

OVATION ART (PTY) Ltd CLIENT TERMS AND CONDITIONS (Registration No. 2005/003114/07)

(Hereinafter referred to as "OVATION ART")

1. The terms and conditions of contract provided in this document shall apply as between OVATION ART and the Client in all quotations, proposals or agreements for the provision of services and the supply of equipment required in the delivery of such services.
2. The following definitions shall apply to these terms and conditions:
  - 2.1. "Client" means the person (natural or legal) which procures equipment and/or receives services from OVATION ART, or which receives a quotation or proposal from OVATION ART in relation to the provision of services;
  - 2.2. "infrastructure and equipment" means all and any infrastructure and equipment provided by OVATION ART to the Client required in terms of rendering the services;
  - 2.3. "OVATION ART" means OVATION Audience Relationship Team (Pty) Ltd;
  - 2.4. "service fees" means fees charged by OVATION ART and payable by the Client for the services;
  - 2.5. "services" means any services or activities provided by OVATION ART or its designated personnel and sub-contractors to the Client as detailed in the proposal and quotation.
3. These terms and conditions apply to all contracts for the services rendered, whether or not such requirements are pursuant to orders by e-mail or orders placed with OVATION ART's agents or representatives on its behalf, and supersede any terms and conditions specified by the Client or contained in any Client documentation. Any and all alterations or amendments to these terms and conditions, in order to be valid, must be in writing and signed by both parties.
4. All and any contracts for the provision of services shall be constituted only upon acceptance in writing by an authorised representative of OVATION ART of an order placed by Client. Subject to changes and adjustments provided herein, OVATION ART's prices and charges shall be determined from such contracts, constituted as aforesaid. Unless otherwise stated, all prices and charges are exclusive of VAT.
5. All quotations and estimates given by OVATION ART shall be valid for 30 (thirty) days, unless otherwise specified in such quotation or estimate, and are based upon duties, levies, surcharges and taxes in effect as of the date of quotation.
6. Orders, after acceptance, may not be cancelled by Client in whole or in part or varied by Client in any manner whatsoever, unless agreed to by OVATION ART in writing, whereupon Client shall be liable to pay to OVATION ART a cancellation fee reflected in the quotation attached hereto or a fee that is commensurate with the amount of work complete at the time of cancellation or in the case of additions to the original, a fee that is determined by the extent of the variation.
7. OVATION ART will endeavour to complete the services by the dates quoted, but any such dates are estimates only and are not binding.

8. Where prices or fees are based on a stated exchange rate, these prices will be adjusted to take account of any exchange rate fluctuations. Adjustments due to exchange rate fluctuations will be calculated as at the date of invoice based on the exchange rate quoted by Nedbank, at the close of business on the date immediately prior to the date of invoice.
9. Service fees may be adjusted by OVATION ART without prior notice to Client as a result of any changes in supplier's charges to OVATION ART in respect of any equipment or personnel which is required for the rendering of the services. Furthermore, OVATION ART shall be entitled to increase its quotation for services or equipment by the amount of any additional costs incurred by OVATION ART as a result of delivery outside the borders of South Africa.
10. Unless otherwise agreed in writing between OVATION ART and Client, Client shall make payment in full and free of exchange in strict accordance with OVATION ART's quotation and invoices.
11. Interest shall be charged and paid on all outstanding amounts at the rate of 2% (two percent) above the publicly quoted prime overdraft rate charged by Nedbank from time to time. A certificate signed by a manager (whose designation or appointment it shall not be necessary to prove) of Nedbank shall be *prima facie* proof of such rate. In the event of Client failing to effect payment of the invoiced amount 7 (seven) days from date of demand for such payment, OVATION ART shall be entitled, at its option, and notwithstanding any indulgence or relaxation granted to Client, to cancel the agreement for the provision of the services, repossess any infrastructure or equipment and/or claim damages.
12. All infrastructure, equipment or supplies required or used in the provision of the required services remains the property of OVATION ART or its designated agents or sub-contractors and unless specifically agreed to in writing no ownership of property intellectual or real, shall pass to the Client. The exercise of OVATION ART's rights under this clause shall be without prejudice to any of OVATION ART's rights and remedies at law.
13. Any reduction in costs which OVATION ART may have granted to Client shall be forfeited by Client if payment is not made to OVATION ART on due date.
14. Payment may not be withheld pending the settlement of any claims or disputes and in the event of any amount due to OVATION ART being handed to an attorney for collection, Client shall pay the collection fee, tracing fees and all other legal charges thereby incurred by OVATION ART on the Attorney and own client scale.
15. OVATION ART shall not be liable under any circumstances for any loss or any damage, direct or indirect, consequential or otherwise, sustained by Client as a result of non-delivery or non-performance of

equipment or services or late delivery or late performance of the equipment or services or due to any other cause whatsoever.

