



## DisneyLiving Channel Terms of Use

### **1. INTRODUCTION**

Welcome to the DisneyLiving Channel (the "**DisneyLiving Channel**") sponsored by Disney Consumer Products, Inc. ("**DCP**"). DCP and any and all entities that control, are controlled by, or are affiliated or under common control with, DCP are collectively referred to herein as "**we**," "**us**" or "**our**".

**PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE SUBMITTING ANY CONTENT TO THE DISNEYLIVING CHANNEL.** By submitting any content to the DisneyLiving Channel or by clicking a box that states that you accept or agree to these terms, you signify your agreement to these terms of use. If you do not agree to these terms of use, do not submit any content to the DisneyLiving Channel.

Note that special terms apply to some services offered on the DisneyLiving Channel, like rules for particular contests or sweepstakes or other features or activities. These terms are posted in connection with the applicable service. Any such terms are in addition to these terms of use, and in the event of a conflict, prevail over these terms of use.

You acknowledge that these terms of use are supported by reasonable and valuable consideration, the receipt and adequacy of which are hereby acknowledged. Without limiting the generality of the foregoing, you acknowledge that such consideration includes your use of the DisneyLiving Channel and receipt of data, materials and information available at or through the DisneyLiving Channel, the possibility of our use or display of your Solicited Submissions (as defined below in Section 2, entitled "SUBMISSIONS") and the possibility of the publicity and promotion from our use or display of your Solicited Submissions.

### **2. SUBMISSIONS**

In these terms of use, we use the word "**Submissions**" to mean text, messages, ideas, concepts, pitches, suggestions, stories, screenplays, treatments, formats, artwork, photographs, drawings, videos, audiovisual works, musical compositions (including lyrics), sound recordings, characterizations, your and/or other persons' names, likenesses, voices, usernames, profiles, actions, appearances, performances and/or other biographical information or material, and/or other similar materials that you submit, post, upload, embed, display, communicate or otherwise distribute (collectively, "**Distribute**") on or through the DisneyLiving Channel.

There are two types of Submissions: Solicited Submissions and Unsolicited Submissions. "**Solicited Submissions**" means those Submissions (a) that we expressly request or enable you to provide to us via any feature or activity on the DisneyLiving Channel for our review or display and possible specifically-defined consideration or compensation (collectively, "**Consideration**") (such as prizes or other value in games, sweepstakes, contests and promotions); and (b) that you Distribute on or through the DisneyLiving Channel for which you do not seek Consideration. "**Unsolicited Submissions**" are any and all Submissions that do not fall within subparagraphs (a) or (b) of this paragraph.

**DO NOT DISTRIBUTE ANY UNSOLICITED SUBMISSIONS; NO IMPLIED CONTRACT.**

Our long-standing company policy does not allow us to accept or consider Unsolicited Submissions so please do not Distribute Unsolicited Submissions on or through any DisneyLiving Channel. We want to avoid the possibility of future misunderstandings when projects developed by us or under our direction might seem to others to be similar to their own creative work. We therefore ask that you not Distribute any Unsolicited Submission. In any event, you agree that any Submissions you make is not being made in confidence or trust and that no confidential or fiduciary relationship is intended or created between you and us in any way, and that you have no expectation of any review, compensation or consideration of any type (other than any stated Consideration).

Except as expressly stated in these terms of use, the provisions of these terms of use apply equally to Unsolicited Submissions and Solicited Submissions. Accordingly, we, our licensees, distributors, agents, representatives and other authorized users shall be entitled to exploit and disclose all Submissions, and we shall not be liable to you or to any person claiming through you for any exploitation or disclosure of any Submission.

### **3. LICENSES AND REPRESENTATIONS**

You hereby grant us and our licensees, distributors, agents, representatives and other authorized users, a perpetual, non-exclusive, irrevocable, fully-paid, royalty-free, sub-licensable and transferable (in whole or part) worldwide license under all copyrights, trademarks, patents, trade secrets, privacy and publicity rights and other intellectual property rights you own or control to use, reproduce, transmit, display, exhibit, distribute, index, comment on, modify (including removing lyrics and music from any Submission or substituting the lyrics and music in any Submission with music and lyrics selected by us), create derivative works based upon, perform and otherwise exploit such Submissions, in whole or in part, in all media formats and channels now known or hereafter devised (including on DisneyLiving Channel, on third party web sites, on our broadcast and cable networks and stations, on our broadband and wireless platforms, products and services, on physical media, and in theatrical release) for any and all purposes including entertainment, news, advertising, promotional, marketing, publicity, trade or commercial purposes, all without further notice to you, with or without attribution, and without the requirement of any permission from or payment to you or to any other person or entity (the "**Submissions License**").

