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Date: 27 February 2019
Our Ref.: KO/001JM/020
Your Ref.: TBA

Chief Executive Officer,
Safaricom PLC,
Safaricom House,
Waiyaki Way,
Nairobi.



Dear Sir,

**RE: INFRINGEMENT OF INTELLECTUAL PROPERTY AND ANALOGOUS RIGHTS
AND BREACH OF CONFIDENTIALITY**

Our services have been retained by Solut Technology Limited (hereinafter our “Client”) and we have instructions to address you as follows:

That you came up with an online idea submission portal dubbed Zindua Café, on or about January 2015, through which you receive ideas, concepts, and prototypes from external developers for your consideration.

Our Client is the creator and proprietor of the WAVU APPLICATION, a novel software solution innovated to, among others, (i) curb direct deposits and remote withdrawals on the M-PESA platform, (ii) ensure MPESA agents comply with KYC requirements laid out by Safaricom in relation to MPESA transactions (iii) prevent fraudulent activities through the MPESA platform, (iv) facilitate efficient transactions on the MPESA platform thereby minimizing the number of calls to MPESA customer care. The WAVU APPLICATION idea was duly submitted on 31

October 2016 to you through the *Zindua Café* portal using Mr. Jimnoon Magolo's (a director/shareholder of our Client) credentials.

Consequent to the submission, your firm undertook an ideas' screening process; and our Client's submission passed this screening stage leading to the pitch stage. Our Client was invited to pitch the idea on the 11 November, 2016. The meeting was attended by our Client's directors on one part, and Ms. Idah Gacheri, Reginald Tole, Felix and Stacey, on the other part. At this meeting our Client was requested to discuss and or clarify on the issues of the value proposition in relation to the WAVU APPLICATION idea.

During the meeting, and backed by an audio recording of the meeting, it transpired as follows:

- a. That Safaricom (You) did not have an application, similar to or an alternative to the WAVU APPLICATION pitched to you by our Client.
- b. A confirmation by a member of your team that such a system did not exist at the time of the meeting.

One of your officers, Ms. Idah Gacheri, would then write to our Client stating that the WAVU APPLICATION implementation at your company could not be progressed further due its high implementation cost and that there already existed "alternative solutions" to this problem within your company. In the regret email, you thanked our Client for its interest to partner with you; in what clearly demonstrated the desired objective between our Client and your company to partnering and or collaborating. You further advised our Client to continue submitting transformative and innovative ideas, a clear testament to your insatiable appetite for entrepreneurial innovations; and a testament to an implicit concession to the transformative and innovative nature of the WAVU APPLICATION idea whose implementation was defeated on grounds of its high implementation costs.

A period of silence and *inactivity* followed during which our Client believed that you were serious on your claim that the cost of implementation of the WAVU APPLICATION was discouragingly high and that its implementation was not a business priority.

However, our Client would later learn that the WAVU APPLICATION was implemented by yourselves as "THIBITISHA" on 13 and 20 November, 2017 without its consent and approval, and without any compensation whatsoever to our Client.

Any reasonable person would presume that the invitation to pitch dated 7 November 2016 read together with the regret email (WAVU APPLICATION Feedback) dated 11 November 2016 on the pitch only meant that your company was indeed interested in the WAVU APPLICATION and that your company was keen to understand the WAVU APPLICATION in more detail. The allegation and thought that the THIBITISHA Application is/was your original idea and not a replica of the WAVU APPLICATION is too fantastic a coincidence to be true.

To further buttress the above position, we are in possession of crucial documents, correspondence and audio recordings that clearly demonstrate that you did not have the solution prior to the submission and subsequent pitch by our Client. Further, that THIBITISHA as currently implemented is an exact replica of WAVU APPLICATION as had been pitched to you.

Interestingly, the benefits promised by THIBITISHA are nothing but the benefits promised by the implementation of the WAVU APPLICATION pointing to the striking similarities between the two applications, with WAVU APPLICATION taking precedence of THIBITISHA.

