



**Disney Standard Terms & Conditions for Media Sales (Effective 2017) (“Terms”)**

**1. Definitions**

Unless otherwise set out in these Terms or the Order the following terms will have the following meanings unless the context otherwise requires:

<b>“Advertiser”</b>	means the Advertiser specified in the Order;
<b>“Advertiser Brand”</b>	means a reference to the Advertiser or any of its affiliates or associated companies or the products or services of the Advertiser or such affiliated or associated companies and any associated name(s), logo(s), brand features and/or trade mark(s) together with associated music, jingles or other soundtracks;
<b>“Advertiser IP”</b>	means any and all Intellectual Property Rights or other proprietary rights in the Advertiser Brand or otherwise owned by Advertiser or its licensors and featured in the Campaign Creative;
<b>“Advertising Partners”</b>	means any affiliate, vendor, subcontractor, agent or other third party engaged by the Client or otherwise acting on its behalf to render, perform or provide advertising services for it including, without limitation, any ad network, ad exchange, demand-side partners or platforms (DSPs), trading desk and other media buyer, and any related third party technical service provider;
<b>“Advertising Standards”</b>	means codes of practice issued by the Regulator and all other relevant industry codes of practice or voluntary standards in respect of advertising, sponsorship and other forms of promotion (as applicable) and any ruling, notes of guidance or bulletins issued by the Regulator or Clearance Body, in each case as amended, varied or replaced from time to time;
<b>“Agency”</b>	means the media buying agency (if there is one) acting on behalf of the Advertiser, as specified in the Order;
<b>“Airtime”</b>	means linear broadcast advertising and sponsorship time available for the transmission of Campaign Creative;
<b>“Anonymous Information”</b>	means information that would be considered to be wholly anonymised or anonymous in accordance with the Data Protection Laws so that such information (i) is not considered to be Personal Data under the Data Protection Laws and (ii) remains anonymised.
<b>“Applicable Law”</b>	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any and all advertising and marketing, tax, labour, product safety, competition and/or fair trade laws as awarded or superseded from time to time;
<b>“Campaign Creative”</b>	means the Creative used to advertise or promote Advertiser Brand or the Advertiser’s products and services and transmitted, published or otherwise made available on the Disney Media Platforms set out in the Order and which may include Custom Content;
<b>“Campaign Period”</b>	means the advertising or sponsorship campaign period set out in the Order;
<b>“Campaign Start Date”</b>	means the advertising or sponsorship campaign or ad flight start date as specified in the Order;
<b>“Child”</b>	means any individual determined to be a child by the Data Protection Laws of the applicable European Member State where the Advertising Services shall be performed, and where no such age is determined that age shall be fifteen (15) years or younger.
<b>“Clearance Body”</b>	means the relevant body responsible for the pre-clearance of broadcast or other advertising subject to pre-clearance in the Territory;

<b>"Client"</b>	means either (a) the Agency acting on behalf of the Advertiser; or (b) where there is no Agency, the Advertiser;
<b>"CPM/CPA/CPC/CPL"</b>	means the website advertising inventory sold on a cost per thousand/cost per acquisition/cost per click/cost per lead Impression basis if specified in the Order;
<b>"Creative"</b>	means any and all advertising copy, artwork, Campaign Creative, materials, videos, blipverts, teaser content, audio visual clips, social posts, social engagement videos, Sponsorship Credits or other advertising, sponsorship or promotional content or material for the Campaign, including without limitation, any active URLs, banners, mobile display, referral websites or social media channels or platforms, video or video players, graphics, text, data, software, audio, sound or animated aspects and any content not usually visible to the viewer of whatever nature;
<b>"Custom Content"</b>	means Creative for the Campaign developed or produced by Disney or on its behalf for the Client as set out in the Order or in an applicable Campaign Summary attached to the Order;
<b>"Data Protection Laws"</b>	means the following laws as applicable from time to time, together with any amended or successor laws thereto, (a) the UK Data Protection Act 1998 and the Privacy and Electronic Communications Regulations 2003 and other national laws implementing the Data Protection Directive (95/46/EC) and the Directive on Privacy and Electronic Communications (2002/58/EC); (b) the General Data Protection Regulation (2016/679) (" <b>GDPR</b> ") and any subsequent Regulation which replaces any European Directive; and (c) any other national privacy and/or data security law or regulations relating to the processing of Personal Data, including where applicable the guidance and codes of practice issued by the UK Information Commissioner or such other regulator with competent authority [and including the US Children's Online Privacy Protection Act (" <b>COPPA</b> ")].
<b>"Deadline"</b>	means any copy delivery or advance booking date which must be met in order to display, transmit, rotate or publish the Campaign Creative as set out in the Order which shall be not less than 7 working days before the intended transmission or publication date or as set out in Section 5;
<b>"Disney Guidelines"</b>	means any and all advertising and sponsorship guidelines published or otherwise issued by Disney from time to time;
<b>"Disney Media Platforms"</b>	shall be specified in the Order and may include Disney-branded, -owned, -licensed, -affiliated, -operated or -controlled television and radio platforms, proprietary websites, online channels, digital/interactive platforms, digital publishing platforms and vertically published print platforms (such as Disney magazines, Marvel comic books and custom publishing, and Star Wars comic books) or other advertising or media space including, without limitation mobile display or in-app advertising, video player or media space available in the Disney mobile network on via social media channels, platforms and networks and all other forms of media whether existing now or in the future;
<b>"Disney Segment"</b>	means any audience segment that the Client or its Advertising Partners create using (a) Disney User Data, or (b) audience amplification algorithms based on Disney User Data or attributes which match the Disney Data (also known as 'look alike' audiences).
<b>"Disney User Data"</b>	means information or data including Personal Data (a) provided to Client or its Advertising Partners by Disney or any Disney Affiliate, and/or (b) collected by the Client or its Advertising Partners on behalf of Disney in the course of providing the Advertising Services (including but not limited to data collected by the Client or its Advertising Partners from Disney Properties or in relation any user interaction with any Disney Advertising).
<b>"Impressions"</b>	means the number of times a user accesses a page on a website that displays the Campaign Creative regardless of whether or not the user is required to scroll to view Campaign Creative;

<b><i>"Intellectual Property Rights"</i></b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
<b><i>"OBA Standards"</i></b>	means industry best practices including, without limitation, self-regulatory principles as directed by the Digital Advertising Alliance, Network Advertising Initiative, European Advertising Standards Alliance and the European Self-Regulatory Programme for Online Behavioural Advertising] including the EASA Best Practice Recommendation on Online Behavioural Advertising and the IAB Europe EU Framework for Online Behavioural Advertising and other Self-Regulatory Principles of the IAB Europe or such replacement codes and guidelines as published from time to time by any competent authority), including the rules on online behavioural advertising in Appendix 3 of the CAP Code and/or equivalent rules applicable in the Territory where the Campaign will be published.
<b><i>"Order"</i></b>	means either Disney's Sales Order form (also known as an Insertion Order or IO) completed by the Client, or commitment or booking placed through the CARIA Service (or other applicable online system) to buy Airtime at an agreed rate for an Airtime campaign) or the commercial deal terms agreed by the parties and set out in a media plan, Statement/Scope of Work (SOW), Promotional Licence Agreement or other sponsorship or promotion agreement, which sets out the details of the Campaign (for the avoidance of doubt an Order for Airtime becomes legally binding once accepted by Disney through the CARIA Service only (unless agreed otherwise in advance by Disney) or by the provision of actual Airtime by Disney);
<b><i>"Personal Data"</i></b>	has the meaning ascribed to it under the Data Protection Laws, and shall further include any data or information that Client or its Advertising Partners process in connection with the Campaign that refers, is related to, or is associated with an identified or identifiable individual, including, but not limited to, any information that provides a precise geolocation of an individual; and any device ID or other persistent identifier that is or can be associated with other Personal Data, excluding Anonymous Information.
<b><i>"Platform Rules"</i></b>	means any and all advertising policies, standards or rules applied by any third party social media or other platform or network;
<b><i>"Regulator"</i></b>	means any regulatory or governing body or other competent appointed from time to time to regulate advertising, sponsorship or promotional activity in the Territory including any national or supra-national court, the European Commission, any governmental or local authority, any other person exercising powers pursuant to any Applicable Law and in each case includes any successor or replacement body;
<b><i>"Campaign Data"</i></b>	means any information or data including Personal Data that is (a) collected during delivery of any Campaign Creative that identifies or allows identification of Disney, any Disney Media Platform or Disney brand, content, context, or users;////means information or data including Personal Data (b) provided to Media Agency by Disney or any Disney Affiliate, and/or (b) collected by the Media Agency or its Advertising Partners on behalf of Disney in the course of providing the Advertising Services (including but not limited to data collected by the Media Agency or its Advertising Partners from Disney Properties or in relation any user interaction with any Disney Advertising).
<b><i>"Social Talent"</i></b>	means bloggers, vloggers and other social media talent engaged by Disney or its affiliates to participate in the Campaign as further detailed in the Order.
<b><i>"Specification"</i></b>	means the technical or other specifications for the Creative required by Disney and provided to the Client;

