



**The Walt Disney Company (Benelux) B.V.
("Disney")**

Disney Media Sales & Partnerships Standard Terms & Conditions for Advertisers

1. Nature of Agreement.

- 1.1 These terms and conditions ("**Terms**") together with a confirmed advertising sales order ("**Order**"), the Technical Requirements for File Based Delivery of Commercials ("**Specifications**"), Disney Advertising Guidelines (the "**Ad Guidelines**") and any special terms agreed between the parties in writing and set out in the Order or annexed to these Terms ("**Special Terms**") together form the agreement between Disney and Advertiser (the "**Agreement**"). The current Specifications and Ad Guidelines are available on <https://disneypartners.disney.nl> or will be provided by email. The terms of this Agreement shall apply to all advertising, sponsorship or other promotional activity of the Advertiser to the exclusion of all other terms and conditions including any terms and conditions which the Advertiser may purport to apply under any purchase order, confirmation of order or other document unless such variation has been agreed in writing and signed by both parties.
- 1.2 To the extent that there is any conflict between the Order, the Specifications, the Ad Guidelines, the Special Terms and these Terms, these Terms shall take priority.
- 1.3 A media buyer, advertising agency or agent shall be deemed the "Advertiser" for the purposes of obligations under the terms of this Agreement and shall be deemed to contract as principal in all respects (notwithstanding that its client is identified) and as such will be personally responsible for the payment of any fees or surcharges due, unless other arrangements are agreed in writing. It will be the responsibility of the media buyer, advertising agency or agent as principal, and not that of Disney to collect all monies owed to it.
- 1.4 By placing an Order with Disney for Advertising, the Advertiser, accepts in full the terms and conditions of this Agreement.

2. Definitions. In the Agreement, the following terms will have the following meanings unless the context otherwise requires:

Advertising	means the advertising copy, creative, materials or other content, including without limitation, any graphics, text, any sound or animated aspects and any content not usually visible to the viewer of the Advertising, of whatever nature;
Advertiser	means the person, firm or company making a booking specified in the Order together with any media buyer or advertising agency therein specified, in which case Advertiser shall mean both the advertiser and its media buyer or advertising agency from time to time on a joint and several basis;
Airtime	means linear broadcast advertising and sponsorship time within a commercial break available for the transmission of Advertising;
Applicable Law	means any and all applicable laws, rules and regulations and codes of practice, including but not limited to, any and all advertising and marketing, tax, labour, product safety, competition and/or fair trade laws, regulations, codes of practice, voluntary industry standards, association laws or other obligations and any notes of guidance or bulletins issued by the Regulator or Clearance Body;
Campaign Period	means the campaign promotion period set out in the Order;
Campaign Start Date	means the campaign or ad flight start date as specified in the Order;
Clearance Body	means the Dutch Advertising Code Authority (<i>Stichting Reclame Code</i>);

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Deadline	means any copy delivery or advance booking date which must be met in order to display, transmit or publish the Advertising as set out in the Order;
Disney Media	means the Disney websites, TV channels, publications or other advertising or media space which carry, publish or otherwise include Advertising, as specified in the Order;
Impression	means the number of separate occurrences of an online ad as specified in the Order;
Regulator	means the Dutch Media Authority (<i>Commissariaat voor de Media</i>) or any other independent body appointed from time to time under applicable legislation to regulate broadcasting activity;
Third Party Server Ads	means Advertiser's online ads which are delivered via servers under the control of third parties and outside the control of Disney;
TVR	means a television rating being one per cent of a given audience universe;
Working Day	means Monday to Friday inclusive in each week except any Bank or Public Holiday. Advertising delivered after 4pm on a Working Day shall be deemed to have been received on the next Working Day.

3. **Disney's Obligations.** Subject always to payment of the Fees and Section 8 below, Disney agrees to display, transmit or otherwise publish the Advertising on the relevant Disney Media during the Campaign Period in accordance with the terms set out in the Order.

