

## Terms of Use

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**Updated: November 2, 2011**

### 1. INTRODUCTION

Welcome to Club Penguin (the "Site"). The Site is operated and presented to users by Disney Online Studios Canada Inc. (formerly known as Club Penguin Entertainment Inc.) of Kelowna, British Columbia, Canada ("DOS Canada").

"DIMG Sites" shall mean the Internet sites of the Disney Interactive Media Group ("DIMG") and certain affiliates thereto including ClubPenguin.com, Disney.com, ABCNEWS.com, ABC.com, ESPN.com, DisneyShopping.com, Go.com, FamilyFun.com, and other Internet sites on which these terms of use are posted. DIMG and any and all entities that control, are controlled by, or are affiliated or under common control with, DIMG are collectively referred to herein as "we," "us" or "our".

**PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING ANY DIMG SITE.** By using any DIMG Site or by clicking a box that states that you accept or agree to these terms, you signify your agreement to these terms of use and the [Club Penguin Rules](#). If you do not agree to these documents, you may not use the DIMG Sites.

**IF YOU ARE A PARENT OR GUARDIAN AND YOU PROVIDE YOUR CONSENT TO YOUR CHILD'S REGISTRATION WITH THE SITE, YOU AGREE TO BE BOUND BY THESE TERMS OF USE IN RESPECT OF THEIR USE OF THE SITE.**

Note that special terms apply to some services offered on certain DIMG Sites, like subscription-based services, rules for particular contests or sweepstakes or other features or activities. These terms are posted in connection with the applicable service. Subject to applicable law, 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 DIMG Sites and receipt of data, materials and information available at or through the DIMG Sites, the possibility of our use or display of your Solicited Submissions (as defined below in Section 3, entitled "SUBMISSIONS") and the possibility of the publicity and promotion from our use or display of your Solicited Submissions.

### 2. USE OF CONTENT

The Site is only for your personal use. You may not use the Site for commercial purposes or in any way that is unlawful, or harms us or any other person or entity as determined in our sole discretion.

All information, materials, functions and other content (including Submissions, as defined in Section 3, entitled "SUBMISSIONS") ("Content") contained on DIMG Sites are our copyrighted property or the copyrighted property of our licensors or licensees. All trademarks, slogans, service marks, trade names, and trade dress are proprietary to us and/or our licensors or

licensees. We may change the DIMG Sites or delete Content or features at any time, in any way, for any reason.

Except as we specifically agree in writing, no Content from any DIMG Site may be used, reproduced, transmitted, distributed or otherwise exploited in any way other than as part of the DIMG Site, not even as part of a derivative work, except that where a DIMG Site is configured to enable the download of particular Content, you may download one copy of such Content to a single computer for your personal, noncommercial home use only, provided that you (a) keep intact all copyright and other proprietary notices, (b) make no modifications to, and do not rent, lease, loan, sell, distribute, copy (except to create a single copy for your own back-up purposes), or create any derivative works based on the Site or the Content, in whole or in part, and (c) do not use the Content in an unlawful manner or in a manner that suggests an association with any of our products, services or brands. Using our Content for any other purpose, including but not limited to "re-mailing" or high-volume or automated use of DIMG Sites or using any of our Content on any other Web site or networked computer environment, is a violation of our copyright and other proprietary rights and is strictly prohibited.

In the event that we offer downloads of software on a DIMG Site and you download such software, the software, including any files, images incorporated in or generated by the software, and data accompanying the software (collectively, the "Software") are licensed to you by us or third-party licensors for your limited, personal, noncommercial home use only. We do not transfer title to the Software to you.

Except as permitted under applicable law, you may not distribute or otherwise exploit the Software or decompile, reverse engineer, disassemble, adapt it, or otherwise reduce the Software to a human-readable form, except to the extent permitted by applicable law.

Use of the Site or any software, code, device or other mechanism that allows automated gameplay, expedited gameplay, or other manipulation of gameplay or game client will result in immediate termination of the Account. Disney reserves the right, in its sole and absolute discretion, to determine what constitutes manipulation of gameplay or game client.