By communicating a Submission, you represent and warrant that the Submission and your communication thereof conform to the Rules of Conduct (set forth below in Section 4 labeled "RULES OF CONDUCT") and other requirements of these terms of use and that you own or have the necessary rights, licenses, consents and permissions, without the need for any permission from or payment to any other person or entity, to exploit, and to authorize us to exploit, such Submission in all manners contemplated by these terms of use (including the Submissions License). These terms of use (including the Submissions License) do not limit any past or future grant of rights, consents, agreements, assignments and waivers you may have made or make with respect to Submissions.

To the extent that any Submissions you Distribute on or through DisneyLiving Channel contain original songs or recordings, you hereby represent that you are a member of ASCAP, BMI, SESAC or any other applicable performing rights society and that all musical compositions (including lyrics) and sound recordings contained in such Submissions are available for licensing to us (and our licensees, distributors, agents, representatives and other authorized users) directly from such societies. Notwithstanding the foregoing, regardless of whether you are a member of any performing rights society, you grant the Submissions License with respect to each and every musical composition (including lyrics) and sound recordings contained in such Submissions.

To the extent that we solicit Submissions through features or activities on or through the DisneyLiving Channel (including games, sweepstakes, contests, promotions and Public Forums ("**Public Forum**" means an area, site or feature offered as part of the DisneyLiving Channel that offers the opportunity for users to

Distribute Submissions for viewing by other users, including a chat area, message board, instant messaging, mobile messaging, social community environment, profile page, conversation page, blog, e-mail function, including electronic greeting cards and send-a-friend e-mails) that require the use of our copyrighted works (in whole or in part), we hereby grant you a non-exclusive license to create a derivative work using our copyrighted works (in whole or in part) as required (but only as required, and only for the purpose of creating your Submissions); provided however, that such license shall be conditioned upon your assignment of all rights in the work you create to us. If such rights are not assigned to us, your license to create derivative works using our copyrighted works (in whole or in part) shall be null and void. You agree to the foregoing grant of rights, consents, agreements and assignments whether or not your Submissions are used by us.

You hereby appoint us as your agent with full power to enter into and execute any document and/or do any act we may consider appropriate to confirm the grant of rights, consents, agreements, assignments and waivers set forth in these terms of use.

To the extent any "moral rights," "ancillary rights," or similar rights in or to the Submissions exist and are not exclusively owned by us, you agree not to enforce any such rights as to us or our licensees, distributors, agents, representatives and other authorized users, and you shall procure the same agreement not to enforce from any others who may possess such rights.

Without limiting the scope of the Submissions License or any future grant of rights, consents, agreements, assignments, and waivers you may make with respect to Submissions, you hereby ratify any prior grant of rights, consents, agreements, assignments and waivers made by you with respect to Submissions submitted by you to us.

#### **4. RULES OF CONDUCT**

The following Rules of Conduct apply to the DisneyLiving Channel. By using the DisneyLiving Channel, you agree that you will not Distribute any Submission that:

- a. (i) is defamatory, abusive, harassing, threatening, or an invasion of a right of privacy of another person; (ii) is bigoted, hateful, or racially or otherwise offensive; (iii) is violent, vulgar, obscene, pornographic or otherwise sexually explicit; or (iv) otherwise harms or can reasonably be expected to harm any person or entity;
- b. is illegal or encourages or advocates illegal activity or the discussion of illegal activities with the intent to commit them, including a Submission that is, or represents an attempt to engage in, child pornography, stalking, sexual assault, fraud, trafficking in obscene or stolen material, drug dealing and/or drug abuse, harassment, theft, or conspiracy to commit any criminal activity;
- b. infringes or violates any right of a third party including: (i) copyright, patent, trademark, trade secret or other proprietary or contractual rights; (ii) right of privacy (specifically, you must not distribute another person's personal information of any kind without their express permission) or publicity; or (iii) any confidentiality obligation;
- c. is commercial, business-related or advertises or offers to sell any products, services or otherwise (whether or not for profit), or solicits others (including solicitations for contributions or donations);