<b>“Sponsorship Credits”</b>	means the still or animated sequences or other materials including the Advertiser Brand, which associates the Advertiser with the relevant Disney Media Platform and/or related Disney content thereon specified in the Order;
<b>“Strikeweight”</b>	if used, means the amount of TVRs by reference to an agreed period;
<b>“Tracking Technologies”</b>	means any cookies (browser-based or Flash cookies), tags, HTML, JavaScript, beacons, pixels, APIs or other programming, software code or similar technologies now known or hereafter developed that are designed, implemented or intended to track users’ online behaviour, activity or information or to track, monitor, collect or process Disney User Data;
<b>“TVR”</b>	means a television rating being one percent of a given audience universe;
<b>“Working Day”</b>	means Monday to Friday inclusive in each week except any Bank or Public Holiday. Campaign Creative delivered after 4pm on a Working Day shall be deemed to have been received on the next Working Day.

## 2. Agreement.

- 2.1 These Terms together with the Order, the Specifications, the Disney 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 Client (the “**Agreement**”). The terms of this Agreement shall apply to all media buys related to advertising, sponsorship or other promotional activity of the Client on Disney Media Platforms to the exclusion of all other terms and conditions including any terms and conditions which the Client 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. Unless stated in the Order or a Campaign Summary attached to the Order, this Agreement may not fully cover co-branded promotions, sponsorships or other arrangement involving co-branded integration, custom content association and/or special productions or events (which shall be subject to Disney’s Standard Terms and Conditions for Promotions or such other terms that Disney may decide to apply), but may be used as the basis for the media components of such arrangements.
- 2.2 By placing an Order with Disney, the Client accepts in full these Terms. Unless the Order expressly states otherwise, to the extent that there is any conflict between the Order, the Specifications, the Disney Advertising & Sponsorship Guidelines, the Special Terms and these Terms, these Terms shall take priority.
- 2.3 Where the Client is an Agency, the Agency warrants and represents that:
- 2.3.1 it contracts with Disney as principal and undertakes to perform all obligations of the Client under this Agreement as principal, notwithstanding that it may also be acting as an advertising agency or media buyer or in some other representative capacity;
- 2.3.2 it is authorised to represent and bind the Advertiser named in the Order;
- 2.3.3 it undertakes to indemnify Disney against any loss arising from any claim by the Advertiser that it should not be bound;
- 2.3.4 without prejudice to clause 2.3.2, it has all relevant authority from the Advertiser that is necessary for the Agency to perform all the Client’s/Advertiser’s obligations under this Agreement, including all licenses and consents required to enter into the Order (including without limitation all necessary licenses and/or other rights to assign for or supply Disney with the Campaign Creative or other Intellectual Property Rights pursuant to the terms of this Agreement);
- 2.3.5 without prejudice to the indemnities set out in clause 18, it undertakes to indemnify Disney against any claims, liabilities, losses, damages, fees and expenses of any kind (including legal fees and costs) suffered or incurred by Disney as a result of the Agency’s breach of the warranties contained in this clause 2.3 or any claim or action made against Disney by the Advertiser and/or any of the Advertiser’s affiliates in relation to any matter under this Agreement;
- 2.3.6 it will be the responsibility of the Agency and not that of Disney to collect all monies owed to it. Payment by Advertiser to Agency shall not discharge either’s liability to Disney. The rights of Disney shall in no way be affected by any dispute or claim between Advertiser and Agency; and

2.3.7 it has complied with any disclosure obligations it has to the Client/Advertiser in respect of agency commission earned or otherwise due under its arrangements with Disney.

### 3. Orders

3.1 All requests for the display, transmission or other publication of Campaign Creative must be submitted to Disney under cover of or otherwise associated with an Order signed by both parties, either by e-mail or (in the case of Airtime bookings made via Disney's designated electronic booking system which are subject to these Terms). Disney shall have no obligation to accept any Order or booking submitted by the Client.

3.2 Acceptance of the Order and these Terms will be deemed the earlier of (i) written (which includes exchange of scanned PDF copies of a signed Order) approval of the Order by Disney and Client, or (ii) the display, broadcast or other publication of Campaign Creative by Disney, unless otherwise agreed on the Order. Notwithstanding the foregoing, modifications to the originally submitted Order will not be binding unless approved in writing by both Disney and Client. Subject to acceptance by Disney and unless otherwise expressly set out in the Order, the Campaign Creative shall be published on the relevant Disney Media Platform(s) during the Campaign Period in accordance with the terms set out in the Order provided always that the placement and designation of any Campaign Creative or campaign positions shall at all times be determined by Disney in its sole discretion.

3.3 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 Client and the Client 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 Client and withdraw credit previously granted to the Client and/or vary any conditions and/or limits applying to any credit. The Client 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 Client 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 Client.

3.4 **Multi-territory/International deals:** Disney is able to broker or otherwise make available through its network of affiliated companies, media inventory opportunities in multiple territories. Unless otherwise agreed in the Order when Client or any of its global affiliates wish to purchase media inventory on Disney Media Platforms, and the Disney affiliate is able to provide such media inventory, the relevant parties will enter into a separate Order. Each Order will incorporate these Terms or any framework agreement entered into by the parties.

### 4. Client Obligations

4.1 Client 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 Campaign Creative in the format specified in the Order and conforming to the Specifications and the Guidelines;
  - (ii) any content or technology including any Tracking Technology associated with any Campaign Creative that may collect or process Campaign Data;
  - (iii) copies of any messages that a user might see when interacting with the Campaign Creative. This includes, without limitation, any error messages if the Campaign Creative fails to operate correctly, and any browser notice requesting user acceptance of any Tracking Technology;
  - (iv) any other information reasonably necessary in order to allow Disney to assess the suitability of the Campaign Creative;
- (c) to respond in good faith to questions raised by Disney in relation to any Campaign Creative in a timely manner. All technical and non-technical issues must be resolved to Disney's satisfaction prior to the delivery of any Campaign Creative to Disney and/or transmission or Intellectual Property Rights or other publication; and
- (d) will not, and will not authorize others to, distribute, broadcast or utilize for any commercial purposes any Disney content unless expressly permitted under this Agreement or other promotional licence agreement.

