

LISTINGS RULES OF THE NIGERIAN STOCK EXCHANGE

CHAPTER [●]

LISTING OF DEPOSITARY RECEIPTS¹

Introduction

This Chapter sets out The Exchange’s requirements relating to Depositary Receipts (DRs). The aim of the Chapter is to set out the general eligibility, disclosure and continuing obligations requirements that apply to DRs and then set out in subsequent parts specific provisions in relation to sponsored and unsponsored DR issues.

The Exchange’s Listing Rules, including the General Requirements, apply to the listing of DRs subject to, and as may be modified or amended by the additional requirements, modifications, exceptions and interpretations set out in this Chapter.

1. DEFINITIONS

References in this Chapter to:

- a. “depository” means a bank or institution that issues DRs representing the securities of an issuer that are held as a bare trustee in a custody account in its name or a nominee’s name in the issuer’s local market. The depository may also act as a registrar, transfer agent and corporate actions agent and may cancel or issue DRs for withdrawal or deposit of securities in accordance with the deposit agreement entered into with an issuer for a sponsored program;
- b. “Depositary Receipts” means the instruments in dematerialized form (or represented by a certificate issued at the request of a DRholder), issued in registered form under a DR programme. “DR” shall mean a unit of such instruments;

¹ Rule Making History

1. The Rules were presented to the Rules and Adjudication Committee of Council (RAC) on 16 July 2014 and approved for exposure to stakeholders from 25 July to 15 August 2014;
2. Comments received from stakeholders were reviewed at the RAC meeting of 21 October 2014;
3. The revised Rules were approved by the National Council on 4 November 2014;
4. The Council approved Rules were submitted to the SEC on 5 November 2014 for approval.
5. The SEC approved the Rules on 10 February 2015.

- c. “holder of DR or DR Holder” means the registered holder of one or more DRs as evidenced by the register of DRs maintained by the depositary;
- d. “Issuer” means the Underlying Entity in the case of Sponsored DRs and the depositary the case of Unsponsored DRs;
- e. “International securities” means securities listed and traded on two or more Exchanges in different jurisdictions;
- f. “Deposit Agreement” means the agreement entered to between the Depository and the Issuer, regulating the terms of a sponsored DR program;
- g. “Liquidity Provider” means a Dealing Member of The Exchange that commits to provide liquidity i.e. protect against variations in volatility on the market, guarantee transactions at all times at the best price and support the volume of transactions in a specific DR Issuance.
- h. “Listing Document” means the offering document for the sale of DRs to be listed on The Exchange;
- i. “Publicly Available Information” shall mean:
 - (i) information which has been published in or on any internationally recognized public or electronic news source, regardless of whether the reader or user thereof pays a fee to obtain such information;
 - (ii) information disclosed by the Underlying Entity pursuant to the requirements of the Underlying Entity's national law, any stock exchange on which the Securities are listed, or the rules of any regulatory body to which the Underlying Entity is subject; and
 - (iii) information in the secondary market or otherwise within the public domain.

- j. “Sponsored DR Issue” means the issuance of DRs at the direction of the Underlying Entity and in accordance with the deposit agreement between the issuer and the depositary;
- k. “Terms and Conditions” means the Terms and Conditions of an Un-sponsored DR Issue;
- l. “Securities” shall mean the underlying shares and debt securities represented by the DRs;
- m. “Underlying Entity” shall for the purpose of these Rules mean the issuer of the Securities in a DR issue; and
- n. “Un-sponsored DR Issue” means the issuance of DRs without the involvement of the Underlying Entity and in accordance with the provisions of the Terms and Conditions of the issuance.

2. THE UNDERLYING ENTITY

- a. The Underlying Entity shall in all DR issues:
 - (i) be a company duly incorporated and validly established under the laws of its jurisdiction of incorporation or establishment; and which operates in conformity with those laws and its constitutional documents;
 - (ii) have its primary listing on another exchange and must be listed on an exchange that is acceptable to the Exchange;
 - (iii) publish in its latest audited financial statements the following:
 - A. Paid up share capital,
 - B. Market value,
 - C. Total shareholder equity, and
 - D. Pre-tax profit

Provided that the foregoing shall satisfy the criteria which may from time to time be prescribed by The Exchange.

- b. In addition, the Underlying Entity shall:
 - (i) have obtained all necessary approvals or exemptions as applicable from the appropriate authorities in the country of its incorporation in accordance with relevant laws relating to issue of securities.
 - (ii) at the time of the proposed DR listing the Underlying Entity shall be sufficiently liquid to ensure efficient price formation in the secondary market, that are acceptable to The Exchange;

- (iii) at the minimum have 20% of its share capital held by Shareholders, excluding company insiders and any corporate shareholders that are more than 50% owned by such insiders.

