

LEGAL NOTICE NO.

THE KENYA INFORMATION AND COMMUNICATION ACT, 1998
(No.2 of 1998)

**THE KENYA INFORMATION AND COMMUNICATION (BROADCASTING)
REGULATIONS, 2022**

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THE KENYA INFORMATION AND COMMUNICATION ACT, 1998
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**THE KENYA INFORMATION AND COMMUNICATION (BROADCASTING)
REGULATIONS, 2022**

IN EXERCISE of the powers conferred by section 46K of the Kenya Information and Communications Act, 1998, the Cabinet Secretary for ICT, Innovation and Youth Affairs, in consultation with the Communication Authority of Kenya, makes the following Regulations—

**THE KENYA INFORMATION AND COMMUNICATIONS (BROADCASTING)
REGULATIONS, 2022**

PART I—PRELIMINARY

Citation.

1. These Regulations may be cited as the Kenya Information and Communications (Broadcasting) Regulations, 2022.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“**Act**” means the Kenya Information and Communications Act, 1998;

“**Advertise**” means to broadcast any item in return for payment or other valuable consideration to a broadcaster with the intention of—

(a) selling to a viewer or listener, any product or service;

(b) convincing a viewer or listener of a belief or course of action; or

(c) promoting a product, service, belief, course of action, person or organisation;

“**Authority**” means Communications Authority of Kenya established under section 3 of the Act.

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“**Betting Control and Licensing Board**” means the Betting Control and Licensing Board established under section 3 of the Betting, Lotteries and Gaming Act, 1966;

“**Broadcasting licence**” means a license issued by the Authority permitting the licensee to provide broadcasting services;

“**Broadcasting-satellite service**” means a radiocommunication service in

which signals transmitted or retransmitted by space stations are intended for direct reception by the general public. In the broadcasting-satellite service, the term “direct reception” shall encompass both individual reception and community reception.

“Broadcast signal distributor” means any person who provides network facility operator services for broadcasting;

“Broadcast market” means the area within which a licensee is licensed to operate, as specified in the broadcasting licence;

No. 24 of 2011

“Candidate” has the meaning assigned to it under section 2 of the Elections Act, 2011;

“Child” has the meaning assigned to it under Article 260 the Constitution of Kenya, 2010;

No. 34 of 1962

“Classification Board” means the Kenya Film Classification Board established under section 11 of the Films and Stage Plays Act, 1962;

“Current affairs programming” means programming that is not a news bulletin but which focuses on and includes comment on and interpretation and analysis of issues of immediate social, political or economic relevance and matters of international, national, regional and local significance;

“Community broadcaster” means a broadcaster licensed to provide broadcasting service as designated under Section 2 (1) of the Act;

“Disaster” means a sudden, calamitous event, caused by nature or human beings, that seriously disrupts the functioning of a community or society and causes human, material, economic or environmental losses that exceed the community’s or society ability to cope using its own resource;

No. 24 of 2011

“Election period” has the meaning assigned to it under section 2 of the Elections Act, 2011;

“Free to Air television channel” means a television channel licenced to be a broadcast without encryption and capable of being received by conventional broadcasting receiving apparatus.

“Foreign broadcaster” means any legal entity primarily licensed to provide broadcasting services in another country and which has been authorized to provide the same services in Kenya in the same format as the primary market.

Cap 131

“Gaming” has the meaning assigned to it under section 2 of the Betting, Lotteries and Gaming Act, 1966;

“Infomercial” means a program-length television commercial that is cast in a standard format and presented in the form of a short documentary so as to disguise the fact that it is an advertisement;

“Independent producer” means any legal or natural person conducting the business of producing television or radio programmes, and is not licensed as a broadcaster but duly registered in Kenya or by the Authority.

“Licensee” means holder of a broadcasting services licence issued by the Authority;

“Local content requirement” means the total of all television or radio programmes, including local news and locally produced advertisement;

(1) which fulfill any five of the following conditions—

- (a) the production is made in either Kenya’s indigenous or official languages of Kenya;
- (b) production and post-production is wholly or partly done in Kenya;
- (c) the content deals with issues that are unique and relevant to Kenyan audiences;
- (d) at least thirty percent of the share of the production company are owned by Kenyans;
- (e) fifty percent of the—
 - (a) leading actor or actors;
 - (b) major supporting cast appearing in the program; and
 - (c) technical crew, are Kenyans;
- (f) the location of shooting, in case of audio-visual programmes or performance is wholly or partly in Kenya;
- (g) the author or authors of the program are Kenyan, whether or not the program is produced in conjunction with a co-producer, an executive producer or director who is not Kenyan;
- (h) majority of the intellectual property is owned by a Kenyan citizen and the Copyright is registered with the Kenya Copyright Board;
- (i) leading actor or actors;
- (j) the programme director is a Kenyan;

(k) majority of the five highest paid performers are Kenyan Citizens;

(2) In case of an animated program, at least five of the following persons are Kenyan citizens, the—

- (a) script writer;
- (b) programme director;
- (c) art director;
- (d) creative director;
- (e) character designer;
- (f) supervising layout artist;
- (g) supervising storyboard artist;
- (h) key background artist; or
- (i) the lead animator;

No. 46 of 2013

“Media Council of Kenya” means the Media Council of Kenya established under section 5 of the Media Council Act, 2013;

No. 11 of 2011

“Political party” means a party registered by the Registrar of Political Parties as a political party in Kenya under the Political Parties Act, 2011;

“Programme” means sound, visual images or a combination of both, intended to inform, educate or entertain.