Our Client also contends that this idea was submitted to you in total confidence which you have since breached. We are alive to the Terms and Conditions you rely on pursuant to your response to our Client dated 8 August 2018. Your said Terms and Conditions reveal a high level of unconscionability, exploitation of contracting parties arising from abuse of monopsony powers, bad faith, and/or fraudulent misrepresentations, elements which collectively inform our position that you forced our Client into consent – through a series of fraudulent misrepresentations captured in the content in the Zindua Café portal, the negotiations between our Client and yourselves, and the Terms and Conditions. The internal inconsistencies on your part are hilarious to say the least. This is also read together with the fact that we have evidence proving that our Client had on various occasions attempted to by-pass the said Terms and Conditions so as to enter into a separate contractual arrangement with yourselves to no avail. Our Client was forcibly led into consenting to your Terms and Conditions.

The first paragraph of your Terms and Conditions (replicated below) reveal it all, “Those Terms and Conditions of Use for the Safaricom Innovation Portal (“Zindua Café”) (“Terms and Conditions”) govern your use of Zindua Café. Safaricom reserves the right to modify these Terms and Conditions at any time effective upon the date of posting any changes on our

website.’(Emphasis ours). Your Terms and Conditions are not only unilateral in nature; they are exploitative, unconscionable, and reek of fraudulent misrepresentations, intended to fleece the unsuspecting members of the public of their hard-earned and developed innovations.

We are alive to the deliberately misleading strategy embraced by *Zindua Café*. For instance, the welcoming remarks are as follows:

“What is that one idea you strongly believe in? *Zindua Café* allows you to own it. Get brewing.” (emphasis ours).

Our Client wrote to you severally, first lodging a complaint and subsequently asking for compensation for the unlawful and illegal appropriation of the WAVU APPLICATION. Our Client’s several follow ups including a demand letter issued by an advocate previously in conduct of the matter fell on deaf ears and were to no avail, save for a response which helps to further point out the inconsistencies of your position in this matter.

That is on 3 August 2018, you wrote a response to our Client’s complaint in which you indicated, among other things, that: (i) There was a possibility that your team was working on a similar idea prior to the engagement with our Client; (ii) There was a possibility that your team had received the idea, underlying the THIBITISHA product, whether wholly or partly, from other external contributors; and (iii) There was a possibility that our Client’s idea maybe already be in your company’s roadmap in part or in full.

It is noteworthy that when the justifications provided in your letter are considered wholesomely and in light of your regret email of 11 November 2016, there are glaring inconsistencies that cannot be wished away. These inconsistencies points to the inescapable similarity between the WAVU APPLICATION, and the THIBITISHA application.

Ultimately, the intrigues and happenings in this matter demonstrate a classic instance of the predatory and exploitative nature of the *Zindua Café* ideas platform especially when read together with the associated Terms and Conditions.

Further, concurrent to our pursuit of this matter with you, our Client reserves the right to launch parallel complaints with: (i) the Competition Authority of Kenya – to address us on the question of abuse of dominance and monopsony buyer power; (ii) the Kenya Industrial Property Institute

and (iii) Kenya Copyright Board – the latter two to address us on questions of contracts in blatant violation of Intellectual Property and/or intellectual ideas/promoting idea thefts/uncompetitive practices in conflict with Intellectual Property rights and principles while hinged on forced consent; and (iv) the Communication Authority – your main regulator to address it on the propriety of your actions in this matter.

WE HEREBY DEMAND your admission of liability so that we can address you on quantum and/or enter into negotiations for appropriate compensation.

TAKE NOTICE THAT we shall be constrained to institute legal proceedings to assert the rights of our Client and protect its interests should we fail to hear from you substantially within the next SEVEN (7) DAYS hereof. Needless to say, this shall be at your peril as to costs and consequences.

Yours faithfully,

TLO LAW ASSOCIATES



Jasper Lubeto

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