3. THE DEPOSITARY

- a. The depositary shall be a duly authorized and regulated financial institution acceptable to The Exchange and shall be either:
 - (i) A company duly incorporated in accordance with the Companies and Allied Matters Act, Cap C20, Laws of the Federation of Nigeria, 2004; or
 - (ii) validly established under the laws of the jurisdiction in which it is incorporated or established.
- b. The depositary, including any replacement depositary, shall be a duly authorised and regulated financial institution acceptable to the Exchange. In assessing suitability, the Exchange shall consider the depositary's experience and capacity for issuing and managing DR programmes or the depositary's experience in managing International Securities.
- c. The depositary must hold the Securities as a bare trustee in a custody account in its name or a nominee's name for the benefit of the DRholders; the underlying securities to which the DR relates, all distributions or cash received pertaining to the underlying securities, subject only to payment of the remuneration and expenses of the depositary or its custodian and to the provision of the Deposit Agreement or Terms and Conditions.
- d. The Depositary shall be duly authorized by its constitutional documents to issue DRs.
- e. The Depositary shall be an independent entity from the Underlying Entity.
- f. None of the Securities nor any such rights, money or benefits may be, or be liable to be treated as assets of the depositary under the law (including insolvency law) of the jurisdiction of its incorporation, the jurisdiction of incorporation of the Underlying Entity or the jurisdiction of administration of the trust or other arrangement under which the Securities are held.
- g. The Exchange may permit the depositary to receive cash distributions from the Underlying Entity without requiring the segregation of such distributions from other cash amounts held by the depositary, provided that the documentation constituting the DRs sets out clearly that the depositary shall distribute such amounts to investors as soon as practicable and in any event no later than 14 days from the receipt of the

dividends from the Underlying Entity.

- h. The depositary, shall agree in the Deposit Agreement and stipulate in the Terms and Conditions, its obligation to distribute to DRholders copies of all information relating to any corporate action to be undertaken by the Underlying Entity or the Underlying Entity's group which it or its nominee receives from the Underlying Entity in its capacity as a Securities holder in the Underlying Entity.
- i. In particular, (but without limitation) the depositary shall undertake in the Deposit Agreement or the Terms and Conditions to inform the DRholders of meetings of Securities holders of the Underlying Entity and to distribute copies of any notices, reports or other communications received from the Underlying Entity giving information on:
 - (i) the allocation and distribution of dividends; and
 - (ii) the issue of new Securities, including arrangements for their allotment, subscription, renunciation, conversion or exchange.
- j. The DRs must not impose obligations on the depositary other than to the extent necessary for the protection of rights to and the transmission of entitlements of the Securities.
- k. The depositary shall if so required by The Exchange, provide a legal opinion (or legal opinions) in form and content satisfactory to The Exchange confirming:
 - (i) that the listing of the DRs is not in breach of any law or regulation in the country of incorporation of the Underlying Entity, or the depositary;
 - (ii) that all necessary exchange control, tax, Securities laws have been complied with and relevant regulatory consents have been obtained in the country of incorporation of the Underlying Entity and of the depositary; and
 - (iii) that, subject to the right of The Exchange to permit the depositary to receive cash distributions from the Underlying Entity without requiring the segregation of such distributions from other cash amounts held by the depositary, provided that the documentation constituting the DRs provides that the depositary will distribute such amounts to DRholders as soon as practicable and in line with these Rules, none of the Securities represented by the DRs nor any rights, money or other benefits attributable to such Securities may be liable to be treated as assets of the depositary under the law (including insolvency law) of the jurisdiction or jurisdictions of

incorporation of the depository and the Underlying Entity.

- i. Where a custodian is appointed, the Exchange may request for a certificate of good standing issued by its regulator in its jurisdiction of incorporation in order to satisfy itself of the suitability of the appointed custodian.

4. THE DEPOSIT AGREEMENT/ TERMS AND CONDITIONS

The Deposit Agreement and the Terms and Conditions shall contain the following:

- a. The status of DRs as instruments representing ownership interests in the Securities of an Issuer that have been deposited with the depository.
- b. The status of registered DRholders as the legal owners of those DRs.
- c. The role of the depository to issue DRs; in the case of Sponsored DR program, this must specify the Depository as an agent of the Issuer and to arrange for the deposit of the Securities with the custodian.
- d. The duties of the Depository, including the duty to keep in Nigeria and make available for inspection by the DRholders or an Issuer, a register of DRholders and the transfers of the DRs; the duty to keep a record of the deposits of the Securities; the issue of DRs; the cancellation of DRs and the exchange of DRs for Securities.
- e. That the role of the appointed custodian is to hold the Securities for the account of the Depository on behalf of the DRholders, and as separate and distinct from all other property of the custodian.
- f. The mechanism for the issue and registration of DRs by the depository upon receipt of Securities in the Issuer and the form of the DR.
- g. The right of DRholders to surrender DRs to be cancelled in exchange for the delivery of the Securities, subject to payment of any applicable charges and taxes and any legal or regulatory restrictions.
- h. The right of DRholders to corporate action entitlements and state the rights (if any) and procedures applying to cash distributions, distributions of Securities, rights issues or any other distribution accruing to the Securities which the DRs represent, in a manner acceptable to The Exchange.
- i. The manner in which any corporate action, or other reclassification of the Underlying Entity's Securities, will be represented by and accrue to the DRs, in accordance with the principle that the DRholders are to be treated as having generally equivalent rights to holders of the Securities which the DRs represent.