“Programme segment” means a programme which, in audio-visual sense, presents one whole unit, with a beginning and end, clearly separated from other segments and content;

“Public broadcaster” means the public broadcaster designated under section 46E of the Act;

“Public service announcement” means broadcasting service offered at no cost to raise public awareness of matters of public interest and in the event of occurrence of a disaster, emergency or pandemic, upon the request of a person authorized by the government;

“Re-broadcasting” means the simultaneous or subsequent broadcasting by one broadcasting organization of the broadcasts of another broadcasting

organization;

No. 24 of 2011

“**Referendum**” has the meaning assigned to it under section 2 of the Elections Act, 2011;

No. 24 of 2011

“**Referendum committee**” has the meaning assigned to it under section 2 of the Elections Act, 2011;

“**Sponsored programme**” means a programme which all or part of its costs are paid by a sponsor, with a view to promoting that sponsor's, or another sponsor's name, product or service;

“**Station programming format**” means an arrangement of programmes which are presented on a broadcasting station;

“**Subscriber**” means a person who, in relation to subscription television and or radio broadcasts, has entered into an agreement with a provider of subscription radio or television services;

“**Subscription broadcasting services**” includes, cable, terrestrial broadcasting and multi-channel satellite distribution services that are offered through subscription;

“**Subscription management services**” means a service which involves the provision of support services to a subscription broadcasting service which may include, among other services, subscriber management support, subscription fee collection, call centres, sales and marketing, and technical and installation;

“**Terrestrial station**” means a station effecting terrestrial radiocommunication;

“**Terrestrial broadcast**” means a type of broadcasting in which the broadcast signal is transmitted by radio waves from the terrestrial, Earth-based, transmitter of a broadcast station to a Tv or radio receiver having an antenna;

“**Voting period**” has the meaning assigned to it under section 2 of the Elections Act, No. 24 of 2011;

“**Watershed period**” means the East Africa time between 5.00 am and 10.00 pm, or such other time as may be prescribed by the Authority by Notice in the Kenya *Gazette*, within which content intended for an adult audience is not to be aired on broadcasting platforms.

PART II – LICENSING

General requirements.

3. (1) A person who intends to provide broadcasting services in Kenya shall

apply to the Authority for the licence in accordance with the prescribed procedure under the Act and these Regulations.

(2) A person who intends to provide more than one service shall apply for a licence for every broadcasting service he or she intends to operate.

(3) The Authority may require an applicant to provide relevant additional documentation or information for purposes of assessing whether the applicant meets the criteria established in the Act and Regulations for the grant of the licence.

(4) The Authority shall publish in the *Gazette*, a list of applications received for broadcasting licences that are complete, and invite the public to comment before it makes a decision on issuance of a licence.

(5) The Authority shall grant a successful applicant a broadcasting service licence and require the licensee to establish the necessary broadcasting infrastructure and commence broadcasting within a period prescribed in the respective licence unless explicitly extended by the Authority in writing.

(6) The Authority shall revoke the licence of a licensee who does not establish the necessary broadcasting infrastructure within the period specified in paragraph (5).

Application for a commercial broadcasting services license.

4. (1) A person who intends to provide free-to-air commercial broadcasting service shall apply for a licence to the Authority in the prescribed manner.

(2) The application shall be supported by a business plan, including—

- (a) evidence of technical capacity in terms of personnel and equipment to carry out the broadcasting services;
- (b) evidence of relevant experience and expertise to carry out the broadcasting services;
- (c) evidence of the capacity to offer broadcasting services for at least eight continuous hours in a day;
- (d) a weekly programme line-up or schedule for the broadcasting services which the licence is sought;
- (e) the proposed complaints handling procedures; and
- (f) such other information or requirement as the Authority may from time to time prescribe.

(3) A person who applies for a licence to provide subscription television or radio service shall, unless it is otherwise prescribed, comply with sub-regulation

(1) and satisfy that it has the capacity to offer such minimum number of channels as may be specified by the Authority.

Application for a community broadcasting licence.

5. (1) A person who intends to provide community broadcasting service shall apply for a licence to the Authority in the prescribed manner.

(2) The application shall be supported by—

- (a) information on the service for which the community broadcasting licence is sought for;
- (b) a signed resolution or the minutes of the meeting where it was resolved to establish a community broadcasting station;
- (c) proof of the sources of funding and sustainability mechanisms;
- (d) details of the target community and thematic focus of station to address identified community needs, extent of community participation in the programming and management of the station, how the funds generated shall be utilized for the benefit of the community;
- (e) weekly programme line-up or schedules for the broadcasting services for which the licence is sought;
- (f) the proposed complaints handling procedures; and
- (g) such other information or requirement as the Authority may from time to time prescribe.

Obligations relating to broadcasting services.

6. (1) The Authority shall—

- (a) ensure that broadcasting services reflect the national identity, needs and aspirations of Kenyans;
- (b) ensure that broadcasting services are delivered using the most efficient and effective available technologies;
- (c) develop a frequency plan which sets out how the frequencies available for broadcasting services in Kenya will be shared equitably and in the public interest among various tiers of broadcasting;
- (d) ensure that every applicant secures relevant permission or entered into agreements or arrangements necessary for the

operation of the broadcasting service.