YOU ACKNOWLEDGE AND AGREE THAT NOTHING IN THESE TERMS OF USE SHALL HAVE THE EFFECT OF TRANSFERRING THE OWNERSHIP OF ANY COPYRIGHTS, TRADEMARKS, SLOGANS, SERVICE MARKS, TRADE NAMES, TRADE DRESS OR OTHER PROPRIETARY RIGHTS IN THE SITE OR CONTENT OR ANY PART THEREOF TO YOU OR ANY THIRD PARTY NOR TO AUTHORIZE YOU TO CREATE DERIVATIVE WORKS BASED ON THE CONTENT. You undertake not to do any act or thing which is inconsistent with or which is likely in any way to prejudice such title.

### 3. 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 a DIMG Site.

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 a DIMG Site 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 any DIMG Site for which you do not seek Consideration (such as in our Guest Services and in Public Forums (as defined below in Section 6, entitled "PUBLIC FORUMS AND COMMUNICATION")). "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 DIMG Sites. 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.

**4. LICENSES AND REPRESENTATIONS**

You hereby grant us and our licensees, distributors, agents, representatives and other authorized users, a non-exclusive, irrevocable, fully-paid, royalty-free, sub-licensable and transferable (in whole or part) worldwide license for an indeterminate period (or for such maximum period permitted by applicable law) under all copyrights, trademarks, patents, trade secrets, privacy and publicity rights and other intellectual and industrial 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 DIMG Sites, 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, without limitation, 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 7 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 DIMG Sites contain original songs or recordings, you hereby represent that you are a member of the applicable mechanical, performing rights and/or copyright owners' 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 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 DIMG Sites (including games, sweepstakes, contests, promotions, and Public Forums (defined below in Section 6, labeled "PUBLIC FORUMS AND COMMUNICATION")) 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 which might be necessary to confirm the grant of rights, consents, agreements, assignments and waivers set forth in these terms of use.

You agree that any Submissions you make are 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.

To the extent any "moral rights," "ancillary rights," or similar rights ("Moral Rights") in or to the Submissions exist and are not exclusively owned by us and to the extent you are able to do so under applicable law, 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, and to the extent allowed by applicable law, 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.

## 5. ACCOUNTS

Some services on the DIMG Sites permit or require you to create an account to participate or to secure additional benefits. You agree to provide, maintain and update true, accurate, current and complete information about yourself as prompted by our registration processes (the

"Registration Data"). You shall not impersonate any person or entity or misrepresent your identity or affiliation with any person or entity, including using another person's username, password or other account information, or another person's name, likeness, voice, image or photograph. You shall not provide false details for a parent or guardian. You acknowledge that you may not sublicense, transfer, sell, or assign Your Membership or Account ID. Any attempt to sublicense, transfer, auction, sell or assign the Membership or Account ID is void, and such attempts, regardless of whether made by Account Holder, will result in immediate termination of Account.

You also agree to promptly notify us at Club Penguin Help, [Billing/Membership Questions](#) of any unauthorized use of your username, password, other account information, or any other breach of security that you become aware of involving or relating to the Site. In addition, you agree to exit from your account at the end of each session.

Subject to applicable law, we may suspend or terminate your account and your ability to use any DIMG Site or portion thereof for failure to comply with these terms of use or any special terms related to a particular service, for infringing copyright, or for any other reason whatsoever.

Users shall comply with any applicable currency exchange control requirements. Before completing your subscription transaction, you may review the transaction and correct mistakes and/or withdraw from the transaction. Access to the Service is available immediately on payment of the subscription transaction fee.

## 6. E-COMMERCE

From time to time, You may purchase goods or services on our sites or applications, including to play games or purchase tickets or other goods. You acknowledge that only an adult (18 years or older) can enter into and complete any such transaction.

When you sign up to our virtual worlds and other ongoing services you have the right to cancel your subscription in writing up to 14 working days after you first sign up and you will receive a full refund of any fees paid within 30 days. However, if you access the chosen service within that 7 working day period, your subscription fees are non-refundable.