- j. The right of the DRholders to exercise the voting rights attached to the Securities represented by the DRs and the procedures by which DRholders will be notified of meetings of Securities holders or solicitations of proxy votes and their entitlement to issue instructions to the depository as to how to exercise their voting rights; (to the extent applicable in case of Un-sponsored DRs).
- k. The conditions and process for the issue or replacement of DRs if any DR instrument is lost, destroyed, stolen or mutilated (if applicable).
- l. The obligations of DRholders, including any liabilities for taxes and other charges and the obligation to disclose the beneficial ownership of the DRs on request of the depository or The Exchange.
- m. A clear statement of the fees and charges payable by DRholders, including fees and charges payable to the Depository and the custodian (if applicable).
- n. Procedures for the removal and replacement of the depository including an obligation to inform DRholders by advance announcement, of any prospective resignation, removal and replacement of the depository.
- o. An obligation to notify the DRholders of any changes made to the appointment of a custodian whether or not such change is as a result of resignation or removal.
- p. Procedures for the amendment of the Depository Agreement and Terms and Conditions.
- q. The governing law of the Depository Agreement and Terms and Conditions shall be that which is acceptable to the Exchange and generally conforms with international best practice.
- r. The procedures by which the Depository will notify DRholders as to where copies of all notices, reports, voting forms or other communications published by the Underlying Entity to its Securities holders can be obtained.
- s. In addition to the above:
 - (i) the Deposit Agreement shall also provide:
 - (A) for the appointment of the depository by the Issuer with authorisation to act on behalf of the Issuer in accordance with the deposit agreement.
 - (B) that the depository holds as bare trustee (or under equivalent arrangements) for the sole benefit of the DRholders, the Securities which the DRs represent, and all rights relating to the Securities and all money and benefit that the Depository

may receive in respect of them, subject only to payment of the remuneration and proper expenses of the Depository.

- (ii) the Terms and Conditions shall:
 - (A) be duly executed by the Depository as a deed poll;
 - (B) include an obligation to provide the DRholders with a 30 day notice period prior to any material change(s) to the Terms and Conditions being effected.

5. THE SECURITIES

- a. The Securities represented by the DRs shall already be listed; or will be concurrently listed on a foreign stock exchange (referred to as the “home exchange”) and shall be, or will be, subject to the listing (or other) rules of the home exchange where it has primary listing.
- b. An application for the listing of DRs shall not be allowed where the Securities are already listed on The Exchange.
- c. Prior to the issuance and listing of the DRs, the Securities shall be free from all liens and from any restriction on the right of transfer and in the case of Un-sponsored DRs, the Securities shall be fully paid.

6. THE DRs

- a. The DRs for which listing is sought shall:
 - (i) be freely transferable;
 - (ii) conform with Nigerian law and the law of the Depository's jurisdiction of incorporation. In the event of a conflict between Nigerian law and the law of the Depository's jurisdiction of incorporation, Nigerian law shall prevail;
 - (iii) be valid under the law which is expressed to govern the document giving effect to the DR;
 - (iv) be capable of being surrendered to be cancelled in exchange for the delivery of the Securities subject to closing of the transfer books the payment of any applicable charges and taxes and any legal or regulatory restrictions;
 - (v) recognize the right of DRholders to receive distributions made on the Securities;
 - (vi) recognize the right of DRholders to exercise the voting rights attached to the Securities and be informed about the procedures by which DRholders will be notified of meetings of Securities holders or

solicitations of proxy votes; and their entitlement to issue instructions to the depository as to how to exercise their voting rights;

- (vii) specify the manner in which any consolidation or split-up or change in the par value or other reclassification of the Issuer's Securities will be represented by and accrue to the DRs;
- (viii) recognize the right of each DRholder to receive copies of all notices, reports, voting forms or other communications sent by the Issuer to its Securities holders, and make such communications available for inspection at its principal offices and at the office of the custodian;
- (ix) be eligible for deposit in an electronic clearing and settlement system acceptable to The Exchange, or any acceptable alternative system agreed in advance with The Exchange.

