading is suitable for you in the light of your financial condition. In case, you trade on the KOMEX and suffer adverse consequences or loss, you shall be solely responsible for the same and the KOMEX its Clearing House and/ or the CMA shall not be responsible, in any manner whatsoever, for the same and it will not be open for you to take the plea that no adequate disclosure regarding the risks involved was made or that you were not explained the full risk involved by the concerned member. The client shall be solely responsible for the consequences and no contract can be rescinded on that account.

You must acknowledge and accept that there can be no guarantee of profits or no exception from losses while executing orders for purchase and/or sale of a commodities being traded on the KOMEX.

It must be clearly understood by you that your dealings on the KOMEX through a member shall be subject to your fulfilling certain formalities set out by the member, which may, *inter alia,* include your filing the know your client form, client registration form, execution of an agreement etc. and are subject to Rules of the KOMEX and its Clearing House, guidelines prescribed by CMA from time to time and circulars as may be issued by KOMEX or its Clearing House from time to time.

The KOMEX does not provide or purport to provide any advice and shall not be liable to any person who enters into any business relationship with any member of the KOMEX and/ or third party based on any information contained in this document. Any information contained in this document must not be construed as business advice/investment advice. No consideration to trade should be made without thoroughly understanding and reviewing the risks involved in such trading. If you are unsure, you must seek professional advice on the same.

In considering whether to trade or authorize someone to trade for you, you should be aware of or must get acquainted with the following:-

1. **Basic Risks involved in the trading in Commodities and other Commodity Instruments on the KOMEX.**

i) Risk of Higher Volatility

Volatility refers to the dynamic changes in price that commodity contracts undergo when trading activity continues on the Commodities Exchange. Generally, higher the volatility of a commodity contract, greater is its price swings. There may be normally greater volatility in thinly traded commodity contracts than in actively traded commodities / contracts. As a result of volatility, your order may only be partially executed or not executed at all, or the price at which your order got executed may be substantially different from the last traded price or change substantially thereafter, resulting in real losses.

ii) Risk of Lower Liquidity

Liquidity refers to the ability of market participants to buy and/ or sell commodity contract expeditiously at a competitive price and with minimal price difference. Generally, it is assumed that more the number of orders available in a market, greater is the liquidity. Liquidity is important because with greater liquidity, it is easier for investors to buy and/ or sell commodity contracts swiftly and with minimal price difference and as a result, investors are more likely to pay or receive a competitive price for commodity contracts purchased or sold. There may be a risk of lower liquidity in some commodity contracts as compared to active commodity contracts. As a result, your order may only be partially executed, or may be executed with relatively greater price difference or may not be execute at all.

iii) Risk of Wider Spreads

Spread refers to the difference in best buy price and best sell price. It represents the differential between the price of buying a commodity contract and immediately selling it or *vice versa*. Lower liquidity and higher volatility may result in wider than normal spreads for less liquid or illiquid commodities / commodity contracts. This in turn will hamper better price formation.

iv) Risk-reducing orders

(a) Most of the Exchanges have a facility for investors to place “limit orders”, “stop loss orders” etc. Placing of such orders (e.g. “stop loss” orders or “limit” orders) which are intended to limit losses to certain amounts may not be effective many a time because rapid movement in market conditions may make it impossible to execute such orders.

(b) A “market” order will be executed promptly, subject to availability of orders on opposite side, without regard to price and that while the customer may receive a prompt execution of a “market” order, the execution may be at available prices of outstanding orders, which satisfy the order quantity, on price time priority. It may be understood that these prices may be significantly different from the last traded price or the best price in that commodity derivatives contract.

(c) A “limit” order will be executed only at the “limit” price specified for the order or a better price. However, while the client received price protection, there is a possibility that the order may not be executed at all.

(d) A stop loss order is generally placed "away" from the current price of a commodity derivatives contract, and such order gets activated if and when the contract reaches, or trades through, the stop price. Sell stop orders are entered ordinarily below the current price, and buy stop orders are entered ordinarily above the current price. When the contract approaches pre-determined price, or trades through such price, the stop loss order converts to a market/limit order and is executed at the limit or better. There is no assurance therefore that the limit order will be executable since a contract might penetrate the pre-determined price, in which case, the risk of such order not getting executed arises, just as with a regular limit order.

v) Risk of News Announcements

Traders/Manufacturers make news announcements that may impact the price of the commodities and/or commodity contracts. These announcements may occur during trading and when combined with lower liquidity and higher volatility may suddenly cause an unexpected positive or negative movement in the price of the commodity / commodity contract.

vi) Risk of Rumours

Rumours about the price of a commodity at times float in the market through word of mouth, newspaper, websites or news agencies, etc., the investors should be wary of and should desist from acting on rumours.

vii) **System Risk**

(a) High volume trading will frequently occur at the market opening and before market close. Such high volumes may also occur at any point in the day. These may cause delays in order execution or confirmation.

(b) During periods of volatility, on account of market participants continuously modifying their order quantity or prices or placing fresh orders, there may be delays in execution of order and its confirmation.

