

## HOSTEE TERMS AND CONDITIONS

Effective Date: 25<sup>th</sup> November 2019

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This document contains the terms and conditions in addition to the Hosting Guidelines that apply to your participation as a Hostee in the NSE PLC Ibuka Services. These terms and conditions take effect on the date of publication. By participating in or continuing to receive Ibuka Services, the Hostee shall be deemed to be making an affirmative statement of acceptance of these terms and conditions. For clarity, the consultants and advisors (as defined in clause 1 here below) are also subject to their specific terms and conditions (i.e. Consultant and Advisor Terms and Conditions).

## 1. Definition of Terms

In this document unless otherwise stated, the following terms and expressions as also defined in the Ibuka Hosting Guidelines shall apply:

- 1.1. **Acceleration:** The process by which Hostees (either from the Incubator Board or direct entrants) shall benefit from Visibility and one-stop shop capital delivery advisory services which includes but is not limited to transaction scope of work with specialized documentation and subsequent implementation.
- 1.2. **Accelerator Board:** A hosting platform offered by the NSE PLC that provides Acceleration and does not involve trading of a capital market instrument.
- 1.3. **Hostee:** The approved entity by NSE PLC placed on the Incubator Board or the Accelerator Board provided by NSE PLC.
- 1.4. **Hosting:** The placing of a Hostee by NSE PLC on the Incubator Board or the Accelerator Board.
- 1.5. **Hosting Introducer:** An individual or entity that provides pre and post Hosting services with the aim of bringing forth multiple Hostings and being involved in Incubation or Acceleration. These shall be detailed in the document under Section 9 below, which is subject to update on an ongoing basis.
- 1.6. **Incubation:** The process by which Hostees shall benefit from Visibility and one-stop shop capital markets access consultancy services which include but are not limited to preparation or restructuring scope of work with specialized documentation and subsequent implementation.
- 1.7. **Incubator Board:** A hosting platform offered by the NSE PLC that provides Incubation and does not involve trading of a capital market instrument.
- 1.8. **Nairobi Securities Exchange PLC (NSE PLC):** The Nairobi Securities Exchange PLC is incorporated in Kenya under the Companies Act and licensed by the Capital Markets Authority of Kenya. The registered office is The Exchange, 55 Westlands Road, P.O. Box 43633 – 00100, Nairobi, Kenya. NSE PLC includes its successor or assigns.
- 1.9. **Visibility:** The optimal degree to which a Hostee may attract prominence and publicity through strategies offered by NSE PLC and its stakeholders so as to derive equity value augmentation during Incubation and/or Acceleration.

In this document unless otherwise stated, the following additional terms and expressions shall have the following definitions:

- 1.10. **Deliverable:** A report or other vital document or project management material, that is required under Ibuka Services, to be formulated or produced mainly by an Ibuka Consultant/Advisor.
- 1.11. **Hosting Guidelines:** Guidelines for Non-Trading Incubator Board and Accelerator Board effective 14<sup>th</sup> December 2018 and any subsequent updates or revisions.
- 1.12. **Ibuka Consultant/Advisor:** Professional service providers that are on the various specialized panels of Consultants and Advisors for purposes of providing Ibuka Services to Hostees as required on request. The panelists are on boarded following a comprehensive application and vetting process.
- 1.13. **Ibuka Services:** This is Acceleration and/or Incubation and Service Description below.
- 1.14. **Partners:** These are institutions that NSE PLC has chosen or shall choose to implement Ibuka Services in an arrangement. They include Kenya Association of Stockbrokers and Investment Banks and entities that are aligned to the objectives of Ibuka.