(2) All broadcasters shall—

- (a) file with the Authority the returns and documentation at such intervals as prescribed in the licences;
- (b) ensure that their station identity or logo is—
 - (i) unique;
 - (ii) duly registered as a business name or under the relevant intellectual property laws; and
 - (iii) does not cause confusion;
- (c) keep the records as the Authority may direct from time to time;
- (d) display the station identity or logo at all times for television broadcasting and make audio announcements revealing the station's identity, for both radio and television, at such intervals as prescribed by the Authority in the licence;
- (e) ensure they incorporate in their systems, minimum delay as prescribed in the licence during airing of live programming and call-ins for the purpose of blocking airing of undesirable content.
- (f) clearly provide full disclosure to listeners and viewers regarding the chargeable rates for short messaging service and studio call-ins;
- (g) ensure that relevant public service announcements are aired on a daily basis for the minimum duration as shall be specified by the Authority, including during the watershed period;
- (h) comply with the local content requirement;
- (i) not air any gaming activities programme and related adverts during the watershed period unless the same has been duly authorized by Betting Control and Licensing Board and appropriately classified by the Classification Board as suitable for the watershed period;
- (j) where such programme is aired, the Betting Control and Licensing Board licence number shall be prominently

announced or displayed and approved messaging clearly articulated; and

(k) comply with the Code of Conduct issued by the Media Council of Kenya.

(3) In the case of free-to-air broadcasting services the Authority shall ensure that the services—

(a) provide the amount of local content as specified under these Regulations and in the licence; and

(b) adhere strictly to the Authority's or subscribed programming codes in the manner and time of programming schedules.

Broadcasting licence fees.

7. The Authority may—

(1) prescribe fees payable for, the broadcasting services licence, application, renewal, transfer, annual licence fee and any other fees related to the services;

(2) specify the timeline within which the fees specified in sub-regulation (a) shall be paid together with interest or penalties to be levied for late payments.

Commencement of broadcasting service.

8. (1) A licensee shall, prior to the commencement of broadcasting services, notify the public of the intention to commence broadcasting service, through publication in at least two daily newspapers with national wide circulation.

(2) A licensee shall notify the Authority in writing, the following—

(a) a statement on the licensee's intention to transmit a broadcasting service from a station in the licensee's coverage area;

(b) the commencement date and time of transmissions;

(c) the assigned frequency or channel that the station shall operate from;

(d) the station programming format and the station identity or logo;

(e) the contact details of the officer assigned to handle complaints against the licensee in case any transmission by the licensee causes interference with the services provided by other licensees; and

(f) the address, email and telephone number of the licensee.

Renewal of licences.

9.(1) A licensee may, apply to renew its licence prior to its expiry within the timeline stipulated in the relevant licence and in such manner as the Authority may prescribe.

(2) The application for renewal of a license shall be accompanied by—

(a) certificate of compliance on classification of content from the Classification Board; and

(b) compliance certificate from the Media Council of Kenya;

(3) Where a licence is renewed, the applicant shall prior to the issuance of the licence pay such fees as the Authority may prescribe.

(4) Where the Authority rejects an application for renewal, it shall inform the licensee of the rejection within the time frame stipulated in the licence.

Ownership and control.

10.(1) The Authority may determine the maximum number of radio frequencies or free-to-air television channels, a person may be allocated to broadcast in the same coverage area.

(2) In determining the limit in sub-regulation (1) the Authority shall take due cognizance of—

(a) the availability of the spectrum resource;

(a) the need to ensure plurality and diversity in the market place;

(b) equitable access by other broadcasting categories;

(c) infrastructure already deployed for the service;

(d) capacity of applicant to provide the services; and

(e) diversity of content to be aired.

(3) The Authority shall notify the all licensees affected by sub-regulations (1) and (2) and require them to comply within a prescribed time frame.

(4) The shareholding of a licensee shall at all times comply with the Information Communications and Technology Sector Policy Guidelines, as may be published from time to time by the Government.

(5) A licensee seeking for approval of a change in shareholding shall, at least sixty days prior to effecting such proposed change, notify the Authority of

any proposed change in ownership, control or proportion of shares held in it, provided that:

- (a) any change in shareholding exceeding fifteen per centum of the issued share capital; or
 - (b) the acquisition by an existing shareholder of at least five per centum additional shares, shall require the prior written consent of the Authority and the Authority shall notify the applicant of its acceptance or refusal stating the reasons for the refusal, within thirty days of receipt of the application for the consent.
 - (c) A notification of change in ownership, control or proportion of shares held in a licensee shall state—
 - (i) the date when the intended transfer of ownership or part thereof is to be effected;
 - (ii) the name and address of the acquirer;
 - (iii) the names, nationality and addresses of persons who are in control of the business; and
 - (iv) any change in the name or address of the business.
- (6) In considering an application for a written consent for transfer of ownership or change of person in control or change in shareholding of a broadcasting licensee the Authority shall consider—
- (a) the capacity of the acquiring entity to roll out the broadcasting services;
 - (b) the nature of broadcasting services and programming that the acquiring entity intends to roll out;
 - (c) the extent to which the allocated frequency resource(s) of the entity to be acquired have been utilized;
 - (d) the possible impact on promotion of pluralism and diversity that the transfer may have;
 - (e) the effect or impact of the transfer on competition or promotion of competition in the sector;
 - (f) whether the transfer conforms with the stipulations of the ICT Sector Policy Guidelines;
 - (g) the past and current compliance record, relating to the conditions

of the current licences, of the acquiring and acquired entities; and

(h) any other matter as the Authority may consider relevant.

(7) A broadcaster shall not lease or transfer broadcast frequencies or channels assigned to it to any other person without the written consent of the Authority.

No. 17 of 1989

(8) For public listed companies, the Capital Markets Authority Act, 1989 shall apply.