(c) Under certain market conditions, it may be difficult or impossible to liquidate a position in the market at a reasonable price or at all, when there are no outstanding orders either on the buy side or the sell side, or if trading is halted in a commodity due to any action on account of unusual trading activity or price hitting circuit filters or for any other reason.

viii) **System/ Network Congestion**

Trading on the KOMEX is in electronic mode, based on satellite/ leased line communications, combination of technologies and computer systems to place and route orders. Thus, there exists a possibility of communication failure or system problems or slow or delayed response from system or trading halt, or any such other problem/glitch whereby not being able to establish access to the trading system/network, which may be beyond the control of and may result in delay in processing or not processing buy or sell orders either in part or in full. You are cautioned to note that although these problems may be temporary in nature, but when you have outstanding open positions or unexecuted orders, these represent a risk because of your obligations to settle all executed transactions.

2. Please note and get yourself acquainted with the following additional features:-

Effect of "Leverage" or "Gearing":

i) The amount of margin is small relative to the value of the commodity contract, so the transactions are 'leveraged' or 'geared'. Commodity trading, which is conducted with a relatively small amount of margin, provides the possibility of great profit or loss in comparison with the principal investment amount.

ii) Trading in Commodity involves daily settlement of all positions.

iii) Under certain market conditions, an Investor may find it difficult or impossible to execute the transactions. For example, this situation can occur due to factors such as illiquidity i.e. when there are insufficient bids or offers or suspension of trading due to price limit or circuit breakers etc.

iv) You must ask your Member of the KOMEX to provide the full details of the commodity contracts you plan to trade i.e. the contract specifications and the associated obligations.

3. General

i) **Deposited cash and property**

You should familiarize yourself with the protections accorded to the money or other property you deposit particularly in the event of a firm become insolvent or bankrupt. The extent to which you may recover your money or property may be governed by specific legislation or local rules. In some jurisdictions, property, which has been specifically identifiable as your own, will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall. In case of any dispute with the Member of the KOMEX, the same shall be subject to arbitration as per the Rules of the Exchange.

ii) **Commission and other charges**

Before you begin to trade, you should obtain a clear explanation of all commissions, fees and other charges for which you will be liable. These charges will affect your net profit (if any) or increase your loss

iii) **Client/Customer/Investor**

The term 'Client' shall mean and include a Customer or an Investor, who deals with a member for the purpose of trading in the commodity through the mechanism provided by the KOMEX.

iv) **Member of the KOMEX**

The term 'member' shall mean and include a Trading Member or a Broker, who has been admitted as such by the KOMEX and got a Unique Member Code from the KOMEX

I hereby acknowledge that I have received and understood this risk disclosure statement and my rights and obligations.

Signature of the client

(If Partner, Corporate, or other Signatory, then attest with firm/ company seal.

Date: …………………. (dd/mm/yyyy)

Place:

NINTH SCHEDULE

DISPUTE RESOLUTION MECHANISM

1. Introduction

1.1 With an objective to streamline and strengthen the framework of member management, members' dispute resolution and arbitration mechanism, a three-fold process may be implemented in the KOMEX.

1.2 Any member of the KOMEX, aggrieved with the counter member, shall follow the hierarchy as under:

i) Complaint to the Members' Service Centre (MSC) of the KOMEX

ii) Complaint to the Dispute Resolution Committee (DRC) of the KOMEX

iii) Reference to Arbitration

1.3 A complaint may be related to non-issuance of the documents by the counter member, non-payment of funds – in full or in part, non-release of the commodities – in full or in part, quality of the commodities not as specified in the contract specifications, etc.

2. Members' Service Centre(s) of the KOMEX

2.1 The KOMEX shall set up Members' Service Centres (MSCs) to cater to the needs of its members for resolving their queries and resolution of dispute among the members. Such centre(s) is required to inter alia provide counselling services to the members.

2.2 The KOMEX shall set up MSCs in Nairobi and in the select cities of the Kenya initially, before expanding to the other major cities in a time bound manner.
Timings of MSC(s): 9:00 am to 5.00 pm (Monday to Friday)
Members' Service Centre(s): KOMEX Head Office
Address: 1st Floor, KIBT Complex, Ojijo Road, Parklands, Nairobi, P.O. Box 30430-00100 NAIROBI - KENYA
Contact No.: (+254) 0770 586170 / 0768 574523

2.3 Any member of the KOMEX, aggrieved with the counter member, can write to the KOMEX, stating clearly her/his grievance with the supporting documents, through-

i) Website: www.komex.co.ke, or

ii) mail to: komexkenya2019@gmail.com, or

iii) posting/submitting a letter to the nearest MSC.

2.4 The KOMEX shall review the case and would try to resolve the grievance/ dispute among the members.

2.5 A complaint/dispute which does not get resolved within fifteen days from the date of lodging the complaint with the KOMEX or a case where parties are aggrieved by the resolution worked out, would be referred to DRC.

3. Dispute Resolution Committee of the KOMEX

3.1 The KOMEX shall set up Dispute Resolution Committee (DRC) to cater to the needs of its members for resolution of the dispute among its members.

The KOMEX shall constitute DRC in Nairobi initially, before expanding to the other major cities of Kenya in a time bound manner.

