

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made this 15th day of July 2018 between The Kenya Film Classification Board (KFCB) and the Digital Broadcasters Association (DBA) of Kenya.

PREAMBLE

MEMORANDUM OF UNDERSTANDING

BETWEEN

KENYA FILM CLASSIFICATION BOARD (KFCB)

AND

DIGITAL BROADCASTERS ASSOCIATION OF KENYA (DBA)

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made this 15th day of July 2016 between The Kenya Film Classification Board (**KFCB**) and the Digital Broadcasters Association (DBA) Kenya Film Classification Board (KFCB)

PREAMBLE

WHEREAS Kenya Film Classification Board is a State Corporation mandated by the Films and Stage Plays Act, Cap 222 Laws of Kenya to regulate the creation, broadcasting, possession, distribution and exhibition of films by classifying films in order to maintain public order and uphold national values. In addition, the Kenya Information and Communications Act of 2008 expanded the Board's mandate to include monitoring broadcast stations to ensure content meant for adult audiences is not aired during watershed period (5am – 10pm).

And Digital Broadcasters Association of Kenya is a society registered under the Societies Act Cap 108.

Whereas the parties desire to further the foregoing cooperation in the interest of ensuring that films and program content aired by Digital Broadcast Association stations are classified and meet the standards as provided in the law, specifically Kenya Information and Communication Act, Film and stage plays Act and the Programming code for free-to-air radio and television services in Kenya. The parties further desire to promote mutual interest through collaboration in providing and keeping to the respective legal mandate and supporting each other to realise their stated objectives, they now agree to enter into this Memorandum of Understanding whose articles are provided hereunder.

ARTICLE 1

DEFINITION

- a) **KFCB** – Shall mean and refer to Kenya Film Classification Board
- b) **DBA**-Shall mean Digital Broadcast Association of Kenya

- c) **MOU** - shall mean and refer to this Memorandum of Understanding

ARTICLE 2

SCOPE AND OBJECTIVES

The purpose of this MOU is to provide a framework for collaboration between KFCB and DBA, is to ensure compliance with the Programming code for free-to-air radio and television services in Kenya which became effective as from 1st July 2016. The DBA to ensure that all their content is classified using the film classification guidelines and air the KFCB classification Symbol which shall be facilitated by the KFCB. The classification and filming license fees arising thereof will be converted to airtime that DBA member channels will give to KFCB in return.

ARTICLE 3

PRINCIPLES OF COOPERATION

In order to achieve the purposes of this Memorandum, the Parties have adopted and will comply with the principles of co-operation set out below.

1. The Parties will cooperate with each other in mutual trust and good faith.
2. The Parties will assist and support each other in respect of the agreed commitments between them in terms of this Memorandum.
3. The Parties will inform each other of, and consult each other on matters of common interest.
4. The Parties will avail to each other the necessary support for the success of the tasks and programmes envisaged and agreed to pursuant to this Memorandum.
5. The parties will be expected to discharge their responsibilities to the highest standard and will be responsible for the actions of their respective staff and their due performance of their obligations listed herein.

ARTICLE 4

AREAS OF COLLABORATION

The areas of collaboration as a result of this MOU shall be but not limited to the following;

1. DBA will ensure that all the television stations under it comply with the Programming code by adhering to classification requirements as per the Film Classification Guidelines and air the KFCB classification Symbol that shall be facilitated by KFCB.
2. DBA television stations to submit their program line up and content to KFCB for minutage calculations and classification respectively. The minutage, classification and filming license fees arising thereof will be converted to airtime that DBA member channels will give to KFCB in return.
3. DBA shall furnish KFCB on any changes on the membership, thus if any station ceases to be a member of DBA then the requirements of the Film and Stages Play Act Cap 222 shall apply.
4. The Certificate of Approval that will be issued by the KFCB shall be valid for two (2) years.

ARTICLE 5

ADDITIONAL AGREEMENTS

The provisions of this MOU if necessary shall be specified in detail by additional agreements and or minutes signed by the parties and intended to be part of this MOU

ARTICLE 6

CONFIDENTIALITY

The parties shall ensure confidentiality concerning documents and information received within the framework of this MOU and shall not, during the subsistence of this MOU or after it's expiry use or disclose any confidential or classified information to third parties

which they may come across in the course of the performance of their obligations except with written consent of both signatories.