7. APPLICATION FOR LISTING

- a. The application for listing shall be made by the Issuer by filing the underlisted documents with The Exchange together with the applicable listing fees to be prescribed by The Exchange; and subject to changes as may from time to time be made by The Exchange:
 - (i) an application for admission to listing, in a form to be provided by The Exchange;
 - (ii) two copies of the Listing Document;
 - (iii) a copy of the Depository Agreement and the Terms and Conditions; as applicable;
 - (iv) an undertaking by the Depository to comply with all obligations imposed by these Rules and the Exchange from to time in the form set out in Appendix I to these Rules;
 - (v) a copy of any agreement(s) entered into between the Issuer, the overseas custodian bank, the Depository or the agent of the Depository, which shall inter alia specify the rights to be passed on to the DRholders (where applicable);
 - (vi) such other documents as may be required by The Exchange.
- b. In a Sponsored DR Issue:
 - (i) certified true copy of the memorandum and articles of association / constitutional documents of the Underlying Entity;

- (ii) a copy of the enactments or provisions having the force of law by or under which the incorporation of the Issuer was effected, attested to by an authorized representative of the company shall be annexed;
 - (iii) evidence of listing of the Underlying Entity in the home exchange;
 - (iv) where the Underlying Entity has a subsidiary in Nigeria, it shall provide the address of its principal office in Nigeria; if otherwise, it shall provide an address in Nigeria where the said instrument, enactments or provision or copies thereof are made available for public inspection;
 - (v) a certified true copy of the certificate of incorporation of the Underlying Entity issued by the companies registry of the country in which it is incorporated;
- c. All documents required to be filed at the Exchange shall be in English.

8. CONTENTS OF LISTING DOCUMENT FOR SPONSORED DRs

a. The Issuer and its Advisers

- (i) The following shall be stated on the cover page of the Listing Document:
 - (A) the official name and jurisdiction of incorporation of the Underlying Entity;
 - (B) the name and number of the DRs being offered and the issue price, if applicable; and
 - (C) the name of the arranger, underwriters or other distributors of the issue, if applicable.
- (ii) On the inside cover page of the Listing Document, declarations and statements in the following form shall be stated:
 - (A) *“This Listing Document includes information given in compliance with the listing rules of The Exchange. The Underlying Entity accepts full responsibility for the accuracy of the information contained in the Listing Document and confirms, having made reasonable enquiry that to the best of its knowledge and belief there are no facts the omission of which would make any statement within the Listing Document misleading. The Nigerian Stock Exchange takes no responsibility for the contents of this document, makes no representations as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss arising from or in reliance upon any part of this document.”*



- (B) *“The DRs are Securities of a specialist nature and should normally only be bought and traded by investors who are particularly knowledgeable in investment matters or have received adequate advice in that regard.”*
- (C) *“Application has been made to The Nigerian Stock Exchange for the DRs to be admitted to the official list.”*

(iii) The following shall be stated on the inside of the back cover of the Listing Document:

- (A) *the registered address or principal office of the Underlying Entity; and*
- (B) *the names and addresses of the Underlying Entity's attorneys, auditors, depository, custodian, underwriters, arrangers or other distributors and paying agent (if any).*

b. Investment Considerations

An explanation of any matter of significance to investors relating to the issue of the DRs for which listing is sought, the Underlying Entity and the Underlying Entity's country of incorporation. Such explanation should be given appropriate prominence, depending on the nature of the matter concerned and its significance to investors.

c. The Securities Represented by the DRs

The following information shall be provided in relation to the Securities represented by the DRs:

- (i) A statement of the resolutions, authorizations and approvals by virtue of which the Securities have been or will be created and/or issued.
- (ii) The number of Securities which have been or will be created and/or issued if pre-determined, and the minimum sale price for such Securities.
- (iii) The ratio of DRs to the Securities.
- (iv) A summary of the rights attaching to the Securities, and in particular the extent of the voting rights, pre-emption rights, entitlement to share in any profits and, in the event of liquidation, in any surplus and any other special rights. Where there is or is to be more than one issue of Securities of the Underlying Entity in issue, like details shall be given for each specific issue.
- (v) The fixed date(s) on which entitlements to dividends arise.

- (vi) The time limits after which entitlements to dividends lapse and an indication of the person in whose favour the lapse operates.
- (vii) A statement regarding tax on the income from the Securities withheld at source in the country of origin.
- (viii) A statement as to whether the Underlying Entity assumes responsibility for the withholding of tax at source.
- (ix) Arrangements for the transfer of the Securities and any restrictions on their free transferability.
- (x) Any stock exchanges on which the Securities are listed and an indication of the closing price of the Securities as derived from the official publication of the relevant exchange for the first business day in each of the six months immediately preceding the date of the Listing Document.
- (xi) Where a listing of Securities on another stock exchange is to be sought by the Underlying Entity, details of that stock exchange.
- (xii) The names and addresses of the Underlying Entity's registrars and any transfer agents.
- (xiii) Where Securities are being issued at the same time as the admission of the DRs to listing, the following information concerning the terms and conditions of the issue:
 - (A) a statement of any right of pre-emption of Securities holders exercisable in respect of any Securities to be represented by the DRs;
 - (B) the total number of Securities being offered or privately placed (where applicable) by category;
 - (C) if a public or private issue or placing is being made simultaneously on the markets of two or more countries and if a tranche is being reserved for certain of these, details of any such issue, placing or tranche;
 - (D) the issue price, the issue premium and the amount of any expenses specifically charged to any subscriber or purchaser;
 - (E) the methods of payment of the issue price;