d. contains a virus or other harmful component, or otherwise tampers with, impairs or damages the DisneyLiving Channel or any connected network, or otherwise interferes with any person or entity's use or enjoyment of the DisneyLiving Channel; or

e. (i) does not generally pertain to the designated topic or theme of the relevant Public Forum; (ii) violates any specific restrictions applicable to a Public Forum, including its age restrictions and procedures; or (iii) is antisocial, disruptive, or destructive, including "flaming," "spamming," "flooding," "trolling," and "griefing" as those terms are commonly understood and used on the Internet.

We cannot and do not assure that other users are or will be complying with the foregoing Rules of Conduct or any other provisions of these terms of use, and, as between you and us, you hereby assume all risk of harm or injury resulting from any such lack of compliance.

## **5. COOPERATION; REMOVAL OF SUBMISSIONS**

We reserve the right, but disclaim any obligation or responsibility, to (a) refuse to post or communicate or remove any Submission from the DisneyLiving Channel that violates these terms of use (including the Rules of Conduct) and (b) identify any user to third parties, and/or disclose to third parties any Submission or personally identifiable information, when we believe in good faith that such identification or disclosure will either (i) facilitate compliance with laws, including, for example, compliance with a court order or subpoena, or (ii) help to enforce these terms of use (including the Rules of Conduct) and/or our contest, sweepstakes, promotions, and game rules, and/or protect the safety or security of any person or property, including the DisneyLiving Channel. Moreover, we retain all rights to remove Submissions at any time for any reason or no reason whatsoever.

## **6. DISCLAIMERS**

**THE CONTENT ON OR OTHERWISE RELATED IN ANY WAY TO DISNEYLIVING CHANNEL OR ANY THIRD PARTY SITES OR SERVICES LINKED TO FROM ANY DCP SITE IS PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS, AVAILABILITY, SECURITY, COMPATIBILITY AND NONINFRINGEMENT. WE DO NOT WARRANT THAT ANY CONTENT WILL BE ERROR-FREE, THAT ACCESS THERETO WILL BE UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, OR THAT ANY DCP SITE OR THE SERVERS THAT MAKE SUCH CONTENT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. MOREOVER, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. WE DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF ANY CONTENT. YOU HEREBY IRREVOCABLY WAIVE ANY CLAIM AGAINST US WITH RESPECT TO CONTENT AND ANY CONTENT YOU PROVIDE TO THIRD PARTY SITES (INCLUDING CREDIT CARD AND OTHER PERSONAL INFORMATION).**

## **7. INDEMNIFICATION**

You hereby agree to indemnify, defend, and hold us, our licensors, licensees, distributors, agents, representatives and other authorized users, and each of the foregoing entities' respective resellers, distributors, service providers and suppliers, and all of the foregoing entities' respective officers, directors, owners, employees, agents, representatives and assigns (collectively, the "**Indemnified Parties**") harmless from and against any and all losses, damages, liabilities and costs (including settlement costs and any legal or other fees

and expenses for investigating or defending any actions or threatened actions) incurred by the Indemnified Parties in connection with any claim arising out of (a) any breach by you of these terms of use, (b) claims arising from your use of the DisneyLiving Channel, or (c) DCP's use of your Submission. You shall use your best efforts to cooperate with us in the defense of any claim. We reserve the right, at our own expense, to employ separate counsel and assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