PART III—BROADCASTING SERVICES

Public
service.

broadcasting

11. (1) A Public Broadcaster shall—

- (a) provide independent and impartial broadcasting services of information, education and entertainment in English and Kiswahili and such other languages as the broadcaster may decide;
- (b) provide a diverse range of programming that reflects the identity, needs and aspirations of Kenyans.
- (c) afford fair opportunity for the presentation of divergent views and dissenting opinions;
- (d) conduct the broadcasting services impartial attention to the interests and susceptibilities of the different communities in Kenya; and
- (e) keep a fair balance in all respects in the allocation of broadcasting hours as between different political view points;

(2) A public broadcasting service shall be supported by revenues from the exchequer, grants, donations and its commercial services.

(3) A public broadcaster shall not lease or transfer to third party the broadcast frequencies or channels assigned to it for use in public broadcasting, except where there is explicit authorization in writing by the Authority.

(4) The Authority may, on application by the public broadcaster, grant the public broadcaster a licence to provide broadcasting services on a commercial basis.

(5) Where the public broadcaster is granted a licence to provide broadcasting services on a commercial basis, it shall be required to maintain and keep separate accounts for its public and commercial broadcasting services.

(6) The Authority shall give priority to ensure equitable allocation of resources for the public broadcasting services.

(7) Where a public broadcaster has exclusive rights for the broadcast of a national event identified to be of public interest, such signal shall be made available for re-transmission by other interested broadcasting licensees at a reasonable charge.

Commercial free-to air broadcasting service.

12. A commercial free-to-air broadcaster shall—

- (a) be issued with a broadcasting service licence which may include the frequency or channel licence for each broadcast station that utilizes a frequency or channel resource;
- (b) provide a diverse range of programming that reflects the identity, needs and aspirations of people in its broadcasting area;
- (c) avail the channel to the designated multiplex centre for inclusion in the bouquet of a subscription broadcasting service provider, in un-encrypted and compatible format within a period of time as prescribed by the Authority, where such channel has been identified as a must carry channel:

Provided that the subscription service provider or the signal distributor shall bear any additional cost of carriage of the must carry channel on its platform.

- (d) Be required, without prejudice to paragraph (a) and (b) to provide programming that reflects the identity and needs of the people of Kenya, where the broadcaster provides national coverage;
- (e) commence broadcasts within a period specified by the Authority after being issued with a licence;
- (f) not acquire exclusive rights for the broadcast of national events identified to be of public interest as may be determined by the Authority from time to time

(2) The Authority may require a licensee who acquires exclusive rights over premium content to file the same with the Authority for the purpose of carrying out its regulatory mandate.

(3) The sale or acquisition of exclusive broadcasting rights over local premium content shall be done in a competitive, fair and transparent manner.

(4) Where a licensee acquires exclusive rights over premium content which has the option of sub-licensing, the licensee shall be under obligation to sub-license to other interested licensees in Kenya at a reasonable charge.

Community broadcasting services.

13. (1) A community broadcaster shall—

- (a) reflect the needs of the people in the community including cultural, religious, language and demographic needs;
- (b) deal specifically with community issues which are not normally dealt with by other broadcasting services covering the same area;
- (c) be informational, educational and entertaining in nature;
- (d) ensure that members of the community are involved in the running of the station, including among other activities, participation in the programming and selection of programming content to be aired;
- (e) receive sponsorship; and
- (f) be allowed by the Authority to advertise on their stations adverts that are relevant and specific to the target community within the broadcast area

(2) The Authority shall ensure that an equitable number of frequencies or channels are reserved for community broadcasting.

(3) A community broadcaster shall ensure any funds generated from the operations of a community broadcasting station are reinvested in activities benefiting the community and provide such reports to the Authority on annual basis.

(4) The Authority shall monitor community broadcasters to ensure that any funds generated from operations of a community broadcasting station are reinvested in activities benefiting the community.

Subscription broadcasting service licenses and subscription management services.

14. (1) A person who intends to provide subscription broadcasting services or subscription management service shall apply for a licence to the Authority in the prescribed manner.

(2) The Authority may require a licensee granted a licence under sub-regulation (1) to—

- (a) distribute broadcasting services, within the borders of Kenya or from Kenya to other territories;
- (b) provide a prescribed minimum number of local broadcasting channels in its service of platform;

(c) provide access to designated local channels on its service for a period of at least seven days for a customer who fails to renew their subscription.

(d) provide diversity in programming;

(3) A broadcasting service provider whose signal originates from outside Kenya and who wishes to provide their broadcasting services in Kenya shall have landing rights authorization from the Authority and be licensed as subscription service provider or provide their services through a subscription management service provider.

(4) The Authority may require the licensee to offer subscription management services to provide the following services on behalf of a multi-channel broadcasting subscription service provider or Landing Rights—

(a) subscription fee collection;

(b) marketing and sales;

(c) technical and installation support;

(d) operation of a national call centre for customer;

(e) guarantees of quality of service and customer protection; and

(f) any other services as the Authority may determine.

(5) A subscription management services provider shall not enter into contractual arrangements with a foreign multi-channel broadcasting subscription service provider unless the foreign multi-channel broadcasting subscription service provider has landing rights authorization issued by the Authority.

Obligations for subscription broadcasting services licensees and subscription management services.

15. (1) A person licensed to provide subscription broadcasting service or subscription management services shall provide a subscriber with information, in writing, relating to the—

(a) products and services offered;

(b) cost of subscription including installation and maintenance;

(c) options of programming service available;

(d) conditions under which the service is supplied;

- (e) instructions regarding to usage of the service in the official languages;
- (f) number and allocation of channels carried on the system and the programming available on each channel;
- (g) billing and complaints procedures;
- (h) address, email and telephone number of the licensee's business office.

(2) A person licensed to provide subscription broadcasting services or subscription management services shall provide means that parents or guardians may use to control access to broadcast content that is accessible and that they may consider inappropriate to children.