3.2 **Formation of Dispute Resolution Committee**

3.2.1 Proposed composition of the DRC shall be as follows:-

i) The DRC shall comprise of a single person for claims upto Ksh 5 million, whereas, for claims above Ksh 5 million, the DRC shall comprise of three persons.

ii) The DRC shall comprise of independent persons with qualifications in the area of law, finance, accounts, economics, management or administration and experience in financial services including commodities market.

iii) Further, the three members Committee shall comprise of atleast one technical expert for handling complaints related to technology issues (such as internet based trading, algorithmic trading, etc).

iv) The members of DRC shall not be associated with a member of KOMEX in any manner.

v) The disclosures and code of conduct prescribed below, shall be applicable to the members of DRC.

3.2.2 The name of a person shall be included in the panel after obtaining:-

i) a declaration that she/he has not been involved in any act of fraud, dishonesty or moral turpitude, or found guilty of any economic offence,

ii) disclosure of the nature of his association with commodities market,

iii) disclosure of the names of her/his dependents associated with the commodities market as members, and

iv) an undertaking that she/he shall abide by the code of conduct prescribed in sub-section 3.2.3.

3.2.3 Code of Conduct for the DRC Members

A DRC Member shall –

(i) act in a fair, unbiased, independent and objective manner;

(ii) maintain the highest standards of personal integrity, truthfulness, honesty and fortitude in discharge of his duties;

(iii) disclose his interest or conflict in a particular case, i.e., whether any party to the proceeding had any dealings with or is related to the DRC Member;

(iv) not engage in acts discreditable to his responsibilities;

(v) avoid any interest or activity which is in conflict with the conduct of his duties as a DRC Member;

(vi) avoid any activity that may impair, or may appear to impair, his independence or objectivity;

(vii) conduct case proceedings in compliance with the principles of natural justice and the Rules, Regulations and Bye-laws framed thereunder and the circulars, directions issued by the KOMEX; and

(viii) endeavour to pass award expeditiously and in any case not later than the prescribed time prescribed.

3.3 **Procedure of admittance and settlement of disputes**

3.3.1 A member can lodge her/his complaint in the format prescribed by KOMEX (refer Schedule 1 for the Complaint Registration Form) along with the supporting documents either by registering the complaint in the electronic mode through our website www.komex.co.ke or may send in their complaints to the nearest MSC.

3.3.2 DRC shall be allowed a time of 15 days from the receipt of the complaint/dispute to amicably resolve the member's complaint/dispute.

3.3.3 Upon conclusion of the proceedings of DRC, i.e., in case claim is admissible, KOMEX shall block the admissible claim value from the margin of the counter member.

3.3.4 KOMEX shall give a time of 7 days to the counter member from the date of signing of DRC directions as mentioned under sub-para (v) above to inform KOMEX whether the counter member intends to pursue the next level of resolution i.e., Arbitration.

3.3.5 In case, the counter member does not opt for arbitration, KOMEX shall, release the blocked amount to the complainant member after the aforementioned 7 days.

4. Complaints not taken up by the KOMEX

KOMEX and its DRC would not deal with certain types of complaints. Illustrative list of nature of complaints that would not be handled by KOMEX and its DRC are as under:

i) Complaints in respect of transactions which are already subject matter of Arbitration proceedings

ii) Complaint involving payment of funds and transfer of commodities to entities other than the member of KOMEX

iii) Claims for mental agony / harassment and expenses incurred for pursuing the matter with the DRC

iv) Claim for notional loss / opportunity loss for the disputed period or trade

v) Complaints pertaining to trades not executed on the Trading System of the KOMEX

vi) Claims which are relating to entities/activities which are not registered / enrolled by the KOMEX

5. Reference to Arbitration

The dispute can be submitted for Arbitration Mechanism of Kenya, if not settled through the DRC of the KOMEX.

KOMEX MEMBER COMPLAINT REGISTRATION FORM

1. Name of the Complainant Member: ……………………………………………….

Membership Registration no ……………………………………….…………….

Address ………………………………………………………………………….

Cell no ……………………………………………………………………………

Email ID …………………………………………………………………...………

2. Name of the Counter party Member: ……………………………………………

Membership Registration no ……………………………………….…………….

Trading Segment: ……………………………………………………………..

4. Nature of the complaint: ………………………………………………………….

5. Value of Claim (Ksh.) ……………………………………………………………

(provide the calculation/break up of claim value): …………………………………

……………………………………………………………………………………

……………………………………………………………………………………

6. List of documents enclosed with the Complaint: ………………………………….

……………………………………………………………………………………

……………………………………………………………………………………

7. Details of Complaint taken up with Counter party Member:

- Date on which complaint taken up: …………………………………
- Copies of correspondence: …………………………………

8. Details of the complaint taken-up with the Members' Service Centre

- Date on which complaint taken up: …………………………………
- Copies of correspondence: …………………………………

9. Detailed description of the complaint: ………………………………………………..

……………………………………………………………………………………

10. Any other information: ……………………………………………………………

Kenya National Multi Commodities Exchange Limited
P.O. Box 30430-00100
NAIROBI - KENYA