### 5. Delivery of Campaign Creative

- 5.1 Delivery of Campaign Creative 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. Disney shall notify the Advertiser who must supply alternative Campaign Creative 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 Client in full for the Order. In the event that any new and/or updated Campaign Creative is not received by Disney by the 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 Campaign Creative in order to satisfy the Order.
- 5.2 The delivery of airtime under this Agreement is subject to prior approval by the relevant Regulator or other pre-clearance body of the final version of all advertisements.
- 5.3 Campaign Creative must be delivered to Disney by the Deadline accompanied with any applicable rotation instructions. In exceptional cases Disney will endeavour but is not obliged to accept Campaign Creative delivered after the Deadline.
- 5.4 Where Airtime Campaign Creative is not delivered by the Deadline, the Advertiser shall at the discretion of Disney be liable to pay a late copy surcharge of £250 plus VAT per Campaign Creative copy and/or be liable to pay in full for the Campaign Creative booked whether or not any Campaign Creative is in fact transmitted or published.
- 5.5 The following Deadlines will apply:
- (a) Campaign Creative containing custom technology or not served on Disney's own server, 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;
- 5.5.2 Campaign Creative for mobile campaigns, no later than twenty-one (21) working Days prior to the Campaign Start.
- 5.6 If any online Campaign Creative is delivered after the Deadline the Client 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 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). If Client needs to change the Campaign Start Date because the Campaign Creative is not ready or its website (or social media page) 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 Campaign Creative received after 12.00 p.m. on the Working Day before the Campaign Start Date.
- 5.7 If Campaign Creative provided by Client are damaged, do not comply with the Specifications, the Guidelines or otherwise unacceptable or unsuitable, Disney shall notify the Advertiser who must supply alternative Campaign Creative at its own cost as soon as possible and in any case not later than the Deadline.
- 5.8 If Campaign Creative materials are not received by the Campaign Start Date, Disney will begin to charge the Client on that date on a pro rata basis based on the Order, excluding portions consisting of performance-based, non-guaranteed inventory, for each full day the Campaign Creative materials are not received. If Campaign Creative is late based on the Guidelines, Disney is not required to guarantee full delivery of the Order. Disney and Advertiser will negotiate a resolution if Disney has received all required Campaign Creative in accordance with these Terms but fails to commence a campaign on the Campaign Start Date.
- 5.9 Disney shall make reasonable endeavours to accommodate the Advertiser's wishes to run different creative versions 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 Campaign Creative which promotes more than one product. If in Disney's opinion any Campaign Creative 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 time length, 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 Campaign Creative for each product been submitted to it separately.
- 5.10 Any invoice submitted for late delivery surcharges shall be paid within 30 days of the invoice date.
- 5.11 Reasonable care will be taken by Disney in respect of any materials provided by or on behalf of the Client to Disney whilst in the possession of Disney, but subject thereto, Disney cannot accept liability for any loss arising out of or in connection with any damage, loss, deletion or otherwise of the same (whether or not the same are in the possession of Disney or any third party engaged by Disney) and Disney will be under no obligation to return any of the same to the Client or any other third party. The Client will be responsible for ensuring that all materials provided by it are insured for full value and Disney will have no obligation to put in place any insurance policy in respect of the same. Unless otherwise instructed Campaign Creative may be destroyed by Disney if not transmitted for a period of 90 days without further notice.

## 6. Compliance & Right to Reject

- 6.1 Disney has, and will at all times continue to have, complete editorial control of the Disney Media Platforms meaning that Disney will be solely responsible for the design, layout, look-and-feel, posting, scheduling and maintenance of any and all aspects of the Disney Media Platforms and content therein, including without limitation editorial policy and the display of the Campaign Creative. Disney will decide in its sole discretion and for any reason whether or not to display, to remove and/or to block access to any Campaign Creative or other content. For clarity, Disney shall have final approval of the Sponsorship Credits to ensure compliance with any Applicable Law and any editorial requirements.
- 6.2 Except as otherwise expressly provided in this Agreement, positioning of Campaign Creative, Advertiser Brand or Advertiser IP on any part of the Disney Media Platforms is at the sole discretion of Disney, and Disney will not be prohibited from also carrying advertisements for any product or business competitive to the product or business of the Advertiser. Disney does not warrant the date or dates of insertion of the Campaign Creative and does not warrant that the Campaign Creative will not be displayed after the Campaign End Date specified. However, Disney will use reasonable endeavours to comply with the Client's wishes in these regards. No protection against proximity of competitive products is given.
- 6.3 Campaign Creative will only be transmitted if approved by Disney, satisfy the Specifications and comply with the Guidelines, Applicable Laws and Advertising Standards and in addition all Campaign Creative including:
- 6.3.1 scripts and/or storyboards, must be submitted in advance to the Disney Compliance Team for provisional approval before transmission;
- 6.3.2 all finished clocked Campaign Creative must be submitted to the Disney Compliance Team for approval before transmission; and
- 6.3.3 approval by the Disney Compliance Team of any Campaign Creative shall not in any way prejudice Disney's right to reject any Campaign Creative.
- 6.4 Approval by Disney of any Campaign Creative will not be deemed to constitute an acceptance by Disney that such Campaign Creative is provided in accordance with this Agreement, nor will it constitute a waiver of Disney's rights hereunder.
- 6.5 Disney reserves the right at any time in its absolute discretion to reject or otherwise not to display, transmit or publish (or to remove after publication) any Campaign Creative or any space reservation or position commitment where the Campaign Creative or any associated software code, or the website to which the Campaign Creative is linked do not comply with (i) the Specifications or Guidelines or (ii) where Disney believes that the Campaign Creative is unsuitable having regard to the age and profile of those viewing, visiting or otherwise using the relevant Disney Media Platform or interacting with the Campaign Creative and/or (iii) in Disney's sole reasonable judgment, any Applicable Law or Advertising Standards.
- 6.6 All broadcast programmes are subject to suspension or cancellation or placement at the sole discretion of Disney or in response to any complaint or any regulatory adjudication, intervention, requirement or ruling. The Client hereby acknowledges and agrees that, unless agreed otherwise in writing with Disney, all Campaign Creative provided under this Agreement will be cleared for transmission across all of the Disney Media Platforms and Disney may transmit the Campaign Creative across any or all of the Disney Media Platforms (whether on a simultaneous basis or any other basis) without providing prior notice to the Client.
- 6.7 Disney reserves the right at its absolute discretion to do any act or thing in respect of the transmission, publication or positioning of any Campaign Creative or part thereof (including the fading, editing, or cutting thereof), where such Campaign Creative or part thereof is considered by Disney to be unsuitable for transmission and Disney shall not thereby incur any liability to the Client who shall have no claim whatsoever for damages or otherwise in respect of any non-transmission of any such Campaign Creative or part thereof but the Client shall remain liable in full to Disney for the charges payable hereunder for such Campaign Creative. Disney reserves the right to redesign or modify the organisation, navigation, structure, "look and feel" and other elements of the Disney Media Platforms at its sole discretion at any time without prior notice.
- 6.8 Disney reserves the right at its absolute discretion not to accept any Order or any Campaign Creative, including but not limited to competitive advertisements that contain date, day or time specific or appointment to view references in either a verbal or visual context.
- 6.9 Disney reserves the right in its absolute discretion (and without incurring any liability) to decline to display, transmit or publish any Campaign Creative without giving any reason for declining but the Client shall not be liable to pay for any Campaign Creative which Disney declines to transmit provided such Campaign Creative has been delivered on time.



- 6.10 Disney shall not be held responsible for any addition to, changes in or deletions from any Campaign Creative required by any Regulator or Clearance Body or delays resulting therefrom.
- 6.11 Disney may at any time and without any liability to the Client, save as expressly provided in this Agreement, stop transmission or publication of the Campaign Creative or otherwise cease to make available any of the Disney Media Platforms or programmes or trailers or other content in order to comply with Applicable Laws, Advertising Standards or in response to any complaint or any regulatory adjudication, intervention, requirement or ruling.

**7. Dates & Times of Transmission or Publication**

- 7.1 Disney does not guarantee that the Disney Media Platforms will be available or that the times and/or dates of display, transmission or publication of any content of the Disney Media Platforms will be adhered to. Disney shall incur no liability for any failure to display, transmit or publish all or any part of any Campaign Creative or for any failure to adhere to Campaign Creative rotation instructions, except that if a total failure to transmit shall be due to the fault of Disney the Client shall not be charged.
- 7.2 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 Client. Airtime advertising appearing within thirty (30) minutes of the segment booked will normally be regarded as appearing within the segment. Campaign Creative booked for transmission at a specific time will be transmitted in the commercial break nearest to that time.
- 7.3 Disney may at any time change the schedule (including timing, number and frequency) for transmission of the sponsored programme(s) or promotional trailers for the sponsored programmes and shall have no liability (including an obligation to reduce the fees) to the Client arising out of or in connection with any such change or otherwise arising out of or in connection with the scheduling of any sponsored programmes or related trailers or in the event there are no such transmissions. Notwithstanding this, in the event where there are changes in the transmission schedule which in Disney's reasonable opinion materially affects the value of the sponsorship, Disney will seek to negotiate an appropriate reduction in the fees with the Client.