(3) Where a licensee under this category acquires exclusive rights over premium content which has the option of sub-licensing, the licensee shall be under obligation to sub-license to other interested licensees in Kenya at a reasonable charge.

(4) Where a new channel is to be added to the subscription platform, the licensee shall first seek the approval of the Authority, providing details of the content they intend to provide.

Terrestrial
broadcasting
distribution services.

digital
signal

16. (1) The Authority may upon application in the prescribed manner grant a licence for the provision of terrestrial digital broadcasting signal distribution services.

(2) The Authority may require a person granted a licence under paragraph (1) to—

- (a) distribute on its digital platform free-to-air and subscription broadcasting services and related data on behalf of its consortia members or other licensed broadcasting service providers as applicable;
- (b) submit to the Authority for approval any contractual agreements entered into with other licensed broadcasters for the distribution of broadcasting services prescribed under its licence;
- (c) provide its services on such terms and conditions as to access, tariffs and quality of service as the Authority may prescribe.
- (d) terminate the provision of services to a broadcasting service provider accommodated on its platform upon notification by the Authority within the period specified in the notice.

(e) provide channel insertion facility at its transmission sites to enable accommodation of signals of other broadcast licensees in the specific sites of interest.

(f) ensure that all channels carried on its platform are duly authorized or licensed by the Authority

(3) A licensee under this regulation shall comply with broadcast signal distribution tariff schedule approved by the Authority and regulation may impose charges in respect of—

(a) any contractual arrangements entered into under sub-regulation(2);

(b) reception of broadcastings services requiring conditionalaccess;

(c) the provision by of any apparatus or device enabling the reception ofdigital broadcasting services, including free-to-air broadcastingservices.

(4) A licensee under this regulation shall, in consultation with other broadcasters accommodated on its platform, prepare an electronic programme guide for audiences to use to access information relating to the schedules of programme materials for all broadcasting services it carries.

(5) A licensee under this regulation, shall enable the display of an up-to-date programme schedule complete with a programme rating from the Kenya Film Classification Board for each programme in all TV channels on its digital platform as provided by the licensed broadcasting service provider.

(6) Where a broadcasting signal distribution licensee is not able to comply with paragraph (4), due to failure by a broadcasting service provider to provide programme schedule information in accordance with paragraph (5) and the signal distributor may lodge a complaint with the Authority and notify the broadcasting service provider of an intention to terminate the agreement and shall give the broadcasting service provider an opportunity to respond.

(7) An entity shall be eligible to be licensed as a broadcast signal distributor if such entity or any of its consortia members own shares in another broadcast signal distributor licensed in Kenya, provided such an entity shall divest all the shares owned in the other licensed broadcast signal distributor within a timeline explicitly approved by the Authority in writing.

(8) A licensee under this regulation providing self-provisioning signal distribution services shall not be eligible to carry on its digital platform channels of third-party broadcasting licensees by the Authority, save its own channels, those of its consortia members and any other channel(s) that the Authority may prescribe in writing as mandatory must carry channel or channels;

(9) In coverage areas where such a licensee does not have infrastructure and wishes to provide coverage, they shall seek to be accommodated on platforms of duly licensed national common carrier broadcast signal distributors under mutually agreed commercial terms, subject to availability of capacity on their platform.

Foreign broadcasters.

17. The Authority shall, in consultation with the Cabinet Secretary license foreign broadcasters, subject to availability of frequencies or channels.

PART IV—CONTENT

Minimum standards.

18. Content prescribed in this part shall form the basis upon which the Authority or a recognized body of broadcasters shall prepare their respective programme codes.

General requirements.

19. (1) A licensee shall ensure that no broadcasts by its station—

- (a) contains the use of offensive language, including profanity and blasphemy;
- (b) presents sexual matters in an explicit and offensive manner;
- (c) glorifies violence or depicts violence in an offensive manner;
- (d) is likely to incite, perpetuate hatred, vilify any person or section of the community, on account of the race, ethnicity, nationality, gender, sexual preference, age, disability, religion or culture of that person or section of the community; or
- (e) fails to indicate the programme rating from the Classification Board prior to the commencement of such programmes.

Protection of children.

20. A licensee shall—

- (a) ensure that due care is exercised in order to avoid—
 - (i) content that may disturb or be harmful to children;
 - (ii) content that has offensive language, explicit sexual or violent material
 - (iii) music with sexually explicit lyrics or lyrics which depict violence; or
 - (iv) any content that is meant for adult audience;
- (b) not broadcast programmes with the content specified in paragraph (a) during the watershed period;

- (c) request for permission to conduct an interview with a child from the child's parents or guardian before conducting an interview with a child.

News reporting.

21. A licensee shall ensure that news and information are broadcast and presented in a balanced manner, without prejudice or negligent departure from facts through distortion, exaggeration, misrepresentation and material omissions give fair reporting regardless of its context and importance.

Unconfirmed reporting.

22. A licensee shall ensure that—

- (a) reports or broadcast from its station are based on fact and that are not founded on opinion, rumour supposition, or allegation unless the broadcast is carried out in a manner that indicates these circumstances clearly;
- (b) it does not broadcast any report where there is sufficient reason to doubt its accuracy and it is not possible to verify the accuracy of the report before it is broadcast.

Correction of errors in reports.

23. A licensee shall broadcast correction of any factual error—

- (a) without reservation, as soon as it is reasonably possible after it has been established that there was an error; and
- (b) with such degree of prominence and timing and shall be broadcast during a similar time-slot as the original error as soon as is reasonably possible and where appropriate shall include an apology.

Reporting on controversial issues.