You may contact us to cancel an auto-renewal or recurring charge as disclosed to You on the relevant site or application by:

email: [billing@clubpenguin.com](mailto:billing@clubpenguin.com)

post: #500 – 1628 Dickson Avenue - Kelowna, BC. Canada V1Y 9X1

telephone: +1 (877)261-9482 toll free for North America

+1 (250)469-6380 all other callers (additional charges for international dialing may be applied)

Our information practices, including how we collect, use and disclose personal information are set forth in the Privacy Policy located at the following link: <http://www.clubpenguin.com/privacy.htm>

The period of the auto-renewal of any subscription shall be the same as the period of initial subscription, unless otherwise disclosed to You at the time of purchase. Any charges made in

connection with recurring payments or automatic renewals shall be made at the rate that was in effect at the time of original purchase of the service, unless we notify of a change you before such charge is made.

With respect to virtual currencies and/or goods, You understand that they can only be used in connection with the WDIG Sites and only in the virtual worlds where You obtained them and except for the right to use such items in the virtual worlds, You have no other right or title in or to any such items and we may control, modify, discontinue manage or otherwise regulate these items from time to time . You understand that these items cannot be traded outside of the virtual world for money or other items for value.

### ***Right of Withdrawal***

***You can withdraw from your contractual statement within 14 days without giving reasons by sending a notice in text form (e.g. a letter, facsimile or email). The deadline begins after the receipt of these instructions for the right of withdrawal in text form, however, but not before the conclusion of the contract and not before we have fulfilled our information duties pursuant to Art. 246 sec. 2 in conjunction with sec. 1 para. 1 and 2 Introductory Law to the German Civil Code as well as our obligations pursuant to sec. 312e para. 1 sentence 1 German Civil Code in conjunction with Art. 246 sec. 3 Introductory Law to the German Civil Code. To keep the deadline it is sufficient to send the notice of withdrawal in due time.*** The withdrawal is to be addressed to:

Disney Online Studios Canada Inc.  
#500 – 1628 Dickson Avenue - Kelowna, BC. Canada V1Y 9X1  
[billing@clubpenguin.com](mailto:billing@clubpenguin.com)

## **7. PUBLIC FORUMS AND COMMUNICATION**

"Public Forum" means an area, site or feature offered as part of any DIMG Site that offers the opportunity for users to Distribute Submissions for viewing by one or more DIMG Site users, including a chat area, message board or social community environment.

YOU ACKNOWLEDGE THAT PUBLIC FORUMS AND FEATURES OFFERED THEREIN ARE FOR PUBLIC AND NOT PRIVATE COMMUNICATIONS, AND YOU HAVE NO EXPECTATION OF PRIVACY WITH REGARD TO ANY SUBMISSION TO A PUBLIC FORUM. We cannot guarantee the security of any information you disclose through any of these media; you make such disclosures at your own risk.

Subject to applicable law, you are and shall remain solely responsible for the Submissions you Distribute on or through any DIMG Site under your username or otherwise by you in any Public Forum and for the consequences of submitting and posting same.

Also, you should be skeptical about information provided by others, and you acknowledge that the use of any Submission posted in any Public Forum is at your own risk. For example, we are not responsible for, and we do not endorse, the opinions, advice or recommendations posted or sent by users in any Public Forum and we specifically disclaim any and all liability in connection therewith.

We owe you no obligation, and therefore may refuse, to post, deliver, remove, modify or otherwise use or take any action with respect to Submissions you Distribute.

We reserve the right to screen, refuse to post, remove, edit, store and/or review Submissions at any time and from time to time and for any or no reason including, without limitation, to ensure that the Submissions conforms to the Rules of Conduct, in our absolute and sole discretion without prior notice. If we elect to screen Submissions, there may be a delay in the posting of such content in a Public Forum to allow for a review process. If we have questions about your Submissions including, without limitation, the copyright, we may contact you for further information including, for example, to verify that you own the copyright or otherwise obtained permission to post the material.