**8. Cancellation or Postponement**

- 8.1 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 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
0 to 28 days from Campaign Start Date	100% of Fees

- 8.2 Unless an Order is cancelled in accordance with this Agreement, Client who fails to deliver any Campaign Creative by the Deadline will remain liable to pay in full whether or not the Campaign Creative is displayed, transmitted or otherwise published. Disney reserves the right to retain all expenditure for any postponed campaign and to rebook the Campaign Creative during a mutually agreed period.
- 8.3 Client will remain liable to Disney for amounts due for any Custom Material or development thereof provided to Client or completed by Disney or its third-party vendor prior to the effective date of termination. For Orders that contemplate the provision or creation of Custom Material, Disney will specify the amounts due for such Custom Material as a separate line item. Advertiser will pay for such Custom Material within 30 days from receiving an invoice therefore. The Client acknowledges and agrees that Disney will have incurred costs and expenses relating to the provision of the Custom Material, including but not limited to costs in designing, developing and hosting, providing technical services and the production and licensing of content, including Disney content. Disney will invoice the Agency for all such production costs incurred up until the date of termination within 30 days of the date of termination.

**9. Custom Content Production & Social Talent Engagement Services**

- 9.1 Where detailed in an Order Disney will (or will commission third parties, including the engagement of Social Talent to) create, develop and design Custom Content (which may be included in or associated with the Campaign Creative) to be transmitted, published, displayed or otherwise hosted on the Disney Media Platforms during the Campaign Period.
- 9.2 Disney will provide the Client with drafts or mock ups of the Custom Content (or presentation of such materials as they would appear on the Disney Media Platforms) on such date set out in the Order or otherwise agreed by the parties separately in writing and before the start of the Campaign Period in order for the Client to review and approve the presentation of the Advertiser Brand. Once the Client has approved, the Client will have no further right



to require changes to or to approve any aspect of the Disney Media Platforms including but not limited to the design, layout, look-and-feel, posting and the display of Custom Content. If the Client does not approve before the start of the Campaign Period, then this will not prevent Disney from proceeding to commencing the campaign on the relevant agreed commencement date set out in the Order.

- 9.3 Where the Campaign involves the engagement of Social Talent and the creation, development and production of Custom Content to be uploaded and/or published via the social channels set out in the Order, Disney and Client shall mutually agree on the content of the Custom Content prior to upload or publication. Disney or its agents shall provide Client with a draft of the social post and/or the creative treatment for any custom video, one (1) rough cut and one (1) final edit of each video. Client shall be entitled to one (1) round of review and Notes for each element above. Client's review and requests for edits, modifications, or other changes to the creative treatment and/or rough cut of the applicable video shall be reasonable, timely, specific and provided in writing on an aggregated basis, incorporating such requests into a single round of notes ("**Notes**") and within two (2) business days of Disney's request for review unless the exigencies of production require faster turnaround, in which case Notes must be provided within twenty-four (24) hours of submission of such rough cut. Notes and/or approvals of the final cut of the applicable video must be provided to Disney within one (1) business day of Disney's request for review. The function of such final approval is for Agency to confirm that the changes specified in the rough cut Notes were made to Client's written specifications. If so, then no additional edits will be requested by either party. Disney shall provide Client with one (1) courtesy review of each social media post prior to upload for legal compliance review only. Due to the nature of the deliverable, live streams will not be reviewed but shall be provided in real time.
- 9.4 Where Disney commissions third parties, including the engagement of Social Talent to create, develop and design Custom Content to be transmitted, published, displayed or otherwise hosted on the Disney Media Platforms during the Campaign Period, Disney shall be responsible for ensuring such third party labels the Custom Content with the appropriate marketing communication disclosures. Client shall be responsible for all other marketing communication disclosures and legal compliance including for any Custom Content produced by Disney for the Client.

## **10. Prize Competitions**

- 10.1 Where the Campaign involves a prize draw, or competition or other consumer response mechanic the parties shall agree who shall be responsible for funding and administering the redemption and fulfilment of the prizes in the Order or otherwise separately in writing. The relevant party responsible shall ensure that prizes are sent out at its cost to winners promptly and not later than 28 days after announcement of the winners.
- 10.2 In the event Disney receives any complaint from any prize competition entrant due to any delay or failure of the Client to fulfil delivery of the prize(s), Disney reserves the right (but is not obligated) to contact affected participants or winners directly and to obtain and deliver the prize(s) (where possible) to the winner(s) and recover all costs for the same from the Client.
- 10.3 If the prize(s) are being supplied by Disney and are not available for reasons outside of Disney's control, Disney will provide replacement prize(s) of equivalent value to Client or the selected winners. Advertiser's sole remedy for any failure by Disney to supply the prize(s) shall be a sum equal the total value of the prize(s).
- 10.4 Where Client supplies prize(s) for distribution by Disney, Client warrants that the prize(s) are new, unused and compliant in all respects with the description of them provided to Disney, lawful to distribute and Client shall at all times be directly responsible to the winner(s) for any defects in the prize(s) and for any and all other obligations owed to the winner(s) in respect of the prize(s) in accordance with the Applicable Laws and Advertising Standards.
- 10.5 Where the Campaign Creative provides a link to a prize draw, or competition or other consumer response mechanic on the Advertiser's own website, Advertiser will solely be responsible for:
- (a) organising all aspects of the activity, including, but not limited to, administration, redemption, fulfilment, and any costs associated with the same;
  - (b) ensuring that all relevant terms and conditions applicable to the activity are prominently displayed and made available to all participants for acceptance either prior to or at time of entry;
  - (c) fairly and equitably selecting the required number of winners conducted either under independent supervision or a verifiably random computer process which has been audited and/or judging and selecting winners using the services of an independent judge in accordance with pre-determined judging criteria; and
  - (d) handling all customer and participant enquiries or complaints in connection with the activity.

## **11. Intellectual Property Rights**

- 11.1 All intellectual property rights in the Advertiser IP and the Campaign Creative (excluding the Custom Content or any Disney Intellectual Property Rights incorporated therein) shall remain the property of the Advertiser.
- 11.2 The Client hereby grants to Disney a worldwide, non-exclusive, royalty-free licence to reproduce and display the Campaign Creative (including the Advertiser IP) 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 Campaign Creative delivered pursuant to this Agreement.
- 11.3 The Client represents and warrants that it owns or obtained all necessary rights to the Advertiser IP, the Campaign Creative does not contain any viruses or other malicious code, the grant of rights to Disney and Disney's use of such Campaign Creative and Advertiser IP shall not violate any right(s) of a third party, and Client agrees to defend, indemnify and hold harmless Disney and its agents from and against all damages, liabilities, losses, costs, and expenses (including reasonable attorneys' fees) relating to any claim, action, suit or proceeding brought by a third party based on any actual or alleged breach by Client of its representations and warranties included in this paragraph or any actual or alleged infringement or misappropriation of such third party's Intellectual Property Rights in connection with Disney's use of the Campaign Creative and Advertiser IP.
- 11.4 The Client grants to Disney the express right to reproduce throughout the world screen shots of all or part of the Disney Media Platform containing all or part of any of the Campaign Creative or otherwise featuring Advertiser IP on or in any promotional or advertising material or campaign promoting or advertising Disney or the Disney Media Platforms.
- 11.5 All legal and beneficial interest in any intellectual property rights relating to Custom Content or other materials provided by Disney for inclusion in the Campaign Creative and all such materials, video, audio, graphics, text, data or software provided by or on behalf of Disney for the purposes of the Agreement (however excluding the Advertiser IP) and all templates, formats, documents, drawings and all other items produced, developed, utilised or supported by or on behalf of Disney remain the property of Disney. For the avoidance of doubt, where Disney pays a third party to develop any Custom Content **or Disney is authorised to use Custom Content produced by a Disney affiliate and license those rights to the Advertiser**, it shall be deemed to be supplied by or on behalf of Disney **and remain the property of Disney** for the purposes of the Agreement. In the event Disney permits Client to edit Custom Content or to create derivative works from such Custom Content ("**Client Edits**"), such Client Edits shall be subject to review by Disney and/or Social Talent and shall be owned by Disney.