24. A licensee shall endeavour to ensure that when broadcasting controversial issues of public interest during live broadcasts—

- (a) a wide range of views and opinions are represented;
- (b) a person or organisation whose views on any controversial issues of public interest have been criticised during a broadcast, is given a right of reply within a reasonable time;
- (c) a reply to criticism under paragraph (b) is given a similar degree of prominence and shall be broadcast on a similar time-slot, as soon as is reasonably possible.

Election period.

25. During an Election period, a licensee shall—

- (a) provide equitable coverage and opportunities to registered political parties participating in an election and in particular to presidential candidates;

- (b) ensure that the name of the political party or sponsor, if any, on whose behalf a broadcast is made, is announced, immediately before the commencement and immediately after such broadcast;
- (c) not permit any broadcast sponsored by or made on behalf of a political party other than an advertisement thereof to be dramatized; and
- (d) ensure that the employees of a licensee who wish to be candidates for any elective position(s) resign from their employment with the licensee during the election period.
- (e) ensure that employees of the licensee, in the execution of their duties, do not wear or exhibit symbols or appear with outfits or logo associated with any political party or contestant during the election campaign period;
- (f) ensure that licensee or its employees do not accept gifts, favours or special treatment by political parties or other interest that compromise professional integrity and editorial independence;
- (g) give political parties and candidates the right of reply where a report aired under the editorial responsibility of the licensee contains inaccurate information or unfair criticism based on distortion of facts;
- (h) ensure that the opportunity to reply is given within twenty-four hours in a programme of similar weight and audience;
- (i) ensure that its presenters who are on air do not in any way campaign for any person who wishes to seek an elective position during the electioneering period; and
- (j) not broadcast views that could incite violence or advocate hatred that is based on race, ethnicity, gender, religion or political convictions and that constitute incitement to cause harm to candidates participating in elections or the general public.

Referendum period.

26. During the Referendum period, a licensee shall—

- (a) provide equitable coverage and opportunities to the registered referendum committees participating in the referendum;
- (b) ensure that the name of the referendum committee or sponsor, on whose behalf a broadcast is made, is announced, immediately before the commencement and immediately after such broadcast;
- (c) not permit any broadcast sponsored by or made on behalf of a referendum committee other than an advertisement thereof to be

dramatized;

- (d) ensure that any employee of a licensee who wishes to be support for any referendum committee resigns from their employment with the licensee during referendum period.
- (e) ensure that employees of the licensee, in the execution of their duties, do not wear or exhibit symbols or appear with outfits or logo associated with any referendum committee during the referendum campaign period;
- (f) ensure that licensee or its employees do not accept gifts, favours or special treatment by any referendum committee or other interest that compromise professional integrity and editorial independence;
- (g) give the referendum committee the right of reply where a report aired under the editorial responsibility of the licensee contains inaccurate information or unfair criticism based on distortion of facts;
- (h) ensure that the opportunity to reply is given within twenty-four hours in a programme of similar weight and audience;
- (i) ensure that its presenters who are on air do not in any way campaign for any referendum position during the referendum period
- (j) not broadcast views that could incite violence or advocate hatred that is based on race, ethnicity, gender, religion or political convictions and that constitute incitement to cause harm to any persons participating in the referendum or the general public;

Conduct of interviews.

27. (1) A licensee shall ensure that any person who is to be interviewed in any of the licensee's broadcastis—

- (a) advised of the subject of the interview;and
- (b) informed, before the interview takes place, to determine whether theinterview is to be recorded or broadcast live.

(2) A licensee shall exercise sensitivity in conducting interviews withbereaved persons, survivors of traumatic incidents or witnessesthereof.

Commentaries.

28. A licensee who broadcasts comments made by the licensee or by any person invited by the licensee, shall ensure the presentation of such comments is in a manner that clearly indicates that they are based on facts which are clearly stated.

Sexual offences.

29. A licensee shall—

- (a) not disclose, in a broadcast, the identity of a victim of a sexual offence unless such victim consents in writing to the disclosure of his or her identity.
- (b) avoid the use of unnecessary or repetitive detail when broadcasting the circumstances of a sexual offence.
- (c) where the victim has not consented to disclose identity, not to broadcast scenes or backgrounds that can easily be used in the identification of the victim.

Consent to broadcast.

30. A licensee shall not broadcast any information acquired from a person, including information captured without the person's knowledge and without that person's consent, unless the information so acquired is essential to establish the credibility and authority of a source, or where the information is clearly in the public interest.

Programme sponsorship.

31. A licensee—

- (a) shall not accept sponsorship of news broadcasts;
- (b) shall accept sponsorship of weather broadcasts, financial broadcasts or traffic reports;
- (c) shall retain ultimate editorial control of a sponsored programme;
- (d) shall ensure that sponsorship of an informative programme does not compromise the accuracy and impartiality of the programme's contents;
- (e) shall not unreasonably discriminate against or favour a particular sponsor;
- (f) shall not broadcast any programme which has been sponsored by a political party save for an advertisement by a political party in which case the advert must be distinctly identified so as not to be confused with normal programming;
- (g) shall acknowledge the sponsorship of a programme immediately before, during and after the programme is broadcasted, and identify any connection between the programme's subject-matter and the sponsor's commercial activities.

Infomercials.

32. (1) A licensee shall not broadcast an infomercial during any break in the transmission of a children's programme or during prime time—

(2) A licensee shall ensure, through visual or audio form, that the broadcast of an infomercial is distinguishable from any broadcast programme material.

(3) A licensee shall ensure that all infomercials that are broadcast by its station are lawful, honest, decent and conform with the principles of fair competition.

(4) A licensee shall ensure that the infomercials are rated by Classification Board for age suitability.