- (F) the procedure for the exercise of any right of pre-emption, the transferability of subscription rights and treatment of subscription rights not exercised;
 - (G) the period during which the issue will remain open and the names of the receiving agents;
 - (H) the methods of and time limits for delivery of the Securities;
 - (I) the names, addresses and descriptions of the persons underwriting the issue and the amount of any portion not covered;
 - (J) an estimate of the overall expenses relating to the issue payable by the Underlying Entity;
 - (K) the estimated net proceeds of the issue and the intended application of such proceeds;
 - (L) if known, the dates on which the Securities will be admitted to listing (if applicable) and on which dealings will commence; and
 - (M) details of the dealing and settlement arrangements for the Securities.
- (xiv) If the Securities have not been admitted to listing but are dealt in on another regulated, regularly operating, recognized open market, an indication of such market. The market shall be acceptable to The Exchange.
- d. **Litigation or Material Claims**
Particulars of any litigation, or claims of material importance pending or threatened against the Underlying Entity or any member of the Underlying Entity's group, or an appropriate negative statement.
- e. **Financial Information about the Underlying Entity**
- (i) The financial information about the Underlying Entity and its group shall be set out in the form of a comparative table, together with any interim financial statements published subsequently.
 - (ii) The comparative table shall include the following financial information, which must be extracted without adjustment from the latest audited annual financial statements, which must be in respect of a period ended not more than nine months before the date of the Listing Document and which covers at least three financial years (or any shorter period stipulated by The Exchange):

- (A) statement of comprehensive income;
 - (B) statement of financial position;
 - (C) statement of cash flow;
 - (D) statement of changes in equity;
 - (E) summary of significant accounting policies; and
 - (F) notes to the accounts for the last financial year.
- (iii) the comparative table shall be presented in a form consistent with that which would be adopted in the Underlying Entity's annual financial statements having regard to the accounting standards, policies and legislation applicable to such financial statements unless The Exchange otherwise agrees.
- (iv) The financial information need not be prepared on a consolidated basis if the Underlying Entity has in the past always presented financial statements on another basis. If the Underlying Entity prepares both own and consolidated annual financial statements, the Underlying Entity may include either form or both, provided that the form which is not included does not provide any significant additional information.
- (v) The Exchange may enquire as to whether the accounting principles which have been applied are consistent with International Accounting Standards, the standing of the auditors within the accounting profession of the country where they practice, and whether the audit has been carried out in accordance with International Financial Reporting Standards (IFRS) and/or International Standards on Auditing. An explanation of any significant departures from International Financial Reporting Standards (IFRS) and/or International Accounting Standards or International Standards on Auditing may be required to be included in the Listing Document.
- (vi) Where a profit forecast appears in the Listing Document, a statement of the principal assumptions upon which it is based, whether it is audited or unaudited and the date at which the profit forecast was prepared.
- f. **Capitalisation and Indebtedness**
- (i) A summary of the provisions of the Underlying Entity's memorandum and articles of association / constitutional documents regarding changes to its share capital.
 - (ii) The amount of the Underlying Entity's authorised and issued share capital and the amount of any share capital agreed to be issued, the number of the Securities of which it is composed with details of their principal characteristics.

- (iii) Where the Underlying Entity has authorised but unissued share capital or is committed to increase its share capital, an indication of:
 - (A) the amount of such authorised but unissued share capital or capital increase and, where appropriate, the duration of the authorisation;
 - (B) the categories of any persons having preferential subscription rights for such additional portions of share capital; and
 - (C) the terms and arrangements for the issue of Securities corresponding to such portions.

- (iv) An indebtedness statement as at the most recent practicable date (which must be stated) of the following, if material:
 - (A) the total amount of any debt Securities of the Underlying Entity issued and outstanding, and authorised or otherwise created but unissued, and term loans, distinguishing between guaranteed, unguaranteed, secured (whether the security is provided by the Underlying Entity or by third parties) and unsecured loans;
 - (B) the total amount of all other borrowings or indebtedness in the nature of borrowings of the Underlying Entity including bank overdrafts, liabilities under acceptances (other than normal trade bills), acceptance credits or hire purchase commitments, distinguishing between guaranteed, unguaranteed, secured and unsecured borrowing and debt, all mortgages and charges of the Underlying Entity; and
 - (C) the total amount of any contingent liabilities or guarantees of the Underlying Entity.

- g. **Group Activities**
 - (i) If the Underlying Entity is a company within a group, a description of the group's principal activities, including details of the main categories of products sold or services performed.
 - (ii) A description of the group covering the Underlying Entity's position within the group and, if a subsidiary, the names and number of Securities held, directly or indirectly, by each holding company of the Underlying Entity.

