

CONSULTANT/ADVISOR ONBOARDING TERMS AND CONDITIONS

Effective Date: 30 August 2019

TABLE OF CONTENTS

1. Definition of Terms.....	2
2. Hostee Service Description.....	3
3. Ibuka Consultants/Advisors.....	4
4. Deliverables, Capital Raising, Equity Value Discovery	4
5. Remuneration.....	5
6. Complaints/Warnings	5
7. Termination.....	6
9. Changes.....	7
10. Indemnity.....	7
11. Publicity	7
12. Ibuka Services Rules	7
13. Dispute Resolution	7
14. Confidentiality.....	8
15. Governing Law.....	8
16. Data Retention	8
17. Variation.....	8
18. General.....	9

This document contains the terms and conditions that apply to your onboarding and participation as a Consultant/Advisor in NSE PLC Ibuka Services strictly and no other services provided by or to the NSE PLC. These terms and conditions take effect on the date of publication. By participating in Ibuka Services, the Consultant/Advisor shall be deemed to be making an affirmative statement of acceptance of these terms and conditions. For clarity, the Hostee (as defined in Section 1 here below) is also subject to their specific terms and conditions (i.e. Hostee Terms and Conditions).

1. Definition of Terms

In this document unless otherwise stated, the following terms and expressions, which are 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 Ibuka Hosting services with the aim of bringing forth multiple Hostings and being involved in Incubation or Acceleration.
- 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.
- 1.11. **Hosting Guidelines:** Guidelines for Non-Trading Incubator Board and Accelerator Board effective 14th 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 onboarded 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 the Kenya Association of Stockbrokers and Investment Banks and entities that are aligned to the objectives of Ibuka.

2. Hostee Service Description

- 2.1 NSE PLC shall work with the Hostee to identify primary objectives and provide or co-ordinate capital markets capacity building sessions.
- 2.2 NSE PLC shall assist with identification of the scope of work and deliverables for Ibuka Consultants/Advisors and oversee the appointment of Ibuka Consultants/Advisors by the Hostee.
- 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 within the documented timelines.
- 2.5 NSE PLC reserves the right to get more involved as appropriate, with regard to any engagement between a Hostee and Ibuka Consultant/Advisor, 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 of Ibuka Consultants/Advisors:
 - 3.1.1 Requesting 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 subject to negotiations and agreement;
 - 3.1.3 Issue a 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 fees which shall be acceptable to the Hostee 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.
- 3.5 Ibuka Consultants/Advisors shall be required to deliver superior service quality and speedy delivery.

4. Deliverables, Capital Raising, Equity Value Discovery

- 4.1 All work should be delivered with full compliance to any laws or regulations or guidelines that may be in effect including from authorities, regulators, NSE PLC (where applicable) and association/s.
- 4.2 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.
- 4.3 New/additional Deliverables may be required and the NSE PLC reserves the right to inform the Hostee accordingly. Equally, an Ibuka Consultant/Advisor can reasonably recommend that a new Deliverable be included when necessary.
- 4.4 The following are requirements, to be fulfilled by the Ibuka Consultant/Advisor with regard to certain Ibuka Services as follows:

- 4.4.1 Capital raising structuring must include book building and/or underwriting and/or other technique to ensure success;
 - 4.4.2 Debt capital may require credit rating, sinking fund, use of proceeds reporting/audit, credit enhancement;
 - 4.4.3 A Reporting Accountant shall be required to be independent from the external auditor;
 - 4.4.4 Forensic report may be required for transactions of a size as directed by the NSE PLC;
 - 4.4.5 An equity value discovery transaction should be delivered successfully, to the satisfaction of the Hostee.
- 4.5 Where applicable, NSE PLC reserves the right to conduct a transaction vetting process to mitigate against any reputational risk.
- 4.6 Where applicable, NSE PLC reserves the right to conduct a project/transaction post-mortem brief.

5. Remuneration

- 5.1 It is agreed that Consultant/Advisor shall be remunerated by the Hostee based on the Deliverables, capital raising (where applicable) and/or equity value discovery (where applicable).
- 5.2 The NSE will subsequently receive an appropriate share of the fee received by the Consultant/Advisor. *Refer to the Ibuka Services Fees Schedule that shall be in effect from time to time.*
- 5.3 It is recommended that the Consultant/Advisor consider value based fees (as further defined in the Ibuka Service Fees Schedule) if and when offered by the Hostees.
- 5.4 It is expected that no invoices can be raised by an Ibuka Consultant/Advisor if a Deliverable has not been accepted by the Hostee or capital raise has not been accomplished or equity value discovery has not been concluded satisfactorily.
- 5.5 Impractical or unrealistic undercutting or underbidding (which will be tested against market practice) is not allowed as this shall be dealt with decisively during tender construction and negotiations.