(5) The provisions of sub-regulation (1) and (2) shall not apply to stations which exclusively broadcast infomercials.

Soliciting of information.

33. (1) A licensee shall not knowingly pay any person involved in a crime or any person who has been convicted of a criminal offence, in order to obtain information.

(2) A licensee shall ensure that investigative reports are balanced, accurate, fair and complete.

Advertisements.

34. (1) A licensee shall ensure that it only broadcasts advertisements that are lawful, honest, decent and conform with the principles of fair competition.

(2) A licensee shall ensure that advertisements broadcast by its station do not—

(a) contain any descriptions, claims or other material which may, directly or by implication, mislead members of the public in relation to the product or service advertised, or about its suitability for the purpose recommended; and

(b) unfairly attack or discredit, directly or by implication, any other advertisers, products or advertisements.

(3) A licensee shall, before broadcasting an advertisement, ensure that any descriptions or claims in the advertisement have been adequately substantiated by the advertiser.

(4) A licensee shall not unreasonably discriminate against or favour any advertiser.

(5) A licensee shall exercise responsible judgment when scheduling advertisements that may be unsuitable for children during periods when large numbers of children are expected to be watching or listening to programmes.

(6) A licensee shall ensure that—

(a) any advertising breaks are clearly distinguishable from broadcast programmes; and

(b) its presenters, when reading advertisements, make a clear

distinction between the programming material and the advertisements they deliver.

(7) All advertisement are rated by the Classification Board for age suitability.

(8) The Authority may advice within the programming code provisions on permissible adverts to be aired by broadcasters.

Watershed period.

35. (1) A licensee shall ensure that—

- (a) content which depicts or contains scenes that are rated by the Classification Board as adult, or are of the language intended for adult audiences or are meant for adult audiences are not aired during the watershed period;
- (b) all programmes broadcast during the watershed period, including advertisements, shall be for the best interest of the child;
- (c) all programmes broadcast during the watershed period, are suitable for family audiences and the transition from family oriented to a more adult programming after the watershed period is gradual;
- (d) consumer advice such as warnings, labelling, classification details and other announcements as assigned by the Classification Board are given prior to the telecast of a programme or its trailers.
- (e) all trailers and promotional material shown before the watershed time comply with all the above provisions.
- (f) the scheduling of any programming that promotes gaming activities and associated adverts is fully compliant with the classification rating assigned to the content by the Classification Board and the gaming activity is duly licensed by Betting Control and Licensing Board.
- (g) all licensees shall exercise responsibility in scheduling of programmes to reduce the risk of causing offence.

Local content.

36. (1) The Authority may require a licensee to commit the minimum amount of time, to broadcast of local content prescribed from time to time by the Authority in the Programming Code or by notice in the *Gazette*.

(2) Where a broadcaster is unable to comply with the provision of sub-regulation (1), the Authority shall require such broadcaster be penalized as provided in Section 83A 1(c) of the Act.

(3) Where a broadcaster fails to or is not able to submit gross revenue return or understates gross revenue, as provided under section 83A (1) (c), the

Authority shall have the right to estimate the licensee's contribution for that calendar year and the decision of the Authority shall be final.

Accessibility to content for the physically challenged.

37. (1) The Authority shall require broadcasters to take specific steps to promote the understanding and enjoyment of programmes transmitted through its stations by persons who are physically challenged and in particular, persons who are deaf or hard of hearing, or who are blind or partially sighted (hearing or visually impaired).

(2) The Authority shall from time to time, prescribe in the Programming Code or by notice in the *Gazette*, the manner, time and percentage of programmes to be broadcast, targeting persons referred to in paragraph (1).

PART V—PROGRAMMING CODE

Setting standards for programmes.

38. (1) The Authority shall prescribe a programming code and any other relevant industry guidelines that sets the standards for the time and manner of programmes to be broadcast by licensees.

(2) A licensee shall be subject to the programming code prescribed by the Authority or by a duly recognized body of broadcasters under regulation 38.

(3) A licensee who is a member of the body of broadcasters under regulation 38 shall abide by the Programming Code prescribed by the Authority during the period the Code by the body of broadcasters is yet to be approved by the Authority.

(4) A licensee shall ensure that content aired on their social media or online platforms is safe, secure and is duly classified by the Classifications Board.

Acceptance of Programming code.

39. (1) Pursuant to section 46H of the Act, any registered body of broadcasters wishing to operate under its own Programming Code shall submit such a code to the Authority for approval.

(2) A body of broadcasters referred to in paragraph (1) shall satisfy the Authority that all its members subscribe and adhere to the Programming Code that has been approved by the Authority.

(3) A licensee who subscribes to a Programming Code prescribed by a body of broadcasters under paragraph (1) shall furnish the Authority with proof of membership, subscription and adherence to the Programming Code prescribed by the body.

(4) When considering a Code submitted for approval, the Authority shall have regard to the specific standards to be complied with and rules and practices to be observed as prescribed in part IV of these regulations and such other matters as the Authority may prescribe from time to time.

(5) In the event that the Programming Code is not acceptable either in part or in whole—

- (a) the Authority shall notify the body of broadcasters in writing and specify the remedial measures that the broadcasting body is to undertake in order to satisfy the Authority's requirements; and
- (b) the body of broadcasters shall within thirty days from the date of notification resubmit the revised Programming Code for reconsideration by the Authority.

(6) Once the Authority approves the Programming Code submitted under this regulation, the body of broadcasters shall publish its Programming Code and a list of broadcasters subscribing to the code, and avail both the Programming Code and list to the public.