4. **Advertiser Obligations.** Advertiser agrees and undertakes as follows:

- (a) to pay the Fees specified in the Order on the dates due for payment;
- (b) to provide to Disney for review prior to acceptance and on or before the Deadline:
 - (i) a copy of the Advertising in the format specified in the Order and conforming to the Specifications;
 - (ii) any content (or technology) in addition to online ads that may be provided or sent to any Disney website or other online user including, without limitation, server "cookies" or any other devices or methods for tagging and/or labelling such user;
 - (iii) copies of any messages that a Disney Media user might see when interacting with the online ad. This includes, without limitation, any error messages if the online ad fails to operate correctly, and any browser notice requesting user acceptance of a server "cookie";
 - (iv) any other information reasonably necessary in order to allow Disney to assess the suitability of the Advertising.
- (c) to comply in all respects with the requirements of the Specifications and Ad Guidelines; and
- (d) to respond in good faith to questions raised by Disney in relation to any Advertising in a timely manner. All technical and non-technical issues must be resolved to Disney's satisfaction prior to the delivery of any Advertising to Disney and/or Disney Media users.

5. **Submission of Orders.**

5.1 All requests for the display, transmission or other publication of Advertising must be submitted to Disney either by email (in the case of Airtime bookings made via Disney's designated booking system acceptance of electronic bookings are subject to these Terms). Disney shall have no obligation to accept any Order or booking submitted by the Advertiser.

5.2 Prior to the acceptance of any Order, Disney reserves the right to obtain credit approval from a third party credit scoring agency in relation to the Advertiser and the Advertiser agrees that, where necessary, it will provide such information as is reasonably necessary in order to allow Disney to make such an assessment including periodic re-assessments at reasonable intervals. Order acceptance is subject to satisfactory credit approval. Disney may in its absolute discretion at any time grant credit (with or without conditions and/or limits) to the Advertiser and withdraw credit previously granted to the Advertiser and/or vary any conditions and/or limits applying to any credit. The Advertiser will comply with the obligations contained in any agreement between it and Disney or any such third party relating to the granting of credit by Disney (including specific terms of any bank guarantee that may be required to secure a credit facility) and the Advertiser acknowledges that no information or report made by Disney or any third party will in any way oblige Disney to grant credit (on particular terms or otherwise) to the Advertiser.

5.3 Advertiser hereby grants Disney a royalty-free, non-exclusive licence to use all intellectual property or other proprietary rights incorporated in the Advertising for the purpose of allowing Disney to comply with its obligations under the Agreement and hereby authorises Disney to display, transmit or otherwise publish all Advertising delivered pursuant to this Agreement.

6. Delivery Deadlines and Clearance of Advertising.

6.1 **Airtime.** Advertising must be delivered to Disney no later than five (5) Working Days prior to the Campaign Start Date accompanied with any applicable rotation instructions. In exceptional cases Disney will endeavour but is not obliged to accept Advertising delivered after the Deadline. Where Advertising is delivered late, the Advertiser shall at the discretion of Disney be liable to pay in full for the Advertising booked whether or not any Advertising is in fact transmitted or published.

6.2 **Online Ads.** The following deadlines will apply to the provision of online ads by the Advertiser:

- (a) For Orders involving a Third Party Server Ad and/or an online ad containing custom technology, no later than ten (10) working days prior to the Campaign Start Date;
- (b) For all other Orders, no later than seven (7) working days prior to the Campaign Start Date; and
- (c) For the provision of the approved online ad in suitable electronic format in accordance with the Specifications, no later than five (5) working days prior to the Campaign Start Date.

If any online ad is delivered after the Deadline the Advertiser will lose Impressions on a daily pro-rata basis from Campaign Start Date until copy is delivered and Disney can test and post it (3 Working Days for testing standard Universal Advertising Package (UAP) formats and 5 Working Days for Rich Media formats are required as a minimum however Disney will use its reasonable endeavours to set up campaigns as soon as possible, assuming that copy meets the Specifications). If an Advertiser needs to change the Campaign Start Date because the creative is not ready or the website is not yet live this can be done up to ten (10) Working Days before the original Campaign Start Date. Charges will be made for creative received after 12.00 p.m. on the Working Day before the Campaign Start Date.

6.3 Disney reserves the right at any time in its absolute discretion not to display, transmit or publish (or to remove after publication) any Advertising where the content does not meet Applicable Law or Disney's standards for content, images, graphics text, audio messages or in any other way as set out in the Specifications or Ad Guidelines or where Disney believes that the Advertising is unsuitable having regard to the age and profile of those viewing, visiting or otherwise using the relevant Disney Media.