- h. **Management**
 - (i) The full names, addresses and functions in the Underlying Entity of every director or proposed director.

- (ii) Where disclosure of such information is required by any stock exchange on which the Underlying Entity is listed or by the laws of the Underlying Entity's country of incorporation, a statement showing the total direct and indirect interest of the directors in the Underlying Entity together with any options in the share capital.

i. Major Shareholders

- (i) To the extent that such disclosure is required by the stock exchange on which the Underlying Entity is listed or by the laws of the Underlying Entity's country of incorporation, the following details shall be provided:
 - (A) the interests of any director of the Underlying Entity in its share capital;
 - (B) each person who is, directly or indirectly, interested in 5% or more of the share capital of the Underlying Entity; and
 - (C) the amount of each director or person's interest in such share capital, together with particulars of any options in respect of further share capital.

j. Information about the Depositary

- (i) The name, registered office address and principal administrative establishment (if different from the registered office) of the depositary.
- (ii) The date and country of incorporation of the depositary.
- (iii) The legislation under which the depositary was formed and it operates and legal form which it has adopted under that legislation.
- (iv) A summary of the contents of the deposit agreement including the date, parties, duration, and any indemnities or restrictions on the liability of the depositary. The summary shall also include a statement as to how the terms of the deposit agreement may be varied and a description of how the agreement may be terminated.

k. The DRs

- (i) The ratio of DRs to Securities.
- (ii) A summary of the material terms and conditions of the DRs and the deposit agreement, including the information set out below:
 - (A) The provisions relating to the exercise of and benefit from the rights attaching to the Securities, in particular the notification

of voting rights, the conditions on which the depositary may exercise such rights, and the procedures applied by the depositary to obtain the instructions of the DRholders and the right to participate in any distribution.

- (B) The provisions which enable a Holder of DRs to cancel the DRs in exchange for the Securities.
- (C) The rates of the commissions and costs to be borne by a Holder of DRs in connection with:
 - (i) the issue of the DRs;
 - (ii) the receipt and payment of any cash dividend or other distribution in respect of the Securities;
 - (iii) the creation of additional DRs;
 - (iv) the exchange of the DRs for Securities upon the cancellation of the DRs; and
 - (v) the issue and delivery of replacement DRs.
- (D) Details of the procedures which will be applied by the depositary whenever it receives cash, Securities or any other distribution in respect of the deposited property.
- (E) Details of the circumstances in which the issue of DRs may be suspended.
- (F) Details of the procedures which may be applied by the depositary if and whenever the Underlying Entity announces its intention to offer or invite the holders of the Securities to subscribe or acquire further Securities.
- (G) The procedures which may be applied by the depositary in the conversion of foreign currency.
- (H) The procedures which will be applied by the depositary upon any change in the nominal or par value, sub-division, consolidation or other reclassification of the Security or upon any reduction of capital or upon any reorganisation, merger or consolidation of the Underlying Entity.
- (I) The procedures for the issue and delivery of replacement DRs.

- (J) Arrangements for the transfer of the DRs and any restrictions on their free transferability.
- (K) Details of the dealing and settlement arrangements for the DRs.
- (L) The names of any stock exchanges where admission to listing for the DRs is, or is intended to be sought and the date on which the DRs will be admitted to listing, if known.
- (M) Details of where the Underlying Entity's audited annual financial statements and any interim financial statements will be made available to the DRholders.
- (N) An indication of the arrangements with regard to any taxes and charges to be borne by the DRholders and levied in countries where the DRs are issued.
- (O) An indication of the legislation under which the DRs have been created (if applicable) and agreed forms of dispute resolution.
- (P) Details of the procedures regarding the pre-release of DRs and lending of the Securities.

l. Material Contracts

To the extent not already disclosed in the Listing Document, a summary of the principal contents of all material contracts (being contracts not in the ordinary course of business entered into within 2 years immediately preceding the publication of the listing document); entered into by the Underlying Entity, including particulars of the dates, parties and a summary of the Terms and Conditions of such contracts.

m. Conditionality

If the issue of DRs may be cancelled at any time prior to the document of title being issued, and therefore the grant of the listing may not become effective, this shall be made clear in the Listing Document. The subscription or underwriting agreement shall make the obligations thereunder conditional upon the DRs being admitted to listing.

n. Inspection of Documents

A statement that for a reasonable period (being not less than 14 days from the date of the Listing Document) at a named place in Nigeria, or such other jurisdiction as The Exchange may stipulate, the following documents (translated into English where the documents are in another language) may be inspected without charge:

- (A) the memorandum and articles of association / constitutional documents of the Underlying Entity;
- (B) the Underlying Entity's most recent audited financial statements and any subsequent interim financial statements; and
- (C) the deposit agreement, any paying transfer agency agreement, if applicable, and any other material contracts pertaining to the issue.

o. Risk Factors

In a Sponsored DR Issue, the Listing Document should contain declarations in a prominent position, in the following form (where applicable):