ARTICLE 7

DISPUTE RESOLUTION

The parties shall make every effort to ensure the achievement of the objectives of this MOU through mutual recognition of the respective roles of either party on the basis of mutual respect. Disputes connected with the interpretation and implementation of this MOU shall be settled by mutual consultations and negotiations.

ARTICLE 8

ARBITRATION

Should the KFCB and DBA fail to agree on any matter related to the continued operation of this cooperation or any other matter, a mutually agreeable third party shall be appointed to arbitrate on the matter in dispute. Should there be disagreement on the selection of an arbitrator, a person appointed by the Chairman of the Chartered Institute of Arbitration (Kenya Chapter) shall carry out arbitration.

ARTICLE 9

NO AGENCY

Parties to this MOU shall maintain their separate and distinct identity. Nothing contained herein shall be construed as establishing a relation of master and servant or of principal and agent as between the DBA and KFCB. Neither shall this MoU mean and or imply an alteration of powers, privileges and immunities accorded to each party by the respective legal frameworks establishing them.

ARTICLE 10

ENTRY INTO FORCE AND DURATION

This MOU shall come into operation from the date of its execution and shall remain in force for a period of two (2) years unless terminated by either party as hereinafter

provided and may be renewed for such further periods by written agreement endorsed by all the parties. Such termination shall require a notice of at least 3 months by either party stating reason for the same. The notice shall be final unless parties agree otherwise.

ARTICLE 11

FORCE MAJEURE

Neither party shall be liable to the other party for any delay or non-performance of its obligations under this memorandum arising from any cause beyond its reasonable control, including but not limited to any of the following: act of God, war, fire, flood explosion, civil commotion or industrial or other disputes of a third party or impossibility of obtaining requisite authorities or materials.

Provided the affected parties shall promptly notify the other party in writing of any cause. Such notice having been given, the performance of the affected party's obligations to the extent affected by the cause shall be suspended during the period the cause persists.

Without prejudice to the foregoing the affected party must take all reasonable measures to minimize the impact of any force majeure on the performance of its obligations under the memorandum and to ensure as soon as possible the resumption of normal performance of the obligations affected by the force majeure.

ARTICLE 12

AMENDMENTS

The provisions of this MOU may be amended or varied as the parties shall agree. The process of amendment shall be commenced by a proposal in writing by one party and acceptance by the other. If the parties do not immediately agree, they will negotiate on proposed amendments until they arrive at a mutual agreement.

ARTICLE 13

GOVERNING LAW

This MOU shall be construed and interpreted in accordance with the Laws of Kenya and is subject to the parties' statutory obligations and administrative practices.

ARTICLE 14

TERMINATION

Any of the parties may terminate this MOU by giving the others at least three months written notice of the intention to terminate. Termination of this MOU shall not affect the validity or duration of projects under this MOU that were initiated prior to such termination.

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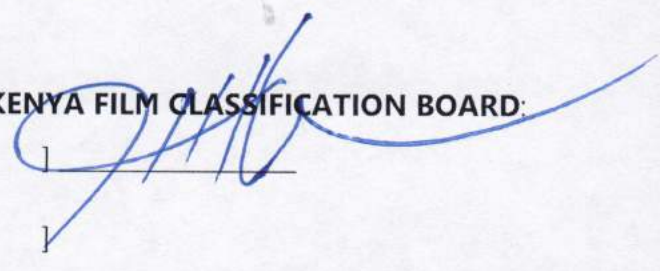
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IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum this
15th Day of Sep. 2016.

Signed and sealed for and on behalf of the **KENYA FILM CLASSIFICATION BOARD:**

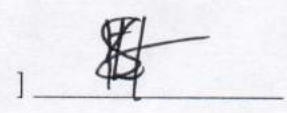
Mr. Ezekiel Mutua, MBS



Chief Executive Officer

Kenya Film Classification Board (KFCB)

Witnessed by

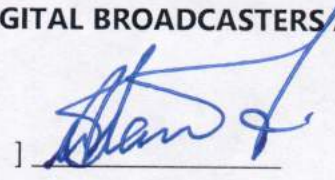


Loice M. Shalakha

Senior Legal Officer

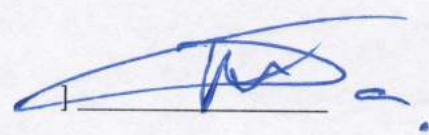
Signed and sealed for and on behalf of the **DIGITAL BROADCASTERS ASSOCIATION
OF KENYA**

Mr. Joel Waweru



Chairman, DBA

Witnessed by



Jane Muthiga

Secretary, DBA