6.4 If Disney decides that any Advertising is unsuitable, Disney shall notify the Advertiser who must supply alternative Advertising at its own cost as soon as possible and in any case not later than the Deadline. Should alternative copy not be supplied or not be accepted Disney shall be entitled to be paid by the Advertiser in full for the booking.

6.5 In the event that any new and/or updated Advertising is not received by Disney prior to the appropriate Deadline, Disney shall be under no obligation to observe the Campaign Start Date. In addition, Disney may, at its sole option, use or display previously provided Advertising in order to satisfy the Order.

6.6 Delivery of Advertising shall be deemed to have been made only when Disney's Specifications have been met and the relevant display, transmission or publication instructions have been given and agreed.

6.7 The provisions of this Section 6 shall be without prejudice to any special arrangements for bookings made at shorter notice and agreed in writing by an authorised representative of Disney.

6.8 While every reasonable care will be taken in respect of physical advertising materials in Disney's possession or control Disney cannot accept liability for the delay in delivery, loss or damage thereof whether in the studios or in transit and whether or not such materials are supplied by Disney and whether any delay, loss or damage is occasioned by Disney's fault or negligence. Unless otherwise instructed Advertising may be destroyed by Disney if not transmitted for a period of 90 days without further notice.

7. Pre-Clearance of Broadcast Advertising.

7.1 Advertising will only be transmitted if approved by Disney, satisfy the Specifications and comply with the Ad Guidelines and Applicable Laws and in addition:

- (a) scripts and/or storyboards, along with consignment notes for all spot Advertisings must be submitted in advance to the Clearance Body for provisional approval before delivery to Disney;
- (b) all finished advertising copy must be submitted to the Clearance Body for approval before transmission;

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provided always approval by the Clearance Body of any Advertising shall not in any way prejudice Disney's right to reject any Advertising as provided under this Agreement.

- 7.2 All broadcast programmes are subject to suspension or cancellation or placement at the sole discretion of Disney.
- 7.3 Disney reserves the right in its absolute discretion to do any act or thing in respect of the transmission of any Advertising or part thereof (including the fading, editing, or cutting thereof) and Disney shall not thereby incur any liability to the Advertiser who shall have no claim whatsoever with respect to the same but the Advertiser shall remain liable to Disney for the charges payable hereunder for such Advertising.
- 7.4 Disney will use its best endeavours to adhere to Advertising rotation instructions but shall not be liable for any failure to comply with those instructions. Disney also reserves the right not to transmit the Advertising if rotation instructions are not received by Disney two (2) clear Working Days before the Campaign Start Date. No protection against proximity of competitive products is given.
- 8. Rejection or Restriction of Advertising.**
- 8.1 Disney reserves the right in its absolute discretion (and without incurring any liability) to decline to display, transmit or publish any Advertising without giving any reason for declining but the Advertiser shall not be liable to pay for any Advertising which Disney declines to transmit provided such Advertising has been delivered on time.
- 8.2 Disney reserves the right to restrict any repeat display, transmission or publication of any Advertising.
- 8.3 Disney shall not be held responsible for any addition to, changes in or deletions from any Advertising required by any Regulator or Clearance Body or delays resulting therefrom.
- 8.4 Disney reserves the right to reject competitive advertising that contain any day or time specific or appointment to view references.
- 8.5 Airtime Advertising which is not a standard time length will only be accepted by Disney if it can be transmitted within the same break as the other Advertising for the same client or product and the total length bought is a standard time length. Rates for standard and non-standard time lengths are available from Disney on request.
- 9. Multiple Ad Creatives.**
- 9.1 Disney shall make reasonable endeavours to accommodate the Advertiser's wishes to run different creative versions of an online ad during a Campaign Period. However, Disney shall not be obliged to accept different creative versions and reserves the right at its absolute discretion to refuse Advertising which promotes more than one product.
- 9.2 If in Disney's opinion any Advertising promoting more than one product is the consequence of editing two or more advertisements with the purpose of taking advantage of reduced rates for Airtime of a greater timelength, Disney reserves the right, at its absolute discretion, to charge such Airtime at a rate equivalent to that which Disney would have charged had the Advertising for each product been submitted to it separately.
- 10. Dates & Times of Transmission or Publication.**
- 10.1 Disney does not guarantee that the times and/or dates of display, transmission or publication will be adhered to. If Airtime is not transmitted on the day and in a break arranged, Disney will endeavour to offer a transmission at some other date which may be accepted instead by the Advertiser.
- 10.2 Disney shall incur no liability for any failure to display, transmit or publish all or any part of any Advertising or for any failure to adhere to Advertising rotation instructions, except that if a total failure to transmit shall be due to the fault of Disney the Advertising shall not be charged for.
- 10.3 Airtime advertising appearing within thirty (30) minutes of the segment booked will normally be regarded as appearing within the segment. Advertising booked for transmission at a specific time will be transmitted in the commercial break nearest to that time.
- 10.4 While every endeavour will be made to give seven (7) days' notice in respect of any change of time segments and classifications, Disney reserves the right to make such changes at shorter notice. Unless otherwise agreed between the parties in writing in the event of such a change, the rate payable shall be at the rate in force at the time of the transmission after taking into account any such change.
- 11. Cancellation or Postponement.**
- 11.1 Any Order may be cancelled by either party provided that notice in writing is received and acknowledged by Disney or the Advertiser not less than nine (9) weeks before the Campaign Start Date. Cancellation or postponement requests for