## 12. Fees and Payment Terms

- 12.1 The applicable Fees are stated in the Order. Subject to Section 12.2, a written invoice in respect of Fees will be issued to Client within thirty (30) working days of the Campaign Start Date. Payment by Client 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 the prevailing prime lending rate of South Africa from time to time, upon such amounts from the date such amounts were due until the date of actual payment and shall be without prejudice to any other rights or remedies Disney may have against the Client. Such interest shall accrue on a daily basis and be compounded quarterly.
- 12.2 Time shall be of the essence with regard to the payment of any amounts due to Disney under this Agreement. If any amount due under this Agreement is not paid on or before its due date, then without prejudice to any other rights it may have under this Agreement, Disney may charge interest on any unpaid amount at the prevailing prime lending rate of South Africa from time to time from the due date until the date of payment, and such interest shall accrue daily and be payable on demand.
- 12.3 Unless otherwise agreed in writing, where Client 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 Campaign Start 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 Campaign Creative.
- 12.4 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.
- 12.5 Where the Fees are expressed to be a minimum investment the Client guarantees that it will pay such sum by the end of the Campaign Period and the parties will separately agree a media plan which will allow flexibility to allocate to available inventory during that period. Disney reserves the right, upon prior written notice to the Client, to amend any Campaign media plan in the event that particular inventory placements listed in the media plan are removed or altered during the Campaign Period, provided that Disney replaces the affected inventory placements with inventory of equivalent value.
- 12.6 No further Orders will be accepted from Client 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.

- 12.7 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.
- 12.8 All payments shall be made in full and it shall not be open to the Client 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.
- 12.9 If the Agency is signing this Agreement for and on behalf of the Client, all invoices shall be sent to the Agency as principal for payment.

### **13. Performance**

- 13.1 Save as otherwise provided in the Order, the Client acknowledges that Disney has not made any guarantees with respect to TVRs, audience size, usage statistics, levels of Impressions or conversion rates for any Campaign. Any statistics provided are estimates only. If an Order contains CPM, CPA, CPL or CPC commitments, the predictability, forecasting, and conversions for such commitments may vary and are not guaranteed.
- 13.2 For the avoidance of doubt, if any Campaign Creative is not distributed for any reason other than Disney's omission, Disney is not obligated to provide any makegood and shall have no further obligations with respect to such Campaign. In any event, Disney's obligations hereunder shall not extend beyond the Campaign Period; provided that notwithstanding the foregoing, Disney may extend the Campaign Period by notification to Client if the launch of the Campaign is delayed or the total number of agreed Campaign Impressions falls short of the number in the Order.
- 13.3 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.
- 13.4 The Client acknowledges that performance measurements provided by Disney are the official, definitive measurements and no other measurements or usage statistics (including those of the Client or any other ad server) will be accepted by Disney.
- 13.5 If Disney fails to transmit or publish the Campaign Creative in full for any reason whatsoever other than a breach of this Agreement on the part of the Client or any of its contractors or vendors then Disney shall repay a proportion of the Fees pro rata to the reduced exposure. The pro rata repayment shall be the limit of Disney's liability under this Agreement.
- 13.6 Although Disney will make reasonable efforts to ensure that the Campaign Creative appears correctly, Client acknowledges that it is responsible for verifying that the Campaign Creative displays and operates correctly on the Disney Media Platform. 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 Client agrees that it is solely responsible for matters such as colour corrections, proper animation, and the quality of any sound. In the event that, in the reasonable opinion of the Client, the Campaign Creative fails to display or operate correctly, Client 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.
- 13.7 If any Campaign Creative fails to display or otherwise perform due to an omission by Disney, Client and Disney will use commercially reasonable efforts to agree upon the conditions of a makegood flight, either on a revised Order or otherwise in writing. If no makegood can be agreed upon, Disney shall determine in its sole discretion to either re-perform a part of the Campaign or extend the Campaign Period or issue a credit equal to the value of the under-delivered portion of the Order for which the Client was charged.
- 13.8 In the event that any Campaign Creative cannot be transmitted, displayed or otherwise published because of unavailability of technical facilities, defect or breakdown of equipment or transmission facilities, labor dispute, government action, or any cause beyond the control of Disney, Disney's liability therefor shall be limited solely to cancellation of all charges to Client hereunder for such affected Campaigns and such failure shall not constitute a breach of this Agreement.

- 13.9 If the requested number of Impressions has not been delivered in the agreed upon date range, Client 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 Client for the delivery of the balance of the Impressions after the Campaign End Date. However, in no circumstances will Client 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 originally requested.
- 13.10 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 separate annual trading deal ("**Annual Deal**"). The parties will carry out a quarterly reconciliation of estimated and actual performance or delivery (including, without limitation audited broadcast or volume share or TVRs or other agreed equivalent measurement) or committed gross expenditure by Client or its media buying group and if any audited share committed under the Annual Deal is under-delivered, Disney shall have the following remedies at its option:
- (a) the offset against any commitment under-delivered by Disney; or
  - (b) an increased share in subsequent year(s); or
  - (c) an agreed cash over-delivery (above the agreed share or other commitment) for subsequent year(s); or
  - (d) withdrawal of any rebate or discount granted; or
  - (e) an increased pricing for subsequent year(s).
- 13.11 In the event Disney withdraws any rebate or discount Disney may re-invoice the current deal period to the Client and will apply a reasonable price adjustment to reflect the difference. Any over or under delivery shall not be reclaimable by either party within six (6) months after the end of the Annual Deal period.
- 13.12 In the absence of an Annual Deal if the TVRs actually delivered for a campaign are less or more than those estimated to be delivered and paid for by a Client this will give rise to an airtime debt or credit. At no time shall any Airtime debt or credit have any cash value or entitle either party to any cash payment from the other and the parties shall negotiate in good faith to agree a position to reconcile any shortfall through the normal course of trading arrangements.

#### **14. Audit Rights**

- 14.1 Disney shall have the right to audit the Client's records (including any records of an associated barter agency) and Client's systems (including without limitation DDS, Media Explorer or similar system) at its own cost at any time on reasonable prior written notice to ensure that the terms of the Agreement have been complied with and in particular that payments are being made in accordance with the Agreement. The auditors are to be permitted access to any information and make such enquiries as they consider relevant to the performance of their duties (including without limitation to both the finance and media buying departments of the relevant entity). Disney shall be entitled to receive details of all audited gross expenditures to establish that they fall within the terms of the Agreement. The auditors will provide letters of confidentiality where requested.
- 14.2 If any such audit reveals that the Client has underpaid to Disney by more than 3% of sums properly due, then the Client 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 two percent over the Barclays Bank plc base rate from time to time in force 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 Client shall immediately make payment to Disney of the shortfall together with interest at the foregoing rate. The auditors' evaluation of the cost shall be final and binding on both parties.

#### **15. Online and Mobile Ad Reporting**

- 15.1 Save in respect of Third Party Served Ads, Disney will provide Client with a report on a monthly basis, unless otherwise agreed in the Order, detailing the number of Impressions and related click yield. Client 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.
- 15.2 Client may request in writing that the Campaign Creative may be served by a third party and not Disney's ad server as part of an Order ("Third Party Served Ad"). The request must be accompanied by all relevant supporting documentation and information in accordance with this clause and clause 16 and within the deadlines set out in Section 5. Requests will be reviewed on a case by case basis, and Disney reserves the right in its absolute discretion to refuse any such request.

- 15.3 Where permitted by Disney, Third Party Served Ads must comply with the following conditions:
- (a) the ad server tags must be implemented so that they are fully functional;
  - (b) the online ads, once approved, may not be changed without prior written approval from Disney;
  - (c) any technical standards or other speed and/or volume requirements specified by Disney; and
  - (d) Client shall ensure that the third party responsible for control over the servers on which the Third Party Served 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 Client and to Disney and shall disclose the applicable ad delivery measurement methodologies. 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 by Disney's servers will be deemed to be accurate in the absence of manifest error.

