

## **APPENDIX 1: TERMS AND CONDITIONS OF USE FOR THE SAFARICOM INNOVATION PORTAL [“ZINDUA CAFÉ”]**

These Terms and Conditions of Use for the Safaricom Innovation Portal (“Zindua Café”) (“Terms and Conditions”) govern your use of Zindua Cafe. Safaricom reserves the right to modify these Terms and Conditions at any time effective upon the date of posting any changes on our website; [www.safaricom.co.ke](http://www.safaricom.co.ke). By registering as a user you agree to abide by these Terms and Conditions and the Safaricom Website Terms and Conditions. Any violation of these Terms and Conditions will result in the suspension or termination of your right to access and use Zindua Cafe.

### **1 Registration and Use of Zindua Cafe**

- 1.1 In order to access and use Zindua Café you are required to register (by providing a name, email address and password) and by login agreeing to these Terms and Conditions.
- 1.2 The use of Zindua Café is restricted to users who have attained the majority age of eighteen (18) years.

### **2 Idea Protection**

Safaricom recognizes that good ideas are a rare find and therefore requires that you protect your idea/prototype/solution before submitting on Zindua Café. Local protection can be done through the Kenya Industrial Property Institute (KIPI). More details are available at <http://www.kipi.go.ke> while details of how to undertake International/Global protection can be found at <http://www.wipo.int/portal/en/index.html>. Details of the same and copies of the documentation should be provided along with your submission. If any of the documents submitted are false you risk being blacklisted and or suspended from any further engagement with Safaricom Limited. Any idea that is submitted without protection is at your own peril.

### **3 No Confidentiality**

- 3.1 No information or subject matter which you submit on Zindua Cafe will be considered to be treated as confidential. By making a submission to Zindua Cafe you hereby consent to the disclosure of that submission by Safaricom to:
  - 3.1.1 Any of its affiliates or subsidiaries and any third parties or consultants for the purposes of implementation or development and Go to Market;
  - 3.1.2 Any regulator, supervisor, government body, quasi-governmental authority with jurisdiction over Safaricom or its affiliates or subsidiaries; or
  - 3.1.3 Any person to whom Safaricom is required or authorized by law or a court order to make such disclosure; Notwithstanding the above, Safaricom accepts no liability whatsoever to you for any submission made and any resultant disclosure thereof.

### **4 Idea Submission**

- 4.1 Upon registration you will follow the links on Zindua Café to submit your idea. On submission, your idea will be screened for suitability in accordance with Safaricom's business objectives. Screening will be conducted by a team of Safaricom cross functional experts after which your submission will be accepted or rejected. Safaricom has no obligation to give reasons for the acceptance or decline of any ideas submitted on Zindua Cafe.
- 4.2 Safaricom shall not accept ideas submitted that relate to Tariffs, promotions and marketing strategies.
- 4.3 Safaricom's receipt of your submission does not imply any promise to pay or compensate you for your submission nor is it a recognition of the alleged novelty, originality or usefulness of your idea nor does it establish any relationship which might require Safaricom to compensate you for the evaluation of the information disclosed in the submission.

## **5 Novelty**

- 5.1 You understand and acknowledge that other users of Zindua Cafe may have already submitted identical or similar ideas to Safaricom, or your idea may not be novel, or may already be under internal development by Safaricom. Accordingly, you denounce and waive any right in the future to make or lodge any claims against Safaricom or any of its affiliates or subsidiaries on the basis of alleged copying or infringement of your idea and any materials previously accepted or used by Safaricom.

## **6 Right or License to Use**

- 6.1 By submitting your idea to Zindua Cafe you irrevocably grant Safaricom, the unrestricted right or license to use any idea or material you submit for the purpose of improving it, assessing its viability and determining its progression to the next stage within the Innovation Cycle. Such use by Safaricom shall not be deemed a violation of your rights or the rights of any third party or give rise to any claim based on such alleged violation.
- 6.2 Should Safaricom choose to discuss any idea submitted idea further, such discussion shall be on a "without prejudice" basis and will be subject to a Non -Disclosure Agreement or such other definitive contracts as Safaricom may in its discretion determine.

## **7 Disclaimer and Indemnity**

- 7.1 You are responsible for the content of any ideas which you post on Zindua Café. Safaricom does not warrant or guarantee the accuracy, reliability, completeness, usefulness, non-infringement of intellectual property or quality of any ideas posted by you on Zindua Café.
- 7.2 You shall, at your own expense, fully indemnify Safaricom from and against all and any loss, damage, liability, including costs and expenses which Safaricom may at any time incur, sustain, suffer or be subjected to as a consequence of the content of any idea submitted by you on Zindua Café including any claims made by any third party with regard to the form or substance of any idea you submit.

7.3 You hereby undertake to give Safaricom prompt written notice of any claim (including third party claims) or other matters to which you believe this indemnification provision may be applicable.