(7) The body of broadcasters shall—

- (a) avail to the Authority such information relating to the enforcement of the Programming Code as the Authority may require and, in the form prescribed by the Authority;
- (b) inform the Authority within five days if any of its members ceases to subscribe to the Programming Code of the body of broadcasters;
- (c) cause to be published in at least one newspaper circulating in Kenya, its website or a daily announcement on its broadcast service, a notice of the fact that the code is available for inspection by any member of the public.
- (d) review or cause the revision of the Programming Codes and enforcement mechanisms at least once in every two years from the date of the Programming Code and mechanisms came into force;
- (e) file the reviewed Programming Code with the Authority for approval.

PART VI—COMPLAINTS HANDLING PROCEDURE

Complaints
procedure.

handling

40. (1) Every broadcaster shall develop a procedure, for handling complaints from persons who may be aggrieved by its broadcasts.

(2) The complaints handling procedure, shall, among other things cover the following—

- (a) full name of the broadcaster as it appears in the licence as well as the broadcast station identity specific to different broadcast services offered;
 - (b) the physical postal address, email addresses, social media handles and telephone numbers where complaints can be sent;
 - (c) the details of the contact person authorized to receive and handle complaints;
 - (d) the manner in which the complaint may be lodged including the applicable languages;
 - (e) details which need to be submitted when lodging a complaint;
 - (f) the need for the complainant to retain a copy of every correspondence exchanged between complainant and broadcaster;
 - (g) the manner in which the complaint shall be investigated and process of investigation;
- (3) In addition to the information under sub-regulation (2) the complaint handling procedure shall include information—
- (a) to listeners or viewers that the first opportunity to resolve a complaint shall be given to the broadcaster to resolve the complaint;
 - (b) relating to the timeframes for responding to the complainant, and resolving the complaint;
 - (c) relating to how complaints from physically challenged and illiterate consumers who are not capable of providing complaints in writing, shall be addressed;
 - (d) on the methods of recording and tracking of complaints, together with the associated responses;
 - (e) on the duration of storage of records of complaints received and actions taken;
 - (f) on the retention and production of recordings of any programme which is the subject matter of a complaint;
 - (g) on the categories of complaints which the broadcaster is under no obligation to respond to or complaints considered frivolous, vexatious or an abuse of the complaint process or from

complainants who choose to remain anonymous.

- (h) On any other matter as the Authority may from time to time by notice in the prescribe.

Obligations of licensees.

41. (1) A licensee shall—

- (a) make its complaints handling procedure available to the public;
- (b) respond to a complaint within fifteen days and resolve the complaint within thirty days of receipt of the complaint;
- (c) inform their listeners or viewers, during the station's prime time, of the existence and content of a complaints handling procedure at such intervals as may be prescribed by the Authority;
- (d) not dispose of broadcast transcripts or recordings related to a complaint so long as it has not been summarily resolved either by the broadcaster, the Authority, the Communications and Multimedia Appeals Tribunal or the High Court; and
- (e) submit to the Authority, on a quarterly basis, a written report of all complaints received during the period and the manner in which they were addressed.

(2) The clause in the licence stipulating the minimum duration that a licensee shall retain a copy of recordings of broadcasts shall not apply to paragraph (1) (d).

Approval of Complaints Handling Procedure.

42. (1) A licensee shall, within such periods as prescribed by the Authority submit its Complaints Handling Procedure to the Authority for approval.

(2) In the event that the Authority does not approve the complaints handling procedure submitted under sub-regulation (1), in part or in whole—

- (a) the Authority shall specify the remedial measures the broadcaster shall take in order to satisfy the Authority's requirements; and
- (b) the broadcaster shall within thirty days of being notified of the disapproval, resubmit the revised complaints handling procedure for reconsideration by the Authority:

(3) In the interim, the Authority may require the broadcaster to handle any complaints submitted during that period in accordance with the procedure determined by the Authority.

(4) A broadcaster shall, after approval by the Authority, publish its

Complaints Handling Procedure.

Escalating Complaints to the Authority.

43. (1) Where any person alleges that they have exhausted the mechanisms in the broadcasters' complaints handling procedure and they are not satisfied with the remedy offered or action taken, the person may appeal to the Authority and such appeal shall be dealt with in accordance with the Dispute Resolution Regulations or such procedures as may be prescribed by the Authority from time to time.

(2) The Authority may, on its own motion, investigate a matter where in its view a broadcaster has breached the provisions of the Act, Regulations or the Programming Code.

(3) An aggrieved party to a broadcast shall lodge a complaint with the broadcaster within a period of thirty days from the date of occurrence of the subject broadcast, or date when they became aware or ought to have been aware of the said offensive broadcast.

(3) Where a licensee and a complainant settle a complaint under these Regulations, the settlement or agreement shall be binding and final as between the parties with regard to the complaint.

PART VII—GENERAL PROVISIONS

Public emergencies.

44. (1) All broadcasting service providers shall provide a public notice of an emergency nature, public service announcement or a public disaster announcement upon the request of a person authorized by the Government.

(2) The Authority shall prescribe, the manner in which broadcasters shall provide information during public emergencies or national disasters.

Offences and penalties.

45. (1) A person who contravenes any provision of these Regulations commits an offence and is liable to conviction to the penalty stipulated in section 46Q(3) of the Act.

(2) Subject to section 46J and 83A, a licensee who contravenes any provision of these Regulations shall be notified in writing of the contravention and the Authority shall determine the regulatory sanction to impose.

Revocation.

46. The Kenya Information and Communications (Broadcasting) Regulations, 2009 are hereby revoked.

Made on the.....day of.....2022

JOE MUCHERU,
Cabinet Secretary,
Ministry of ICT, Innovation and Youth Affairs

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