## 2. Service Description

- 2.1 NSE PLC shall work with the Hostee to identify primary objectives and provide or co-ordinate capital market capacity building sessions for the Hostee.
- 2.2 NSE PLC shall assist with identification of the scope of work and deliverables for Ibuka Consultants/Advisors and oversee the appointment by the Hostee of Ibuka Consultants/Advisors to progress Acceleration/Incubation.
- 2.3 NSE PLC shall oversee the setting by the Ibuka Consultants/Advisors of the critical path milestones and the mini-milestones and formulation of other project management materials that shall be required to deliver the primary objective/s.
- 2.4 NSE PLC shall oversee the successful delivery of the critical path milestones and the mini-milestones. The NSE PLC does not guarantee the success of any of any capital raise initiative.
- 2.5 The Hostee is expected to involve the Hosting Introducer (where applicable) in meetings and updates.
- 2.6 NSE PLC reserves the right to get more involved provided there is a request and no objection from the Hostee.

### **3. Ibuka Consultants/Advisors**

3.1 The Hostee has the following options of appointment/engagement of Ibuka Consultants/Advisors:

- 3.1.1 Request NSE PLC to select Ibuka Consultants/Advisors for the Hostee subject to negotiations and agreement by the Hostee;
- 3.1.2 Select an Ibuka Consultant/Advisor directly from the panels, subject to negotiations and agreement;
- 3.1.3 Issue a short tender with the help of NSE PLC to identify the Ibuka Consultant/Advisor for the Hostee subject to negotiations and agreement by the Hostee; or
- 3.1.4 Any other method approved by the NSE PLC.

3.2 Ibuka Consultants/Advisors can be appointed in consortia with a co-lead or members that are on a panel subject to approval of the NSE PLC.

3.3 The Hostee is responsible for payment of fees that will have been pre-agreed with the Consultant/ Advisor and based on performance.

3.4 Any engagement contract between an Ibuka Consultant/Advisor and a Hostee shall recognize Ibuka Services and contain clauses that provided for indemnification of NSE PLC, as appropriate. The Hostee and Ibuka Consultant/Advisor (“the Contracting Parties”) shall share the contract with NSE PLC for confirmation of the same, prior to the execution by the Contracting Parties.

### **4. Deliverables**

4.1 Upon request by the Hostee, the NSE PLC shall independently review and accept or return with comments any deliverable produced by an Ibuka Consultant/Advisor, at no recourse whatsoever to the NSE PLC by anyone. A returned deliverable can be amended and resubmitted.

4.2 In the event that new/additional deliverables may be required as part of an Ibuka Service, the NSE PLC reserves the right to inform the Hostee accordingly, for purposes of engaging an Ibuka Consultant/Advisor to generate the same.

### **5. Disclosure of Material Changes**

During the Incubation and Acceleration period, the Hostee shall be required to disclose to the NSE PLC when considering any: (a) form of new capital or project finance by non-Ibuka-registered-parties; (b) any merger and acquisition and/or (c) any other event related to equity price discovery, (d) enhanced commercial banking facilities and/or shareholder loans and/or other material changes.

## **6. Remuneration**

It is agreed that NSE PLC shall be remunerated by the Hostee based on the deliverables, capital raising (where applicable) and/or equity value discovery (where applicable). *Refer to the Ibuka Services Fees Schedule that shall be in effect from time to time.*

## **7. Indemnity**

7.1 The Hostee irrevocably and unconditionally agrees to indemnify and hold harmless NSE PLC and its Partners and respective officers as appropriate from and against all or any losses, claims, damages, charges, expenses or liabilities (or other actions in respect thereof) related to or arising directly or indirectly out of NSE PLC's provision of Ibuka Services.

7.2 The Hostee will promptly upon demand by NSE PLC reimburse NSE PLC and all other NSE PLC partners or officers for all losses, charges, taxes, costs and expenses (including legal and other professional fees and expenses) which are incurred by NSE PLC or any such other NSE PLC person in connection with investigating, preparing or defending any such action or claim, whether or not in connection with, pending or threatened or actual litigation or arbitration, or in establishing its right to be indemnified pursuant to this paragraph and/or in seeking advice as to any claim, action, liability, demand or proceedings in which NSE PLC or any such NSE PLC official is a party, and whether or not resulting in liability on the part of NSE PLC or such other NSE PLC officials (as the case may be).