15.4 Where a Third Party Ad Server cannot serve the Campaign Creative, the Client shall immediately notify Disney and Disney at its option may elect to treat the Order as cancelled in accordance with these terms and Disney may use the inventory that would have been otherwise used for Disney's own advertisements or advertisements provided by a third party.

## **16. Data Protection & Tracking Technology**

16.1 The Client will disclose to Disney any Tracking Technologies used by the Client or its Advertising Partners to collect or process Campaign Data or interactions on any Disney Media Platform, including consumer clicks or other interactions with any Disney website, app or content. Disney has the right to approve or reject the use of such Tracking Technologies in its sole discretion at any time. If approved, the Client may only use (or authorise Advertising Partners to use) Tracking Technologies for the purpose of measuring impressions or conversions and not for retargeting users or appending data to a non-public profile regarding any user unless expressly agreed in writing by Disney.

16.2 In respect of the operation of any Tracking Technology in the Campaign Creative or on the Disney Media Platform and regardless of whether such Tracking Technology has been disclosed to or otherwise approved by Disney, the Client warrants that it shall not be in breach nor shall it place Disney in breach of any Applicable Laws and in particular the Data Protection Laws.

16.3 Client agrees to (and shall procure that its' Advertising Partners agree to):

16.3.1 ensure that with respect to any processing of Campaign Data which it carries out or otherwise instructs an Advertising Partner to perform on its behalf then it and they shall post a privacy policy that: (a) complies with Applicable Laws, and (b) accurately discloses the data collection, use and disclosure practices applicable to such processing

16.3.2 provide end-users with a link to the Internet Creative Bureau's opt-out page at [www.youronlinechoices.com](http://www.youronlinechoices.com) so as to provide a notification to users relating to the use of Tracking Technologies which links at the user's option to further information which accurately discloses the use of such technologies (including for the purposes of interest-based online advertising) and user controls (through privacy policies or otherwise).

16.4 Each party agrees to comply with the terms of its own posted privacy polic(ies) and the EASA Best Practice Recommendation on Online Behavioural Creative and Self-Regulatory Principles of the IAB Europe (or such replacement codes and guidelines as issued from time to time) in connection with its and their activities related to this Agreement.

16.5 Nothing in this section shall prevent the Client from using aggregate and anonymous performance data for internal media planning purposes only (but not for user retargeting), or (where the Client is an Agency) disclosing qualitative evaluations of aggregate and anonymous performance data to its clients and potential clients for the purpose of media planning or purposes relating to its continued development of its business, and provided further that the Agency shall not disclose any such data to any third party in a way that would identify Disney to such third party.

16.6 Failure by either party to comply with the obligations set out in this Section 15 is grounds for immediate cancellation of the Order by Disney.

## **17. Warranties and Representations**

17.1 Each party represents and warrants that its representative signing this Agreement has the full power and authority to sign and to bind the relevant party accordingly and it is duly organised, validly existing and in good standing

under the laws of the jurisdiction in which it is incorporated, has been in continuous existence since its incorporation and has the right, power and authority and has taken all action necessary to execute, deliver and exercise its rights and perform its obligations under this.

17.2 Disney warrants, represents and undertakes that with respect to any Disney Intellectual Property, it has the right to license such property on the terms provided in this Agreement and that such licence shall not violate the rights of any third parties. No representation or warranty is hereby given as to trade mark rights or non-infringement of trade mark rights with respect to any Disney Intellectual Property.

17.3 Client warrants, represents and undertakes that:

17.3.1 it shall not use, or permit the use by any third party, any Disney Intellectual Property except as expressly authorised by this Agreement;

17.3.2 the Advertiser Brand, Advertiser IP, the Campaign Creative and any other activities of or content, copy or materials supplied by Client or its sub-contractors, agents or representatives or for which Client is responsible shall:

(a) comply with all Applicable Laws, the Advertising Standards, the Nutritional Guidelines, any and all applicable Platform Rules and conform to any specifications provided by Disney;

(b) not infringe the Intellectual Property Rights, rights of publicity, rights of personality, rights of privacy, rights to any payment of royalties or other rights of any other third party;

(c) be of the highest quality and safe and free from defects in design, materials and workmanship and shall not contain any material that is unlawful, harmful, offensive, fraudulent, false, misleading, 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 or the Advertising Standards; and

(d) where it or its designee is granted access to the Disney Media Platforms to serve, display or otherwise publish the Campaign Creative or other online advertising it shall at all times comply with the Data Protection Laws and will comply with Disney's current published privacy policy (including any published Cookies Policy) or cause Disney to breach data protection or privacy law or incur any liability to Disney or any other person whatsoever; and

17.3.3 it shall be solely responsible for ensuring that the description of the Advertiser Brand and/or the Advertiser's products and services featured in the Campaign Creative or the Custom Content including the depiction of the performance or functionality of such products and services shall comply with Applicable Laws, the Advertising Standards and shall not be misleading in any way. The Advertiser shall furnish Disney with adequate substantiation and suitable objective factual information and other data for all such descriptions or representations as Disney may reasonably request and to enable Disney to deal with any legal or other regulatory complaints raised in relation to the Campaign Creative.

17.4 Client further warrants, represents and undertakes that where it or its designee has provided material for the Campaign Creative or Custom Content (including any advertising or 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 such advertising), except as expressly set out in this Agreement, it:

17.4.1 has obtained or will be responsible for obtaining and paying for all Intellectual Property Rights and other third party rights, and all appropriate consents, permissions, clearances and licences (including without limitation any and all music rights and performing rights including making any and all payments, re-use payments, royalties and other sums required to be paid to administrators of musical compositions and/or recordings synchronized with or used in the materials and all other music rights holders and musicians and/or applicable unions or collective societies, and any personal appearance rights) to permit the use, reproduction, display, transmission and distribution of such materials whether or not on Disney Media Platforms in the manner described in the Order; and

17.4.2 such materials shall comply with any specifications or technical requirements communicated by Disney, shall perform without any material error or defect, be of satisfactory quality, be free of any defects, shall not contain viruses, spyware, malware, backdoors, Trojan horses or other software, algorithms or code intended to disrupt or harm computer or network systems or access data or systems and not affect the operation of the Disney Media Platforms or cause damage or harm to any use of the Disney Media Platforms.

- 17.5 Client acknowledges and agrees that if it becomes aware of any likelihood of any breach of warranty under this clause, it will notify Disney immediately. Disney shall have the right (but not the obligation) to remove any materials from display, transmission or publication on the Disney Media Platforms.
- 17.6 This Agreement sets out the full extent of Disney's obligations and liabilities in respect of the rights granted hereunder. Except as expressly stated in this Agreement, there are no conditions, warranties, representations or other terms, express or implied, that are binding on Disney. Any condition, warranty, representation or other term which might otherwise be implied into, or incorporated in, this Agreement whether by statute, common law or otherwise, is excluded to the fullest extent permitted by Applicable Laws.