## **8 Limitation of Liability**

- 8.1 **SAFARICOM SHALL NOT BE LIABLE IN CONTRACT TORT OR OTHERWISE FOR ANY DIRECT, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE SUSTAINED BY YOU OR ANY THIRD PARTY AS A RESULT OF ANY DIRECT OR INDIRECT USE OF OR RELIANCE ON THE ELECTRONIC COMMUNICATION ORDERS OR MESSAGES SENT VIA ZINDUA CAFÉ INCLUDING BUT NOT LIMITED TO ANY LOSS OR DAMAGE RESULTING FROM ANY DEFECTS DELAYS INTERRUPTIONS ERRORS INACCURACIES OR FAILURES IN THE VARIOUS COMMUNICATIONS. ANY LOSS OF DATA OR MATERIAL RESULTING FROM DELAYS, NON- DELIVERIES, MISSED DELIVERIES, SUSPENSION OR WITHDRAWAL OF ALL OR PART OF ZINDUA CAFÉ AT ANY TIME. THE REMOVAL FROM ZINDUA CAFÉ OF ANY MATERIAL SENT OR POSTED BY YOU ON OR VIA ZINDUA CAFÉ AND OR THE BLOCKING OR SUSPENSION OF YOUR ACCESS TO ZINDUA CAFÉ OR ANY PART OF IT IN ACCORDANCE WITH THESE TERMS.**
- 8.2 **SAFARICOM'S MAXIMUM LIABILITY UNDER THESE TERMS AND CONDITIONS IF ANY FOR ALL CLAIMS HOWSOEVER ARISING SHALL BE LIMITED TO A MAXIMUM OF KES 100,000 ONLY.**

## **9 Assurance of Intellectual Property**

- 9.1 You hereby warrant to Safaricom that you are the genuine creator/originator of the idea and/or the owner of all intellectual property rights comprised in the idea (if any) and where applicable possess all the necessary rights and permissions to submit the idea to Safaricom and that your submission does not violate the rights of any third party or any applicable law.
- 9.2 You further warrant that no claim of infringement of any patent, copyright, trade mark, trade secret or other intellectual property rights in respect of the idea has been threatened or asserted, nor is a claim for such infringement pending against you or any of your agents, or to the best of the your knowledge, any entity from which you have obtained such rights.
- 9.3 Any use of Safaricom's intellectual property in the idea does not imply a waiver of any rights with regard to the ownership and use of the intellectual property.

## **10 Compensation**

You understand and accept that Safaricom is under no obligation to compensate you for the submission of the idea unless the idea is approved and adopted by Safaricom upon successful completion of each of the idea submission stages in Zindua café and the terms of compensation will be captured in the contract to be signed thereafter.

## **11 General Release**

You hereby release and hold harmless Safaricom, its affiliates entities, employees, directors, officers, licensees and assigned and respective designees. ("Safaricom entities") with respect to any claims, damages, costs, losses and expenses including legal fees due to or arising out of the content you

submit, post, transmit or make available through Zindua Cafe, the use of such content by Safaricom Entities for any purpose, your use of Zindua Café, your violation of these Terms and Conditions or Safaricom's website's Terms and Conditions or the violation by you or Safaricom entities of yours or any third party's rights including without limitation, intellectual property or other proprietary rights of privacy and publicity, rights of attribution or any other liability, direct or indirect, vicarious, contributory or otherwise.

## **12 Restriction on Content**

- 12.1 By participating in Zindua Café including the posting of content and commentary, you agree that you will not upload, post or transmit any content (including text, links, communications, software, images, sounds, data or other information ) that:
- 12.1.1 Is not consistent with the permissible uses outlined in the Terms and Conditions of Safaricom' s website including by not limited to content that is harmful, threatening, abusive, harassing, defamatory, libelous, invasive of another's privacy, vulgar, profane, sexually explicit, obscene, racially or ethnically offensive or otherwise objectionable;
  - 12.1.2 Infringes on any patent, trademark, trade secret, copyright or other proprietary rights of any party;
  - 12.1.3 Constitutes advertising or promotion, junk mail, "spamming", chain letters or any other form of unauthorized solicitation that connects to commercial websites that will not be considered unauthorized solicitations unless the link or website consent appears to be intended as a means of solicitation as determined by Safaricom in its sole discretion;
  - 12.1.4 Contains software viruses, Trojan horses, worms, time bombs, cancelbots or any other computer code or files that will disrupt, damage or limit the functioning of any software or hardware including the use of Safaricom's website;
  - 12.1.5 Provides any non- public information about Safaricom or any other company or person without proper authorization and includes providing names, addresses and extension numbers of Safaricom's employees or any of its subscribers,
  - 12.1.6 Intentionally interferes with the operation of Safaricom's website without limitation mail bombing, news bombing other flooding techniques, deliberate attempts to overload a system and broadcast attack to avoid messaging blocking;
  - 12.1.7 Impersonates any person or entity including anyone in Safaricom's employment.
  - 12.1.8 Attacks or insults another Zindua Café user or site manager;
  - 12.1.9 Suggests or encourages illegal activity; or
  - 12.1.10 Violates Kenyan law.

## **13 Governing Law and Dispute Resolution**

THIS TERMS AND CONDITIONS SHALL BE GOVERNED IN ACCORDANCE WITH THE LAWS OF KENYA AND ITS VALIDITY CONSTRUCTION AND EFFECTIVENESS SHALL BE GOVERNED AND ENFORCED PURSUANT TO THE SUBSTANTIVE LAWS OF KENYA. THE PARTIES AGREED THAT ALL LEGAL PROCEEDINGS IN CONNECTION WITH THE ENFORCEMENT, CONSTRUCTION, INTERPRETATION,

BREACH OR VIOLATION OF THIS AGREEMENT SHALL BE REFERRED TO ARBITRATION BY THE KENYAN BRANCH OF THE CHARTERED INSTITUTE OF ARBITRATORS, IN ACCORDANCE WITH THE PROVISIONS OF THE ARBITRATION ACT, 1995 AND OR ANY OTHER STATUTORY MODIFICATIONS MADE THERETO.