## **8. Publicity**

8.1 The Hostee shall require the express approval from the NSE PLC before making any matter public that pertains to the Ibuka Services or the NSE PLC.

8.2 Notwithstanding Section 11 herein, NSE PLC however has the right to release certain updates in relation to Ibuka Services and Hostees as and when deemed fit, on condition that any information that is deemed to be confidential to the Hostee shall not be released to the public, unless NSE PLC seeks consent from the Hostee prior to so disclosing the same.

## **9. Ibuka Services Rules**

NSE PLC reserves the right to issue these rules from time to time to improve delivery of Ibuka Services. These shall be distributed at least twenty-one calendar days ahead of effective date for any comments. Consultations where required shall be undertaken as well.

*Refer to the Ibuka Services Fees Rules that shall be in effect from time to time.*

## **10. Complaints/Warnings**

The NSE PLC reserves the right to recommend to the Hostee of any complaints/warnings that may be necessary to be directed to an Ibuka Consultant/Advisor, with regard to the engagement between the Hostee and the Ibuka Consultant/Advisor.

## **11. Dispute Resolution**

Section 10.5 of the Ibuka Hosting Guidelines as follows, shall apply:

- 11.1 If a dispute arises between the Hostee and the NSE PLC (the “Parties”) as regards oversight services delivery or payment of fees, a party may not commence in any court or arbitration proceedings relating to the dispute unless it has complied with the following paragraphs of this clause except where the party seeks urgent interlocutory or declaratory relief.
- 11.2 A party claiming that a dispute (the Dispute) has arisen under or in relation to this process must give written notice to the other party specifying the nature of the Dispute.
- 11.3 On receipt of that notice by that other party, all parties must endeavor to resolve the Dispute expeditiously using dispute resolution procedures such as mediation, expert evaluation or determination or similar procedures agreed by them.
- 11.4 The Parties will first enter into good faith discussions within fourteen (14) calendar days from when a dispute is communicated by one party to the other, with a view to resolving the dispute.
- 11.5 If the Parties do not agree, within the said fourteen (14) calendar days of the receipt of the notice (or such further period as agreed in writing by them), the Parties will agree on the following:
  - 11.5.1 To have the dispute referred to a certified mediator and the Parties to have the matter resolved within thirty (30) calendar days;
  - 11.5.2 Failing resolution of the dispute through mediation, the parties will refer the matter to settlement by Arbitration, in accordance with the Arbitration Act, 1995 (Kenya) or any statutory amendment thereof in force. The Parties agree to have one arbitrator appointed by the Chairman for the time being of the Chartered Institute of Arbitrators (CI Arb), Kenya Branch. The Parties will agree on the arbitration procedures to be adopted, failing which the Chairman of the CI Arb Kenya Branch, will be requested to decide on the same.

## 12. Confidentiality

12.1 The Hostee will not disclose the confidential information pertaining to the NSE PLC, Ibuka and Ibuka Services and will at all times keep that information confidential, unless such disclosure is authorized in writing by NSE PLC prior to the disclosure, or disclosure is required under the law. The NSE PLC will limit disclosure of any confidential information of the Hostee as it deems fit; keep all confidential information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and not disclose any confidential information received by it to any third parties (except as otherwise provided for herein) or other Hostees.

## 13. Governing Law

13.1 This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.

## 14. Data Retention

14.1 The Hostee acknowledges that NSE PLC may retain data for a period of up to seven (7) years or as may be required by any law or regulation.

## 15. Variation

15.1 It is acknowledged that these terms and conditions are subject to amendment, modification or variation from time to time.

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**Issued by: Nairobi Securities Exchange PLC, The EXchange Building,  
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