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campaigns within nine (9) weeks before the Campaign Start Date shall be considered by Disney and may be accepted at Disney's absolute discretion subject to the following cancellation charges that apply to the entire campaign:

Over 6 weeks from Campaign Start Date	20% of Fees
29 to 42 days from Campaign Start Date	35% of Fees
15 to 28 days from Campaign Start Date	50% of Fees
Within 2 weeks of Campaign Start Date	100% of Fees

11.2 Unless an Order is cancelled in accordance with this Agreement, an Advertiser who fails to deliver any Advertising by the Deadline will remain liable to pay in full whether or not the Advertising is displayed, transmitted or otherwise published. Disney reserves the right to retain all expenditure for any postponed campaign and to rebook the Advertising during a mutually agreed period.

12. **Third Party Server Ads.**

12.1 Advertiser may request in writing that Third Party Server Ads be included as part of an Order. The request must be accompanied by all relevant supporting documentation and information in accordance with this clause and within the deadlines set out in Section 6. Requests will be reviewed on a case by case basis, and Disney reserves the right in its absolute discretion to refuse any such request.

12.2 Where permitted by Disney, Third Party Server Ads must comply with the following conditions:

- (a) the online ads, once approved, may not be changed without prior written approval from Disney;
- (b) any technical standards or other speed and/or volume requirements specified by Disney; and
- (c) Advertiser shall ensure that the third party responsible for control over the servers on which the Third Party Server Ad is to be located will be responsible for providing accurate information of at least the same statistics as are typically provided by Disney to both to the Advertiser and to Disney. In the case of dispute as to such statistics, Disney's own statistical information as to the number of Impressions and click through yield allocated to the online ads by Disney's servers will be deemed to be accurate in the absence of manifest error.

13. **Statistical Reporting.** Save in respect of Third Party Server Ads, Disney will provide Advertiser with a report on a monthly basis, unless otherwise agreed in the Order detailing the number of Impressions and related click yield in relation to each online ad. Advertiser agrees to accept Disney internal reporting as the official basis for measuring the delivery of Impressions and related click yields, and acknowledges that it shall not be entitled to any further information on the number of Impressions and click yields.

14. **Use of Data.**

14.1 Prior to acceptance of any Order for online ads, Advertiser will submit in writing a clear and accurate description of what, if any, specific data will be collected by Advertiser or any third party arising from the operation of the online ad, how, when and where any such data will be collected, reported and distributed. Advertiser also agrees to respond in good faith to all Disney questions in a timely manner. Unless otherwise agreed by Disney on a case-by-case basis, no data may be collected in the online ad or on the page immediately displayed as the result a click on the online ad.

14.2 Advertiser agrees that neither it nor any third party operating a third party server, nor any agent or other party operating within Advertiser's control or upon its instructions, will be permitted to take data arising out of the operation of the online ad and use it in conjunction with any other data source or sources to identify any Disney Media user as an individual.

15. **Invoicing and Payment Terms.**

15.1 The applicable Fees are stated in the Order. Subject to Section 15.2, a written invoice in respect of Fees will be issued to Advertiser within thirty (30) working days of the Campaign Start Date. Payment by Advertiser of the Fees in the currency outlined on the invoice will be due to Disney no later than thirty (30) days from the date of the invoice. Disney reserves the right to apply an interest charge on late payments at a rate of 4% above EURIBOR base rate from time to time.