## **18. Indemnities**

- 18.1 Client shall, on demand, indemnify and hold harmless Disney, its parent and affiliated companies and their respective officers, directors, employees, sub-contractors and agents and each of them ("**Disney Indemnified Parties**"), from and against all losses, actions, claims, costs, liabilities, judgments, damages and/or expenses (including but not limited to reasonable 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) whether reasonably foreseeable or not, incurred and arising from or relating to (a) any breach of any warranty given by the Client contained in this Agreement, (b) any claim made against Disney or its Affiliates for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with any use of the Disney Media Platforms which is not in accordance with the rights granted under this Agreement, and (c) the operation of the Competition(s), including use or misuse by contestants of any prize and any user-generated content and shall add the Disney Indemnified Parties as indemnified and released parties in the official rules and any winner releases, waivers or prize claim documents.
- 18.2 Disney agrees to, and shall, indemnify, defend and hold harmless Client from and against any and all losses, actions, claims, costs, liabilities, judgments, damages and/or expenses (including but not limited to reasonable legal fees, costs and expenses) arising from any third party claim that any Intellectual Property Rights provided by Disney and used in the manner prescribed by Disney infringes the copyright of any third party.
- 18.3 The indemnification obligations in this Clause 18 are expressly conditioned on the indemnified party: (i) notifying the indemnifying party promptly in writing of each such claim, and in any case not later than ten (10) days after it receives notice of the claim; (ii) giving to the indemnifying party sole control of the defence and any settlement negotiations with regard to such claim; and (iii) giving the indemnifying party the information, authority, and assistance it needs to defend against or settle the claim PROVIDED ALWAYS that Disney will have sole control of the defence of third party claims in relation to infringement of the Licensed Property and Client shall be solely responsible for its own legal and other professional fees, costs and expenses with respect to the same.
- 18.4 In no circumstance shall Disney be liable for any error in the Campaign Creative whatsoever whether through its own act or omission (whether negligent or otherwise) or through the incorrect presentation or codes for the Campaign Creative or otherwise and the Client hereby indemnifies Disney in respect of any claim, loss, damage or otherwise arising out of any error or omission in the Campaign Creative.
- 18.5 Client agrees that it may not, without Disney's prior written consent (which shall not be unreasonable withheld or delayed), enter into any settlement or compromise of any claim that results in any admission of liability or wrongdoing on the part of Disney or its Affiliates. It is understood and agreed that neither Disney nor any of its Affiliates will be required, to edit or review for accuracy or appropriateness any Campaign Creative.

## **19. Liability**

- 19.1 Nothing in this Agreement shall limit or exclude either party's liability for (a) death or personal injury resulting from such party's negligence, (b) fraud or fraudulent misrepresentation; or (c) any other liability that cannot be excluded or limited by Applicable Laws.
- 19.2 The aggregate liability of Disney or any Disney-related Entity in respect of any loss or damage determined by a court to have been incurred by the Client and arising out of or in connection with this Agreement (whether in contract (including the performance, non-performance or delayed performance by Disney of any obligations under or in connection with this Agreement), tort (including negligence), equity or for breach of statutory duty or in any other way), or otherwise arising from the Client's exercise of the rights granted to it under this Agreement, shall not exceed the Fee (or £50,000 where any fee has been waived), subject always to the remaining provisions of this Clause 18
- 19.3 To the extent permitted by Applicable Laws, neither party shall be liable in any circumstances whether in contract (including the performance, non-performance or delayed performance by Disney of any obligations under or in connection with this Agreement), tort (including negligence), equity or for breach of statutory duty or in any other way) for:



- 19.3.1 any loss arising from or in connection with loss of revenues, profits, contracts or business or failure to realise anticipated savings (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or
- 19.3.2 any loss of goodwill or reputation (regardless of whether any of this type of loss or damage are direct, indirect or consequential); or
- 19.3.3 any indirect or consequential loss or damage whatsoever,

suffered or incurred by the other party and arising out of or in connection with this Agreement, even if such loss was reasonably foreseeable or that party had been advised of the possibility of the other party incurring it, provided always that this clause shall not apply to (a) any infringement of Disney Intellectual Property Rights by Client or its agents or subcontractors or (b) any breach by either party of Clause 20 (Confidentiality) or Clause 15 (Data Protection).

- 19.4 Under no circumstances shall Client be entitled to any injunctive relief against Disney with respect to this Agreement or any rights granted and agrees that its sole and exclusive remedy under the Agreement shall be an action in damages or a claim under the indemnity under Clause 18
- 19.5 This Clause 19 shall not limit Client's liability to pay to Disney any payment properly owing to Disney pursuant to this Agreement.
- 19.6 The limitations of liability in this Clause are a fundamental part of the basis of each party's bargain hereunder, and Disney would not enter into this Agreement absent such limitations.
- 19.7 The parties acknowledge that the rights and obligations of Disney under this Agreement are subject to Applicable Laws in force from time to time and accordingly in the event of any inconsistency between the terms of this Agreement and Applicable Laws, the Applicable Laws shall prevail and Disney shall have no liability (save as provided in Clause 6) to the Client in the event that it is unable to perform any of its obligations hereunder as a result of the requirements of any Applicable Laws or change. If Disney fails to publish any Campaign Creative for any reason whatsoever or deliver any guaranteed Impressions or Referrals as provided in the Order (or in the event of any other failure, technical or otherwise, of such Campaign Creative appearing as provided in this Agreement), Disney's liability will be limited (at the option of Disney) to either: publishing the Campaign Creative as soon as is reasonably practicable in the period following the period during which the Campaign Creative was scheduled to run on the Disney Property or an alternative website and for such time as is necessary to generate a number of substitute Impressions or Referrals equal to the shortfall; or refund to the Client that proportion of the Net Fee which relates to that Campaign Creative and/or Impressions or Referrals which were not provided or, if the relevant amounts were not paid by or on behalf of the Client, agree that such amounts will not be due or payable.

## **20. Term and Termination.**

- 20.1 The term of the Agreement shall commence when the Order has been signed by both parties, or the date Disney commences publishing the Creative (whichever is the earlier) and this Agreement shall continue in force and effect until the Campaign End Date unless terminated earlier pursuant to this Clause 20 of the Agreement. Except as expressly set out in this Agreement, any renewal of this Agreement and acceptance of any additional advertising order will be at Disney's sole discretion. The rates applicable to such renewal period (if any) are subject to change by Disney from time to time in its absolute discretion.
- 20.2 Either party may terminate this Agreement, upon written notice to the other party, at its discretion, if:
  - 20.2.1 the other party commits a material breach of this Agreement and, if remediable, it fails to remedy such breach within five (5) days after written notice from the other party requiring it to do so; or
  - 20.2.2 the other party commits any act of insolvency, including:
    - (a) inability of that party to pay its debts generally as they fall due (within the meaning of Section 123 of the Insolvency Act 1986 or analogous such law in any applicable jurisdiction); or
    - (b) any petition or action for relief is filed in respect of that party under any reorganisation or insolvency law; or
    - (c) an application is made or steps are taken (formal or informal) for an administration order to be made in respect of that party for an arrangement or composition between that party and its creditors; or
    - (d) proceedings are started for, or a meeting is called for the consideration of, the winding-up, administration, dissolution or reorganisation (otherwise than while solvent and on terms previously approved in writing) of that party, or for the appointment of a receiver and/or management (or an administrative receiver) for that party; or