## 8. RULES OF CONDUCT

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

- (a) is defamatory, abusive, harassing, threatening, or an invasion of a right of privacy of another person; (b) is bigoted, hateful, or racially or otherwise offensive; (c) is violent, vulgar, obscene, pornographic or otherwise sexually explicit; or (d) otherwise harms or can reasonably be expected to harm any person or entity;
- 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;
- infringes or violates any right of a third party including: (a) copyright, patent, trademark, trade secret or other proprietary or contractual rights; (b) right of privacy (specifically, you must not distribute another person's personal information of any kind without their express permission) or publicity; or (c) any confidentiality obligation;
- 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);
- contains a virus or other harmful component, or otherwise tampers with, impairs or damages the DIMG Sites or any connected network, or otherwise interferes with any person or entity's use or enjoyment of the DIMG Sites; or
- (a) does not generally pertain to the designated topic or theme of the relevant Public Forum; (b) violates any specific restrictions applicable to a Public Forum; or (c) 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.

## 9. COOPERATION; REMOVAL OF SUBMISSIONS

Without prejudice to any of our other rights under these terms of use or at law, we reserve the right to (a) refuse to post or communicate or remove any Submission from any DIMG Site that violates these terms of use (including the Rules of Conduct) and (b) to the extent we are able to do so under applicable law, 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 any DIMG Site. Moreover, we retain all rights to remove Submissions at any time for any reason or no reason whatsoever.

## 10. DISCLAIMERS

**SUBJECT TO APPLICABLE LAW, THE CONTENT ON OR OTHERWISE RELATED IN ANY WAY TO DIMG SITES OR ANY THIRD PARTY SITES OR SERVICES LINKED TO FROM ANY DIMG SITE IS PROVIDED "AS IS" AND WITHOUT CONDITIONS OR WARRANTIES OF ANY KIND. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, WE DISCLAIM ALL CONDITIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, SUBJECT TO APPLICABLE LAW, THOSE 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 DIMG SITE OR THE SERVERS THAT MAKE SUCH CONTENT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. MOREOVER, SUBJECT TO APPLICABLE LAW, 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. APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. 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), TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. PLEASE NOTE, HOWEVER, THAT THIS DOES NOT AFFECT YOUR STATUTORY RIGHTS AS A CONSUMER, IN PARTICULAR THE LEGAL WARRANTY FOR LATENT DEFECTS FOR USERS WHO ACCESS THE SITE IN CERTAIN JURISDICTIONS.**

Furthermore, the Content is not intended to be a substitute for professional medical advice. Always seek the advice of your physician with any questions you may have regarding a medical condition. If you think you may have a medical emergency, call your doctor or the applicable local emergency service immediately. Reliance on any information appearing on a DIMG Site is strictly at your own risk.

DIMG Sites may contain the opinions and views of other users. Given the interactive nature of these sites, we cannot endorse, guarantee, or be responsible for the accuracy, efficacy, or veracity of any content generated by our users.

The content of DIMG Sites are intended for educational and entertainment purposes only. Such content is not intended to, and do not, constitute legal, professional, medical or healthcare advice or diagnosis, and may not be used for such purposes. Always seek the advice of your physician or other qualified health provider with any questions you may have regarding a medical condition. You should not act or refrain from acting on the basis of any content included in, or accessible through, the DIMG Sites without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue from a lawyer or professional licensed in the recipient's state, country or other appropriate licensing jurisdiction.

## 11. GAME PLAY AND LATENCY

To support smooth operation of the Site across wide geographic areas, aspects of certain activities in the Site, such as competing with fellow penguins in toboggan races, may be simulated to avoid delays in game play.

## 12. INDEMNIFICATION

You are responsible for maintaining the confidentiality of your username(s), password(s), and your account(s), as well as all activities that occur under your account(s). You hereby agree to indemnify, defend, and hold us, our group undertakings (as defined under the United Kingdom's Companies Act 1985), and our and our group undertakings' 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 any breach by you of these terms of use or claims arising from your use of the DIMG Sites and/or your account(s). 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.