15.2 Unless otherwise agreed in writing, where an Advertiser does not satisfy Disney's credit rating requirements or does not otherwise comply with this Agreement it will be required to pay the Fees in advance not later than ten (10) Working Days prior to the scheduled display, transmission or publication date and in default of payment Disney shall be entitled, without prejudice to its right to be paid and other remedies for breach of contract, to refuse to display, transmit or otherwise publish the Advertising.

15.3 In a case where any campaign exceeds one calendar month in length, Disney may, at its option, issue several interim invoices for appropriate time periods during the Campaign Period.

- 15.4 No further Orders will be accepted from Advertiser when any Fees due to Disney have been outstanding for more than ninety (90) days. Disney reserves the right to delay the Campaign Start Date or suspend display, transmission or publication (without prejudice to its right to be paid in full), until full payment is received in respect of any such outstanding Fees.
- 15.5 The existence of a query in any individual item in an account will only affect the due date of payment of that individual item. The Advertiser must notify Disney of any query within seven (7) Working Days from receipt of the invoice, no dispute by the Advertiser may be brought after this time. In the event of a query being resolved in favour of Disney, the item in query will be subject to the full rate of surcharge, subject only to Disney having dealt with the query reasonably promptly.
- 15.6 All payments shall be made in full and it shall not be open to the Advertiser to make any deduction retention or to claim any rights of set off or to make any counterclaim in any proceedings brought by Disney in respect thereof.
16. **Advertising Performance & Quality.**
- 16.1 Although Disney will make reasonable efforts to ensure that the content of any online ad appears correctly on the Disney Media, Advertiser acknowledges that it is responsible for verifying that the Advertising displays and operates correctly on the Disney Media. In particular, (but without limitation) Disney will have no responsibility where a click-through to a URL (or online ad referring to a URL) fails to link correctly, or for a broken text link, where a click-through URL leads to an error message for the user. Furthermore, the Advertiser agrees that it is solely responsible for matters such as colour corrections, proper animation, and the quality of any sound on the online ad.
- 16.2 In the event that, in the reasonable opinion of the Advertiser, the online ad fails to display or operate correctly, Advertiser must notify Disney within three (3) days after the Campaign Start Date, in order to effect any corrective change. Disney will not normally make a charge for such changes provided that they are not excessive, but reserves the right to make a charge if significant amounts of administrative work are required as it shall determine in its sole discretion.
- 16.3 Disney will make all reasonable endeavours to deliver the requested number of Impressions within the date range set out in the Order. In the absence of specific agreement to the contrary in the Order, Disney reserves the right to determine in its discretion the precise placements and rotation of online ads. Disney shall make reasonable endeavours to spread Impression volumes evenly over the Campaign Period.
- 16.4 If the requested number of Impressions has not been delivered in the agreed upon date range, Advertiser agrees that unless it provides notice in writing requesting that the online ad be removed, Disney shall be allowed to continue to display the online ad beyond the Campaign End Date, in order to make up the number of Impressions until the requested total is delivered. There will be no additional charge to Advertiser for the delivery of the balance of the Impressions after the Campaign End Date. However, in no circumstances will Advertiser be entitled to any repayment of Fees to the extent that the number of Impressions at the Campaign End Date have not matched the number requested.
- 16.5 Any reference to Airtime value, audience share, performance or delivery with respect to any campaign set out in an Order shall be estimates only and any over or under delivery shall not be reclaimable by either party at any time unless the parties have entered into a written Media Deal as set out in Section 16.6 below.
- 16.6 Where there exists an overarching written deal between Disney and the Advertiser (or an Advertiser's media buying group) in relation to the sale of Airtime or any other advertising, sponsorship or other promotional opportunities in relation to Disney Media (a "**Media Deal**"):
- 16.6.1 the parties will carry out a quarterly reconciliation of estimated and actual advertising performance or delivery (including, without limitation audited broadcast or volume share or TVRs or other agreed equivalent measurement) or committed gross buyer expenditure by Advertiser or its media buying group unless otherwise agreed in writing between the parties; and
- 16.6.2 In the event any difference is identified between the estimated and actual audited advertising performance or delivery by Disney or committed gross buyer expenditure by Advertiser or its media buying group, Disney shall be entitled to withdraw any rebate or discount granted.
17. **Auditing.** Disney shall have the right to audit the Advertiser's (or it's client's, where Advertiser is an agency) records at its own cost at any time on reasonable prior written notice to ensure that payments are being made in accordance with any agreement based upon the share of the Advertiser's advertising expenditure that it has agreed to commit in purchasing advertising sold by Disney. If any such audit reveals that the Advertiser has underpaid Disney by more than 3% of sums properly due, then the Advertiser shall pay to Disney immediately the reasonable cost of the audit, together with the amount of the shortfall and interest thereon accruing daily at a monthly rate of 2% from the date when the sums were due until the date of actual payment. In the event of any shortfall being revealed which is less than 3% of sums properly due to Disney, the Advertiser shall immediately make payment to Disney of the shortfall together with interest at the foregoing rate.
18. **Advertiser Warranties.**