- (A) *“Prior to the issue of the DR there has been no public market for the DR. An application has been made to list the DR on The Nigerian Stock Exchange. There can be no assurance that any trading market will develop for the DR.”*
- (B) *“The most recent audited financial statements and interim financial statements have been appended to this Listing Document. However, there can be no assurance that the financial condition or results of operations of the Underlying Entity have not changed in a material adverse manner since the date to which such financial statements were prepared.”*
- (C) *“The necessary principles that have been applied in the annual audited and interim financial statements of the Underlying Entity are consistent with International Financial Reporting Standards (IFRS) and/or International Standards on Auditing. A summary of the principal differences between the principles applied in producing the financial statements of the Underlying Entity and those of the International Accounting Standards and/or International Standards on Auditing is provided herein.”*

p. Continuous Disclosure Requirements for Sponsored DR.

- (i) The Underlying Entity shall prepare and submit to The Exchange its financial statements periodically as specified by The Exchange in its Listings Rules.
- (ii) The depository shall ensure that all communication made by the Issuer to its Securities holders are made available to the DRholders and copies of same shall be submitted to The Exchange not later than the same date it was made available to its shareholders.
- (iii) The Underlying Entity shall provide details of its directors and institutional shareholders or other shareholders holding 5% or more of its Securities to The Exchange quarterly.

9. CONTENTS OF LISTING DOCUMENT FOR AN UNSPONSORED DR

- a. The cover page of the Listing Document should set out:
- (i) the official name and jurisdiction of incorporation of the Underlying Entity;
 - (ii) the name, number and specific issue of the DR being offered and the issue price, if applicable; and
 - (iii) the name, registered office address and principal administrative establishment (if different from the registered office) of the Depositary;
 - (iv) the date and country of incorporation of the Depositary;
 - (v) the legislation under which the Depositary was formed and it operates and legal form which it has adopted under that legislation;
 - (vi) the name of the arranger, underwriters or other distributors of the issue, if applicable.
- b. A declaration in the following form should be included on the inside of the cover page of the Listing Document:
- (i) *“This Listing Document includes information given in compliance with the Listing Rules of The Nigerian Stock Exchange.”*
 - (ii) *“The depositary has extracted such information from publicly available sources and to the best of its knowledge and belief such information has been accurately reproduced in the Listing Document but such information has not been independently verified or checked [or, if applicable, the extent to which it has been so verified or checked]. The Nigerian Stock Exchange takes no responsibility for the contents of this document, makes no representations as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss arising from or in reliance upon any part of this document.”*
- c. The depositary shall ensure that the Listing Document contains the form of the Terms and Conditions to be issued in relation to the DR as prescribed by these Rules. The Terms and Conditions would state the number of Securities represented by the DRs.
- d. Any stock exchanges on which the Securities represented by the DRs are listed and an indication of the closing price of the Securities as derived from the official publication of the relevant exchange for the first business day in

each of the six months immediately preceding the date of the Listing Document.

- e. The depositary shall ensure that the Listing Document contains the latest published annual financial statements and any subsequently published interim financial statements of the Underlying Entity.
- f. The Depositary shall ensure compliance with Article 9 (j) (Information about Depositary) and Article 9 (k) (the Securities Represented by the DRs).
- g. All information in relation to the Underlying Entity contained in the Listing Document shall be derived from Publicly Available Information.

Risk factors

- h. In an unsponsored DR, the Listing Document should also contain declarations in a prominent position, in the following form (where applicable):
 - (i) *“Information in the Listing Document relating to the Underlying Entity has been derived from publicly available sources but has not been provided by the Underlying Entity. The depositary has extracted such information from such publicly available sources and to the best of its knowledge and belief, such information has been accurately reproduced in the Listing Document. However, such information has not been independently verified or checked or, if applicable, the extent to which it has been so verified or checked.”*
 - (ii) *“The Underlying Entity is not a party to the offer and sale of the DR or the arrangements pursuant to which the DR may be converted into the Securities. Accordingly, the Underlying Entity is under no contractual obligation to furnish the depositary with reports or other information relating to such Securities for the benefit of investors.”*

10. ANNOUNCEMENTS

- (a) In an Unsponsored DR Issue, the depositary shall ensure that every proposed corporate action or restructuring of the Securities is announced, at least ten business days prior to the date of the relevant corporate action provided it affects the listed security (if applicable).