#### **8. LIMITATION OF LIABILITY**

**UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL WE, OUR LICENSORS OR LICENSEES, OR ANY OF THE FOREGOING ENTITIES' RESPECTIVE RESELLERS, DISTRIBUTORS, SERVICE PROVIDERS OR SUPPLIERS, BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING LOST PROFITS, PERSONAL INJURY (INCLUDING DEATH) AND PROPERTY DAMAGE OF ANY NATURE WHATSOEVER, THAT RESULT FROM (A) THE USE OF, OR THE INABILITY TO USE, ANY DCP SITE OR CONTENT, OR (B) THE CONDUCT OR ACTIONS, WHETHER ONLINE OR OFFLINE, OF ANY USER OF A DCP SITE OR ANY OTHER PERSON OR ENTITY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL OUR TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EXCEED THE AMOUNT PAID BY YOU, IF ANY, OR \$100 (WHICHEVER IS LESS) FOR ACCESSING OR PARTICIPATING IN ANY ACTIVITY RELATED TO ANY DCP SITE. MOREOVER, UNDER NO CIRCUMSTANCES SHALL WE, OUR LICENSORS OR LICENSEES, OR ANY OF THE FOREGOING ENTITIES' RESPECTIVE RESELLERS, DISTRIBUTORS, SERVICE PROVIDERS OR SUPPLIERS, BE HELD LIABLE FOR ANY DELAY OR FAILURE IN PERFORMANCE RESULTING DIRECTLY OR INDIRECTLY FROM AN ACT OF FORCE MAJEURE OR CAUSES BEYOND OUR OR THEIR REASONABLE CONTROL.**

**WE MAY TERMINATE YOUR FURTHER ACCESS TO DISNEYLIVING CHANNEL OR CHANGE THE DISNEYLIVING CHANNEL OR DELETE CONTENT OR FEATURES IN ANY WAY, AT ANY TIME AND FOR ANY REASON OR NO REASON.**

**THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION AND ELSEWHERE IN THESE TERMS OF USE APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.**

#### **9. JURISDICTIONAL AND VENUE ISSUES**

You agree that any action at law or in equity arising out of or relating to these terms of use or the DisneyLiving Channel shall be filed, and that venue properly lies, only in state or federal courts located in Superior Court in and for the County of Los Angeles, State of California (or if the Superior Court shall not have jurisdiction over the subject matter thereof, then to such other court sitting in said county and having subject matter jurisdiction), and you hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action.

#### **10. AMENDMENT**

At any time, we may amend these terms of use (including by modification, deletion and/or addition of any portion thereof). If we make a material amendment to these terms of use, we will notify you of such amendment by sending you an e-mail at the last e-mail address that you provided us, and/or by posting notice of such amendment on the DisneyLiving Channel covered by these terms of use. Any such amendment to these terms of use will be effective thirty (30) calendar days following either our dispatch of an e-mail notice

to you or our posting of notice of the changes on the DisneyLiving Channel. Please note that, at all times, you are responsible for providing us your current e-mail address. In the event that the last e-mail address that you have provided us is not valid, or for any other reason is not capable of delivering to you the notice described above, our dispatch of the e-mail containing such notice will nonetheless constitute effective notice of any amendment described in the notice.

## **11. GENERAL PROVISIONS**

These terms of use shall be governed by and construed in accordance with the laws of the State of California and the laws of the United States, without giving effect to any principles of conflicts of law. If any provision of these terms of use shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these terms of use and shall not affect the validity and enforceability of any remaining provisions. No waiver of any provision of these terms of use by us shall be deemed a further or continuing waiver of such provision or any other provision, and our failure to assert any right or provision under these terms of use shall not constitute a waiver of such right or provision. In these terms of use, the word “including” is used illustratively, as if followed by the words “but not limited to.” **YOU AGREE THAT ANY CAUSE OF ACTION YOU MAY HAVE ARISING OUT OF OR RELATED TO THESE TERMS OF USE OR THE DISNEYLIVING CHANNEL MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION SHALL BE PERMANENTLY BARRED.**

Supply of goods, services and software through the DisneyLiving Channel is subject to United States export control and economic sanctions requirements. By acquiring any such items through the DisneyLiving Channel, you represent and warrant that your acquisition comports with and your use of the item will comport with those requirements. Without limiting the foregoing, you may not acquire goods, services or software through the DisneyLiving Channel if: 1) you are in, under the control of, or a national or resident of Cuba, Iran, North Korea, Sudan or Syria or if you are on the U.S. Treasury Department’s Specially Designated Nationals List or the U.S. Commerce Department’s Denied Persons List, Unverified List or Entity List or 2) you intend to supply the acquired goods, services or software to Cuba, Iran, North Korea, Sudan or Syria (or a national or resident of one of these countries) or to a person on the Specially Designated Nationals List, Denied Persons List, Unverified List or Entity List.