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- 18.1 The Advertiser warrants and undertakes to Disney on behalf of itself and/or its client:
- (a) that it has the right to enter into this Agreement and to perform its obligations under this Agreement;
 - (b) it is the owner or valid licensee of all intellectual property or other proprietary rights involved in the Advertising;
 - (c) that it holds the necessary rights to permit the display, transmission, publication and/or use of Advertising by Disney for the purpose of this Agreement;
 - (d) the use, reproduction, distribution, transmission, or display of Advertising and any content or material to which viewers or users can link through or any products or services made available to viewers or users through interaction with the Advertising, will:
 - (i) not violate any criminal or civil laws in any jurisdiction including, without limitation, laws relating to obscenity, racism, illegal commerce, data protection or gambling;
 - (ii) comply with all relevant government codes of practice and formal standards in relation to advertising, marketing, distance selling, consumer protection and e-commerce applicable in the territory to which the Disney Media is directed and including without limitation Disney's Ad Guidelines;
 - (iii) not infringe the intellectual property rights or other legal rights of any third parties, including, but not limited to, infringement of image rights, unfair comparative advertising, unfair competition, defamation, invasion of privacy or rights of celebrity, violation of any anti-discrimination law or regulation, or any other similar right of any third party;
 - (iv) not contain any material that is unlawful, harmful, fraudulent, threatening, abusive, harassing, defamatory, vulgar, obscene, profane, hateful, racially, ethnically, or otherwise objectionable, including, without limitation, any material that encourages conduct that would constitute a criminal offence, give rise to civil liability, or otherwise violate any Applicable Law;
 - (v) it will be responsible for obtaining and paying for all necessary licenses and consents for the transmission of any Advertising or copyright material contained, or the appearances of any person in the Advertising including also (but not limited to) music rights and performing rights including making any and all payments to administrators of musical compositions and/or recordings synchronized with or used in the commercial and all other music rights holders and musicians and/or applicable unions or collective societies. In addition, Advertiser will also be responsible for informing Disney in advance of transmission if a piece of commercially recorded music has simultaneously commissioned for use signature music for programmes or promotions; and
 - (vi) it shall at all times comply with any and all applicable data protection or privacy legislation regarding the collection, processing, storage and transfer of customer and/or personal data including, without limitation, the General Data Protection Regulation (EU) 2016/679 ("GDPR") and the European Directive 2002/58/EC as amended from time to time and any legislation, regulations and industry or self-regulatory codes implementing or made pursuant to them and any use of personal data will not be contrary to Disney's current published privacy policy or cause Disney to breach data protection or privacy law or incur any liability to Disney or any other person whatsoever.
- 18.2 Advertiser acknowledges and agrees that if it becomes aware of any likelihood of any breach of warranty under this clause, it will notify Disney immediately.
- 18.3 Advertiser acknowledges and agrees that upon receipt of any notification or advice to the effect that any Advertising contravenes any of the warranties contained in this Section 18, or for any other good and substantial reason, Disney shall have the right (but not the obligation) to remove such Advertising from display, transmission or publication on the Disney Media.
- 18.4 In the event of any challenge by any Regulator in connection with the Advertising, the Advertiser shall co-operate fully with Disney and provide such assistance as may reasonably be required by Disney in connection with such challenge.
19. **Disney Warranties.** Disney warrants and undertakes to Advertiser that it has the right to enter into this Agreement and to perform its obligations under this Agreement and that it shall perform its obligations in a commercially reasonable manner.
20. **Indemnity.** Advertiser hereby indemnifies and shall keep Disney its parent and affiliated companies fully indemnified on an after-tax basis from and against any and all claims, expenses, losses, demands, awards, judgments and liabilities, damages, costs and/or expenses (including but not limited to legal fees, costs and expenses and any compensation, costs or disbursements incurred by or paid by Disney to compromise or settle any action or claim) incurred or suffered by Disney whatsoever or howsoever arising as a result of any case, suit or complaint brought as a result of (a) the display, transmission,