## 13. LIMITATION OF LIABILITY

**TO THE EXTENT REQUIRED BY APPLICABLE LAW, WE DO NOT LIMIT IN ANY WAY OUR LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE OR FOR OUR FRAUDULENT MISREPRESENTATION OR CONCEALMENT OR FOR ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAWS.**

**SUBJECT TO APPLICABLE LAW, UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL WE, OUR GROUP UNDERTAKINGS, OUR AND OUR GROUP UNDERTAKINGS' 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 DIMG SITE OR CONTENT, OR (B) THE CONDUCT OR ACTIONS, WHETHER ONLINE OR OFFLINE, OF ANY USER OF A DIMG SITE OR ANY OTHER PERSON OR ENTITY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUBJECT TO APPLICABLE LAW, 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 DIMG SITE. MOREOVER, SUBJECT TO APPLICABLE LAW, 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.**

**SUBJECT TO APPLICABLE LAW, WE MAY TERMINATE YOUR FURTHER ACCESS TO DIMG SITES OR CHANGE THE DIMG SITES OR DELETE CONTENT OR FEATURES IN ANY WAY, AT ANY TIME AND FOR ANY REASON OR NO REASON WITHOUT LIABILITY.**

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

**WITH RESPECT TO USERS WHO ACCESS THE SITE IN CERTAIN JURISDICTIONS, THIS SECTION DOES NOT AFFECT YOUR STATUTORY RIGHTS AS A CONSUMER UNDER APPLICABLE LAW.**

#### **14. JURISDICTIONAL AND VENUE ISSUES**

Subject to the requirements of applicable consumer rights and other laws, you agree that any action at law or in equity arising out of or relating to these terms of use or the DIMG Sites shall be filed, and that venue properly lies, only in state or federal courts located in the borough of Manhattan, City of New York, State of New York, United States of America, and you hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action. We make no representation that Content on any DIMG Site is appropriate or available for use in any particular location. Those who choose to access a DIMG Site do so on their own initiative and are responsible for compliance with all applicable laws including any applicable local laws.

#### **15. AMENDMENT**

Subject to applicable law, 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 Web sites 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 Web Sites. Please note that, at all times, you are responsible for updating your personal information to provide 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.

#### **16. TERMINATION**

**These terms of use are effective until terminated by either you or us. You may terminate these terms of use at any time by discontinuing use of the Site and destroying all materials obtained from the Site and all related documentation and all copies and installations thereof, whether made under these terms of use or otherwise.**

**We may immediately terminate these terms of use with respect to you (including your access to the Site, other Club Penguin sites, and any and all Disney group sites) in our absolute discretion including, without limitation, if you breach or fail to comply with any material term or provision of these terms of use. Upon termination, you must cease use of the Site and destroy all materials obtained from the Site and all copies thereof, whether**

**made under these terms of use or otherwise.**

**We have adopted and implemented a policy that provides for the termination, in appropriate circumstances, of the accounts of users who are repeat infringers of copyright. Any fraudulent, abusive or otherwise illegal activity may also be grounds for termination of your account, at our sole discretion, and you may be reported to appropriate law-enforcement agencies.**

## 17. GENERAL PROVISIONS

Subject to the requirements of applicable consumer rights and other laws, these terms of use shall be governed by and construed in accordance with the laws of the State of New York 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. These terms of use take effect as an agreement and separately as a notice which limits the basis on which DIMG makes the DIMG sites available. 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." TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE THAT ANY CAUSE OF ACTION YOU MAY HAVE ARISING OUT OF OR RELATED TO THESE TERMS OF USE OR ANY DIMG SITE MUST COMMENCE WITHIN ONE (1) YEAR (OR THE MINIMUM APPLICABLE STATUTORY PERIOD, IF LONGER) AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION SHALL BE PERMANENTLY BARRED.

Supply of goods, services and software through DIMG Sites is subject to United States export control and economic sanctions requirements. By acquiring any such items through DIMG Sites, 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 DIMG Sites 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 United States of America Treasury Department's Specially Designated Nationals List or the United States of America 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.

## 18. CLAIMS OF COPYRIGHT INFRINGEMENT

We have adopted and implemented a policy that provides for the termination, in appropriate circumstances as determined by us in our sole discretion, of users who are infringers of copyright.

Notifications of claimed copyright infringement must be sent to Service Provider's Designated Agent.

Notification must be submitted to the following Designated Agent:

Service Provider: Disney Online Studios Canada Inc.