6. Complaints/Warnings

- 6.1 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.

7. Termination

7.1 The NSE PLC reserves the right to recommend to the Hostee, the termination of contract between the Hostee and an Ibuka Consultant/Advisor, premised on any or a combination of the following grounds that could lead to the said termination of contract,;

7.1.1 Repetitive complaints/warnings;

7.1.2 Repetitive unacceptable Deliverables that portrays lack of capabilities to adequately meet expectations;

7.1.3 Repetitive inability to meet agreed timelines that portrays lack of capabilities and/or resources and/focus to adequately meet reasonable expectations;

7.1.4 Profound weaknesses in: complex structuring, transaction risk management and capital raising capabilities;

7.1.5 Biased recommendations that may serve different interests other than the Hostee;

7.1.6 Any other factor/ground that NSE PLC deems fit and necessary, provided NSE PLC has informed the Hostee in advance and requested the Hostee to try and remedy the concerns with the Ibuka Consultant/Advisor, with no satisfactory resolution.

7.2 The Ibuka Consultant/Advisor reserves the right to terminate a contract provided terms and conditions had been included in the contract.

8. Off boarding

8.1 Pursuant to the grounds and actions mentioned in Section 7, the NSE PLC reserves the right to offboard an Ibuka Consultant/Advisor from a specific panel or group of panels as deemed fit and necessary, provided the Ibuka Consultant/Advisor is given fair hearing on why they should not be retained, within twenty one (21) calendar days of the notification to the Ibuka Consultant/Advisor in writing, of the intended off boarding action by NSE PLC.

8.2 NSE PLC may provide the affected Ibuka Consultant/Advisor an option of voluntary resignation.

8.3 NSE PLC reserves the right to make an offboarding decision based on its evaluation of the grounds and factors mentioned in Section 7 above.

9. Changes

9.1 It is incumbent on the Ibuka Consultant/Advisor to advise NSE PLC, in writing, of any material changes or expected changes in the control of the Consultant/Advisor within fourteen (14) calendar days of the change event or of any material changes in the core executives or any other matter that may be considered significant.

10. Indemnity

10.1 The Ibuka Consultant/Advisor irrevocably and unconditionally agrees to indemnify and hold harmless NSE PLC and its Partners and their 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 onboarding of the Ibuka Consultant/Advisor on any of its panels or group of panels or offboarding.

11. Publicity

11.1 NSE PLC shall not publicly advertise names of Ibuka Consultants/Advisors following onboarding or when offboarded.

11.2 Ibuka Consultants/Advisors authorize the Hostee to make announcements as regards appointment of the Ibuka Consultant/Advisor when necessary following which, the Ibuka Consultants/Advisors can make announcements. Ibuka Consultants/Advisors are required to exercise extreme caution as to any further public announcements as regards the Ibuka Services and where in doubt regarding the ramifications of such announcements, should consult NSE PLC prior to making such announcements.

12. Ibuka Services Rules

12.1 NSE PLC reserves the right to issue these Terms and Conditions from time to time to improve delivery of Ibuka Services. These shall be distributed at least twenty one (21) calendar days ahead of the effective date for any comments. Consultations where required, with NSE PLC stakeholders, with regard to revision of these Terms and Conditions shall be undertaken as well.

13. Dispute Resolution

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

13.1 If a dispute arises between the Ibuka Consultant/Advisor and the NSE PLC (the "Parties") as regards services delivery, 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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:

13.5.1 To have the dispute referred to a certified mediator and the Parties to have the matter resolved within thirty (30) calendar days;

13.5.2 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.

14. Confidentiality

14.1 The Ibuka Consultant/Advisor 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 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).

15. Governing Law

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

16. Data Retention

16.1 The Ibuka Consultant/Advisor 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.

17. Variation

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

18. General

18.1 It is acknowledged by the Ibuka Consultant/Advisor that NSE PLC cannot guarantee assignments as the work is subject to being awarded by the Hostee and is subject to open competition. NSE PLC shall however use best endeavors to be fair in distribution of work as much as possible.

18.2 It is acknowledged by the Ibuka Consultant/Advisor that they shall attend capacity building sessions when called upon.

18.3 NSE PLC is aware of possible conflicts of interest and where such a case arises it shall act with prudence to protect the integrity of any processes.

18.4 The Ibuka Consultant/Advisor may request for off boarding from a panel or group of panels. NSE PLC shall consider this subject to any assignment, termination and handover considerations. There shall be no refunds applicable for any fees paid to the NSE PLC.

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