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publication or use of any Advertising (b) the operation or interaction of Advertising with any viewer or user of the relevant Disney Media and (c) any breach of any of the obligations or warranties set out in this Agreement.

21. **Limitation of Liability.**

21.1 Nothing in this Agreement shall exclude or limit the liability of either party:

- (a) for death or personal injury resulting from the negligence of that party or its directors, officers, employees, contractors or agents; or
- (b) in respect of fraud or of any statements made fraudulently by that party or its directors, officers, employees, contractors or agents.

21.2 Disney shall not be liable to Advertiser whether in contract (including under any indemnity or warranty), in tort (including negligence), under statute or otherwise for any loss of profit, loss of revenue, loss of anticipated savings, loss or corruption of data, loss of contract or opportunity, loss of goodwill or indirect or consequential loss of whatever nature including (without limit) any loss of a type which could be regarded as indirect or consequential and whether or not reasonably foreseeable or actually contemplated by the parties at the time of execution of this Agreement.

21.3 Subject to 21.1 and 21.2, in the event that Disney shall be liable to Advertiser in contract (including under any indemnity or warranty), in tort (including negligence), under statute or otherwise, the liability of Disney shall not exceed the total amount of Fees paid by the Advertiser in respect of the Order as a result of which such liability arises.

21.4 The parties agree that the limitations on liability contained in this clause are reasonable in all the circumstances and are a fundamental part of the basis of each party's bargain hereunder, and neither party would enter into this Agreement absent such limitations.

21.5 Save as expressly provided under this Agreement all other warranties whether express or implied are hereby excluded to the fullest extent permissible by law.

22. **Term and Termination.**

22.1 Either party may terminate this Agreement with immediate effect by written notice to the other if the other:

- (a) commits a material breach of this Agreement and such breach:
 - (i) is not capable of remedy; or
 - (ii) if capable of remedy, has not been remedied with five (5) Working Days after receipt by the party in breach of notice requiring such remedy; or
- (b) if the other enters into a compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation) becomes insolvent or unable to pay its debts and steps have been taken with a view to the winding-up, or convenes a meeting of or enters into any composition with its creditors or has an administrative receiver, receiver, manager or administrator appointed over all or some of its undertaking or assets or anything analogous to the events described above occurs in any jurisdiction; or
- (c) ceases carrying on its business or substantially the whole of its business; or
- (d) (being a natural person) shall die, or (being a partnership or other unincorporated association) shall be dissolved.

22.2 In the event of Disney's transmission or other media activities being restricted, curtailed or prevented by any law or any other act or thing beyond Disney's control, Disney may at any time, notwithstanding anything herein before contained, immediately terminate any Order in whole or in part without prejudice to Disney's right to be paid by the Advertiser any monies due and owing by the Advertiser to Disney at the time of termination.

22.3 Where any Advertiser having signed an Order divests itself of a subsidiary company or business, Disney reserves the right to terminate the Order and recover the full benefit of the Order as against the original Advertiser.

22.4 Under no circumstances shall Advertiser be entitled to any injunctive relief against Disney with respect to this Agreement or any Order and agrees that its sole and exclusive remedy under the Agreement shall be an action in damages.

22.5 Termination of this Agreement howsoever arising shall not affect the accrued rights of the parties arising in any way out of this Agreement as at the date of termination and in particular, but without limitation, the right to recover damages against the other party.