Name of Agent Designated to Receive Notification of Claimed Infringement: Laurence J. Shapiro

Full Address of Designated Agent to Which Notification Should be Sent: 500 South Buena Vista Street, Burbank, CA 91521-7725, United States of America

Telephone Number of Designated Agent: +1 (818) 623-3200

Facsimile Number of Designated Agent: +1 (818) 623-3637

E-Mail Address of Designated Agent: [designated.agent@dig.TWDC.com](mailto:designated.agent@dig.TWDC.com)

To be effective, the notification must be a written communication that includes the following:

- A physical or electronic signature of person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
- Information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;
- A statement that the complaining party has a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

We may give you notice that we have removed or disabled access to certain material by means of a general notice on any DIMG Site, electronic mail to a user's e-mail address in our records, or by written communication sent by first-class mail to your physical address in our records. If you receive such a notice, you may provide counter-notification in writing to the designated agent that includes the information below. To be effective, the counter-notification must be a written communication that includes the following:

- Your physical or electronic signature;
- Identification of the material that has been removed or to which access has been disabled, and the location at which the material appeared before it was removed or access to it was disabled;
- A statement from you under the penalty of perjury, that you have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled; and
- Your name, physical address and telephone number, and a statement that you consent to the jurisdiction of a court for the judicial district in which your physical address is located, or if your physical address is outside of the United States, for any judicial district in which DIMG may be found, and that you will accept service of process from the person who provided notification of allegedly infringing material or an agent of such person.

## 19. ADDITIONAL TERMS

**Apple Additional Terms** -- The following additional terms and conditions apply with respect to our applications designed for use on an Apple iOS-powered mobile device (“iOS App”):

1. You acknowledge that these terms of use are concluded between you and us only, and not with Apple, Inc. (“Apple”). We, and not Apple, are solely responsible for our iOS App and the services and Content available thereon.
2. You agree that your use of our iOS App shall be subject to the Usage Rules set forth in Apple’s then-current App Store Terms of Service.
3. The parties agree that Apple shall have no obligation to provide maintenance and support services with respect to our iOS App.
4. To the maximum extent permitted by applicable law, Apple will have no warranty obligation whatsoever with respect to our iOS App.
5. You agree that we, and not Apple, are responsible for addressing any claims by you or any third party relating to our iOS App or your possession and/or use of our iOS App, including, but not limited to: (i) product liability claims; (ii) any claim that the iOS App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
6. You agree that we, and not Apple, shall be responsible for the investigation, defense, settlement and discharge of any third party intellectual property infringement claim related to our iOS App or your possession and use of our iOS App.
7. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) You are not listed on any U.S. Government list of prohibited or restricted parties.
8. You agree to comply with all applicable third party terms of agreement when using our iOS App (e.g., you must not be in violation of your wireless data service terms of agreement when using the iOS App).
9. The parties agree that Apple and Apple’s subsidiaries are third party beneficiaries to the terms of use applicable to our iOS App. Upon your acceptance of the terms of use, Apple will have the right (and will be deemed to have accepted the right) to enforce the terms of use against you as a third party beneficiary thereof.
10. Questions, complaints and claims with respect to our iOS App should be directed to:

Club Penguin  
c/o Disney Online Studios Canada Inc.  
Attention: Mobile Apps  
Suite 500 - 1628 Dickson Ave.  
Kelowna, British Columbia, V1Y 9X1  
CANADA

You may also telephone us at +1-877-261-9482 (US and Canada) or +1-250-469-6380, or e-mail us at [support@clubpenguin.com](mailto:support@clubpenguin.com)

(If you are not 18 years of age or older, you should get your parent or guardian's permission to contact us.)

Please be assured that any personal information that you provide in communications to the above e-mail and postal mail addresses and telephone numbers will only be used for purposes of a response, and will not be used to send you promotional materials, unless you so request.

**Android Additional Terms** -- The following additional terms and conditions apply with respect to our applications designed for use on an Android-powered mobile device ("Android App"):

1. You acknowledge that these terms of use are concluded between you and us only, and not with Google, Inc. ("Google"). We, and not Google, are solely responsible for our Android App and the services and Content available thereon.
2. You agree that your use of our Android App shall be subject to the then-current Android Market Terms of Service.
3. Google Inc., as provider of the Android Market, shall have no obligation or liability to you with respect to our Android App or these terms of use.
4. You acknowledge and agree that Google is a third party beneficiary to the terms of use applicable to our Android App.