11. SUPPORTING DOCUMENTS IN AN UNSPONSORED DR

- a. The Exchange may at any time before or after the admission to listing require the depositary to provide to the Exchange a copy of any of the following, where applicable:
 - (i) any reports, letters, valuations, statements by experts, contracts or other documents referred to in the Listing Document; and

- (ii) any temporary and/or definitive document of title regarding the Securities.
- b. The depository shall if so required by The Exchange, provide a legal opinion (or legal opinions) in form and content satisfactory to The Exchange confirming:
- (i) that the listing of the DR is not in breach of any law or regulation in the country of incorporation of the Underlying Entity, or the depository;
 - (ii) that all necessary exchange control, tax, Securities laws have been complied with and relevant regulatory consents have been obtained in the country of incorporation of the Underlying Entity and of the depository; and
 - (iii) that, none of the Securities represented by the DR nor any rights, money or other benefits attributable to such Securities may be or be liable to be treated as assets of the depository under the law (including insolvency law) of the jurisdiction or jurisdictions of incorporation of the depository and the Underlying Entity.
 - (iv) that at the time of the listing the depository has the capacity to apply to list DRs and that the establishment of the DR facility is in compliance with its memorandum and articles of association/constitutional documents and all applicable local laws and regulations and any listing rules; and that all actions, consents, registrations, and filings to be taken, obtained or made by the depository under such laws have been taken or obtained.

12. CONTINUING OBLIGATIONS IN AN UNSPONSORED DR

- a. As a condition of being granted and maintaining a listing, the depository shall observe the continuing obligations with respect to Un-sponsored DR Issues which are set out below:
- (i) When additional Securities of the same specific issue representing new DRs are to be deposited with the depository under the same facility, the depository shall notify The Exchange of the creation of the new DRs and any modification in the rights attaching thereto. The Exchange may list such DRs without requiring a Listing Document to be prepared in connection with the listing application.
 - (ii) The depository shall notify The Exchange of the resignation of its appointment and shall give the DRholders notice of such resignation as provided by the un-sponsored Terms and Conditions. The replacement depository shall satisfy the applicable conditions for listing DRs set out in these Rules.

- (iii) The depositary shall notify The Exchange of any modification in the rights of the depositary or any Securities into which the listed DRs are exchangeable, to the extent that it becomes aware of the same. In such circumstances, The Exchange may require a new application for listing of such modified DRs or may cancel the listing thereof.
- (iv) If requested by The Exchange, the depositary shall (subject to it or its nominee receiving or otherwise being able to obtain the same) submit to The Exchange through The Exchange's Issuers' Portal or other channels approved by The Exchange one copy of the annual financial statements of the Underlying Entity, the auditors' report thereon, any interim financial statements, all circulars, notices of meetings, forms of proxy, and other similar documents as soon as possible after they have been received or obtained by the depositary (or its nominee) in its capacity as a Securities holder of the Underlying Entity.
- (v) The Exchange may at any time make a public announcement with respect to any information delivered to it by the depositary or the Underlying Entity.

13. LIQUIDITY PROVIDER

- a. A Sponsoring Broker is required to introduce the DRs on The Exchange. The Sponsoring Broker shall be a Dealing Member in good standing with The Exchange's Rules and Regulations.
- b. The Sponsoring Broker may choose to be the Primary Liquidity Provider for the DRs or otherwise nominate another broker to perform the role of the Primary Liquidity Provider subject to the approval of the Exchange and shall undertake to maintain a secondary market in the DRs.
- c. There shall be at least one supplemental Liquidity Provider for a specified DR issuance.
- d. A primary Liquidity Provider may act as Liquidity Provider for more than one specified DR Issuance.
- e. When the Exchange considers it to be in the interest of the market that liquidity in a specified DR be improved, it may enter into agreements with Liquidity Provider-firms, one of who shall assume the role of a Primary Liquidity Provider for such DR and the rest shall assume the role of Supplemental Liquidity Provider.
- f. Any Dealing Member desirous of becoming a Liquidity Provider for a designated DR must submit to The Exchange a written application describing all the pertinent factors demonstrating why the firm is suitable to perform

the role of a Liquidity Provider taking into consideration the eligibility criteria to be prescribed by The Exchange on:

- i. Net Liquid capital of ~~N~~300million share capital which must have been subscribed and paid up.
- ii. Experience, Expertise and past performance based on market volume & value traded over the previous twenty four months.
- iii. Compliance with The Exchange's minimum operating standards.

**APPENDIX I
FORM OF UNDERTAKING BY A DEPOSITARY IN AN UNSPONSORED DR ISSUE**

Form of Undertaking (Depositary Receipts)

TO: The Council of
The Nigerian Stock Exchange

(Name of Company)

.....acknowledges that the privilege to remain on the list of The Exchange is subject to the pleasure of The Exchange and hereby resolves and undertakes as follows:

- 1.1 We have an application to the Nigerian Stock Exchange (NSE) for the registration and listing of Depositary Receipts in line with the provisions of the relevant NSE listing rules for Depositary Receipts;
- 1.2 We hereby undertake to comply with all obligations imposed on the issuer of depositary receipts under an unsponsored Depositary Receipt Program and also with the provisions of the Listing Rules of the Nigerian Stock Exchange as amended from time to time.

The common seal of the Company is hereto affixed in the presence of:

.....
Common Seal

.....
Director

.....
Secretary

.....
Date