23. **Confidentiality.**

- 23.1 Each party shall keep confidential all confidential information disclosed to it by the other whether relating to each Order or otherwise relating to the content or operation of this Agreement. Each party will only disclose confidential information to those of its employees, officers, approved sub-contractors and agents who (i) need to know it for the purpose of exercising or performing its rights and obligations under this Agreement (ii) are informed of the confidential nature of the information divulged and (iii) agree to act in compliance with this Agreement. Neither party will disclose that information to any third party (other than its employees, officers, approved sub-contractors and agents in accordance with this clause), except for information that: (i) is already in the public domain at the time of disclosure; (ii) becomes publicly known through no fault of its own; or (iii) is acquired by that party from a third party without any breach of any obligation of confidence.
- 23.2 Notwithstanding any other provision of this Agreement it shall not be a breach of this Agreement for either party to disclose any information given to it in connection with this Agreement pursuant to a court order or a binding request from a regulatory (or other analogous) authority with jurisdiction or from any other third party with statutory power to require the disclosure of such information, provided that the affected party gives all reasonable notice of such disclosure to the other party.
24. **Publicity.** The parties agree that neither party will publicise the fact of this Agreement or make any public comment or press statement in relation to any aspect of the relationship between the parties or any dispute arising between them unless the form of such comment or statement is agreed in advance by the parties in writing.
25. **General Provisions.**
- 25.1 Nothing in this Agreement shall be so construed as to constitute the Advertiser and Disney as principal or agent, employer or employee, partners or joint venturers, nor shall any similar relationship be deemed to exist between the parties. Neither party shall have any power to obligate or bind the other party.
- 25.2 No conditions other than those specified in these Terms, the Specifications and the Order shall be binding upon Disney unless specifically agreed to in writing by an authorised representative of Disney.
- 25.3 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of such rights or remedies. A waiver of a breach of any term of this Agreement or a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement. If any portion of the Agreement is deemed unenforceable by a court of competent jurisdiction, the remaining portion shall be valid and enforceable.
- 25.4 Neither party will be liable for delay or default in the performance of its obligations under this Agreement (other than for non-payment by Advertiser) if such delay or default is caused by an event of force majeure. 'Force Majeure' means any event beyond the reasonable control of either Disney or the Advertiser, as applicable, and shall include (but not by way of limitation) strikes, lockouts, riots, sabotage, acts of war, terrorism, hostilities or piracy, destruction of essential equipment by fire, explosion, storm, flood, earthquake, and delay caused by failure of power supplies or transport. If the event of Force Majeure continues for a period of more than three (3) months, the other party shall be entitled to terminate the affected booking by notice in writing to the affected party.
- 25.5 While every endeavour will be made to give two (2) weeks' notice in respect of changes of the terms and conditions of this Agreement, Disney reserves the right to make such changes at shorter notice. Unless otherwise agreed between the parties in writing, in the event of such a change, the terms and conditions applicable shall be those in force at the time of transmission or publication. The Advertiser shall (by serving written notice on Disney within one (1) week of receiving notice of such a change) be entitled to cancel any order for an Advertising to which the change of terms and conditions would otherwise be applicable.
- 25.6 Advertiser may not assign this Agreement, in whole or in part, by operation of law or otherwise, without Disney's prior written consent. Any attempt to assign this Agreement contrary to this provision will be null and void.
- 25.7 Any notices under this Agreement will be sent by confirmed email, fax, nationally recognised express delivery service, or certified or registered mail to the address of the relevant party set out in the Order. Notice by email (provided no 'out of office message' is sent) or confirmed facsimile or express delivery service will be deemed received and effective on the date sent. Notice by certified or registered post will be deemed received and effective five (5) days after posting.
- 25.8 Each party represents and warrants that its representative signing the Order has the full power and authority to sign and to bind the relevant party accordingly.
- 25.9 Where the parties agree that this Agreement is a barter transaction VAT invoices will be exchanged at a time and for a value to be separately agreed.
- 25.10 This Agreement formed by these Terms, the Specifications, the Ad Guidelines, the Order and any Special Terms is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter.

Disney Media Sales & Partnerships Standard Terms and Conditions for Advertisers

Unless otherwise expressly agreed to in writing by Disney and Advertiser, any Order concurrent herewith or subsequently hereto issued by Advertiser to Disney shall be deemed an Order pursuant to and subject to these Terms. This Agreement may be modified, and any rights under it waived, only by a written document signed by both parties.

- 25.11 This Agreement will be governed by and construed in accordance with the laws of the Netherlands and the parties agree to be bound by the exclusive jurisdiction of the court of Amsterdam. This Agreement will not be governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.

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