- (e) that party becomes the subject of any other judicial or administrative proceeding launched in good faith relating to its insolvency; or
  - (f) that party ceasing or threatening to cease to carry on business in accordance with this Agreement; or
  - (g) any encumbrancer taking possession of a material part of the assets or undertaking of that party; or
  - (h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraph (a) to (g) (inclusive) above.
- 20.3 Each party shall as soon as reasonably practicable give notice in writing to the other party of any event within paragraph 21.2 which occurs during the Term and which would entitle the other party to terminate this Agreement.
- 20.4 Disney shall have the right to immediately terminate this Agreement if the Client: (i) fails to pay any sum due or to deliver any agreed Advertising Support; or (ii) engages in, or Disney becomes aware Client has engaged in or authorises or condones, any unlawful practice or in any practice which Disney believes in its reasonable judgment could cause disrepute to Disney or the Licensed Property.
- 20.5 Any breach by Client of any of the warranties or representations made in this Agreement shall constitute a material and repudiatory breach of this Agreement which, in addition to and without prejudice to Disney's other rights and remedies under law or equity, shall allow Disney the right to, at its option: (a) declare this Agreement breached by Client; (b) declare all Rights Payments and any other monies then due hereunder immediately due and payable; (c) suspend the license of Promotion Rights granted until such default is cured (if capable of cure); and/or (d) terminate this Agreement by notice to Client.
- 20.6 Neither party shall be deemed to be in breach of this Agreement or otherwise held responsible for loss or damage caused by delay or failure to perform undertakings hereunder when such delay or failure is due to an event of Force Majeure provided that the relevant event was beyond their control, prompt notice of such event is given, all reasonable steps (if any) to provide against such event had been taken and they used best endeavours to mitigate any damages arising from such event. If either party is prevented from performing its obligations under this Agreement for more than fourteen (14) consecutive days as a result of an event of Force Majeure, the other party shall be entitled to suspend this Agreement; provided, however, that if any event of Force Majeure continues for sixty (60) consecutive days or more, either Party shall have the right to terminate this Agreement without liability.
- 20.7 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 Client any monies due and owing by the Client to Disney at the time of termination.
- 20.8 Where any Client 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 Client.
- 20.9 Under no circumstances shall Client 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.
- 20.10 No termination of this Agreement will affect any provision of this Agreement expressed to have effect after such termination or any rights which either party may have against the other subsisting at or accrued prior to the time of termination.
- 20.11 In the event that this Agreement is terminated pursuant to this Clause 21, then without prejudice to its rights and remedies, Disney shall be under no obligation to publish the Campaign Creative or to refund any fee or other amounts paid by or on behalf of the Client to Disney in respect of such Campaign Creative.
- 20.12 Termination or expiry of this Agreement and of any Order in whole or in part shall not affect any rights of any party in respect of any antecedent breach of this Agreement by any other party, nor shall it affect any accrued rights or liabilities (or the coming into force of any accrued rights or liabilities) of any party.
- 20.13 Upon termination of this Agreement for any reason:
- 20.13.1 the Client shall remain liable for any amount due under an Order for Campaign Creative displayed by Disney and such an obligation to pay shall survive the termination of this Agreement;
  - 20.13.2 at the request of Disney, the Client shall return all of Disney's statistics provided under this Agreement.

## 21. Confidentiality and Publicity

- 21.1 Any existing and executed NDA or Confidentiality Agreement is expressly incorporated into this Agreement and will govern disclosure and handling of the Parties' Confidential Information (as defined therein), including any disclosures made in the course of any prior discussions or negotiations relating to this Agreement. This Agreement is the Confidential Information of each of the Parties separately.
- 21.2 Subject to Clause 21.1 neither party shall divulge or announce, or in any manner disclose to any third party, any of the terms and conditions of this Agreement or any other confidential information which either party may disclose to the other in connection with this Agreement (other than to its agents, representatives and legal representatives on a need to know basis only for the purposes of carrying out its obligations under this Agreement and provided that the disclosing party takes all reasonable steps to ensure such persons comply with the confidentiality obligations set out in this Clause 21 (and the disclosing party agrees that it shall be responsible for such persons' compliance with the confidentiality obligations set out in this Clause 21), without the express written consent of the other party (which consent may be withheld in that party's sole discretion), except:
- 21.2.1 to such extent as may be required by any Applicable Laws, government order or regulation or by order or decree of any court of competent jurisdiction, recognized stock exchange and in the event that disclosure is required in any such investigatory, legal, regulatory or administrative proceeding, the party required to make disclosure shall provide the other with the maximum prior notice practicable in the circumstances, so that the other party may seek a protective order or other appropriate remedy;
- 21.2.2 as part of normal reporting or review procedure to the disclosing party's parent company, auditors (and in the case of Disney, any participants, talent or any third party auditors representing such participants or talent unions or talent union pension and health plans, provided that such participants, talent and auditors have entered into confidentiality agreements in favour of Disney or its Affiliates), shareholders, and legal representatives; or
- 21.2.3 to either party's or their Affiliates' investors or to persons who are bona fide considering an investment in either party or their Affiliates, providing such persons have entered into confidentiality agreements in favour of the disclosing party or its Affiliates.
- 21.3 The provisions of this Clause 21 shall not apply to any information which:
- 21.3.1 is at the date of this Agreement in, or subsequently enters, the public domain, other than by default of the recipient party;
- 21.3.2 is obtained by the recipient party from a bona fide third party having free right of disposal of such information; or
- 21.3.3 a party is able to demonstrate from written records to the reasonable satisfaction of the other party, has been independently generated by that party without reference to the other party's confidential information.
- 21.4 The parties expressly agree that there shall be no announcements, press releases, comments or discussions, directly or indirectly, with or to any third party, whether public or otherwise, oral or written, regarding any of the terms and conditions of this Agreement or its subject matter or the fact that this Agreement has been entered into, without both parties' prior written consent (email sufficing), except as may be required by law, any governmental or regulatory authority, any court or other authority of competent jurisdiction. Insofar as public announcements or press releases are concerned, no disclosure whatsoever shall occur unless and until the text thereof has been mutually agreed by the parties. It is also understood and agreed that the appropriate strategy for responding to the press on matters which concern Disney shall be subject to Disney's approval, in Disney's sole and absolute discretion.
- 21.5 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.
- 21.6 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.

21.7 Save to the extent required by Applicable Laws or any Regulator the Client will at all times during and after this Agreement keep the provisions of this Agreement and any confidential information or commercially sensitive information acquired from the other confidential and shall not disclose the same to any third party.

21.8 No reference shall be made to the terms of this Agreement by either party in any advertising, publicity or promotional material without the prior written approval of the other party. 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. Advertiser shall not state or imply that Disney endorses Advertiser's products or services. Advertiser shall not submit any Campaign Creative for any award, prize, honour or similar recognition without Disney's prior written consent.

## **22. Regulator or Consumer Complaints and Investigations**

22.1 In the event either party receives a complaint, investigation, claim or any information request from any Regulator or consumer in connection with the Campaign Creative or related marketing materials: Client acknowledges and agrees:

(a) it shall not respond to the request without the other party's written consent and shall immediately notify the other party providing full written particulars and copies of all correspondence together with a report on the manner in which such complaints are being, or have been, dealt with and shall comply with any reasonable directions given by the other party in respect thereof;

(b) the parties shall promptly consult with one another to agree an appropriate response and/or to conduct a defence to any claim provided always that with respect to any issue solely related to intellectual property rights belonging to Disney, Disney shall decide in its absolute discretion what action (if any) to take and will have exclusive control over, and conduct of, all correspondence, claims and proceedings. During such consultation the Client shall not make any admissions or respond to any such request and shall provide Disney with all assistance (at Client's cost) that it may reasonably require to deal with the request. Client acknowledges and agrees that Disney's response or approval of any correspondence in connection with the request shall not constitute an opinion as to its legal adequacy or appropriateness.

22.2 In the event the request results in any adjudication which determines that the Campaign Creative or any element of any related marketing materials breaches the Applicable Laws at any time during or after the Campaign Period, Client shall, at its sole cost and expense, immediately terminate the Campaign Creative campaign and cease (and shall not continue or seek to extend the Campaign Period) the dissemination, exhibition or use of the affected Campaign Creative or related marketing materials. Any replacement promotion, advertising support or related marketing materials may be substituted provided they are compliant with Applicable Laws and the relevant adjudication and have been approved for use by Disney in writing. Disney shall not incur any liability to Client with respect to any complaint, investigation, claim or any information request and Client shall remain liable to Disney for the delivery of any advertising support or other commitment without any deduction.

## **23. General**

23.1 Nothing in this Agreement shall be so construed as to constitute the Client 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.

23.2 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.

23.3 Neither party will be liable for delay or default in the performance of its obligations under this Agreement (other than for non-payment by Client) 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 Client, 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.

23.4 No term in this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999.

- 23.5 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 Client 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 Campaign Creative to which the change of terms and conditions would otherwise be applicable.
- 23.6 Client 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.
- 23.7 The Client may not re-sell, assign or transfer any of its rights hereunder, and any attempt to re-sell, assign or transfer such rights will entitle Disney to terminate this Agreement immediately, without liability on the part of Disney. Disney shall be entitled to assign any of its rights and obligations hereunder to any other person.
- 23.8 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.
- 23.9 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.
- 23.10 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.
- 23.11 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. Unless otherwise expressly agreed to in writing by Disney and Client, any Order concurrent herewith or subsequently hereto issued by Client 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.
- 23.12 This Agreement will be governed by and construed in accordance with the laws of South Africa and the parties agree to be bound by the exclusive jurisdiction of the South African courts.

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