16. All risk in and to the infrastructure and equipment shall pass to Client upon delivery thereof. Unless otherwise agreed in writing, delivery will occur with the establishment of the infrastructure or when the equipment is demonstrated to a Client representative at a designated address specified in the quotation or Client's order.
17. OVATION ART shall not be required to render any services, erect any infrastructure or commission any equipment or render any services to Client for so long as Client is in arrears with any payment owing to OVATION ART from any cause. In the event of Client committing an act of insolvency, or being placed under provisional or final judicial management, liquidation or sequestration (whether provisional or final), OVATION ART reserves the right to cancel any quotation, proposal or agreement and to stop further performance of services or deliveries of equipment.
18. No claims of whatsoever nature shall be entertained in respect of efficacy of concept, attainment of Client Objectives, display of visual material or performance of artists or sub-contractors or damaged or defective equipment, or equipment which does not conform to specifications and in particular OVATION ART shall not be liable for any direct or consequential loss or damage of any nature.
19. If any equipment is to be installed at or services are to be provided at Client's premises, the following shall apply:
  - 19.1. Client shall ensure that OVATION ART is given reasonable access to those premises during reasonable hours for that purpose;
  - 19.2. whilst OVATION ART will take all reasonable precautions to prevent damage to Client's premises, Ovation ART shall not be responsible or liable therefore;
  - 19.3. Client shall ensure that the premises are suitably equipped and comply with all OVATION ART's specifications and requirements including (without limitation), size, power supply, lighting and safety.
20. Client shall at Client's own expense obtain all necessary consents, permits, licences or other authorities from the owner of the premises, governmental, municipal, local or other competent authorities and others whose permission is or may be necessary for the providing of the agreed services or the installation or proper use of equipment. OVATION ART does not warrant or represent that any such consents, permits, licenses or other authorities will be granted and a failure to obtain any one or other of the same shall not invalidate any order accepted by OVATION ART.

21. OVATION ART gives no warranties or undertakings to Client whatsoever with regard to equipment or services, and all implied or residual warranties, including without limitation, the warranties of 'fitness for a particular purpose' and 'merchantability' are hereby disclaimed and excluded.
22. OVATION ART shall be entitled to employ sub-contractors to provide equipment and/or all or any portion of the services.
23. Nothing in these terms and conditions shall prevent OVATION ART using for any purpose, any know-how or experience including programming tools, skills and techniques gained or arising from the provision of the services.
- 23.1. Unless agreed by the parties to the contrary, copyright and all other intellectual property rights whatsoever in all quotations, proposals and documents furnished by OVATION ART in or in relation to the supply of equipment or provision of services and any materials developed in providing services, including without limitation all creative concepts (collectively "OVATION ART IP"), are and shall remain at all times vested in OVATION ART, or its licensors. Client shall do all such acts and things as may be reasonably required for the purpose of preserving or perfecting such vesting and shall use OVATION ART IP only strictly in accordance with Client's contractual rights and entitlements. Client shall not use OVATION ART IP for any other purpose nor shall it disclose OVATION ART IP to any third party. In the event of the termination or cancellation of the contractual relationship between OVATION ART and Client, or in the event that Client does not accept any OVATION ART quotation or proposal, Client shall return all OVATION ART IP to OVATION ART.
24. The Client warrants to OVATION ART that it has complied, in all respects with and furthermore has performed all obligations required in terms of all relevant legislation including in respect of the processing (including any operation or activity concerning personal information including the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use of such information, as well as the dissemination by means of transmission, distribution or making available in any other form or merging, linking as well as blocking, degradation, erasure or destruction of such information) of the data and information it has or may provide to OVATION ART and hereby indemnifies fully, and holds OVATION ART harmless against any losses, costs, damages, penalties, actions or claims suffered, incurred or made against OVATION ART (including any legal costs incurred by OVATION ART as a consequence thereof, on an attorney and own-client scale) by any third party which arises from the performance by OVATION ART of the services in accordance with his agreement and/or the use of such data or information by OVATION ART and/or a breach of this warranty.
25. Either party may, at its sole discretion, suspend or terminate the services forthwith on written notice should the other party commit a breach (save for a breach referred to in clause 11) of any obligation in

relation to such services and omit or fail to remedy such breach to the reasonable satisfaction of the determining party within 30 (thirty) days of receipt of notice in writing by the determining party requiring it to do so. Exercise of rights under this clause shall be without prejudice to either parties' rights and remedies at law.

25.1. No waiver or abandonment by either party of any of its rights in terms of these terms and conditions, shall be binding on that party, unless such waiver of abandonment is in writing and signed by the waiving party.

25.2. If any provision of these terms and conditions is found by any court of competent jurisdiction to be invalid, unlawful or unenforceable, such provision shall not invalidate the remaining provisions of these terms and conditions.

26. Client chooses as its nominated address for the purposes of receiving of notices or other communications from OVATION ART or for the purpose of service of legal process from OVATION ART, the physical address and fax number specified in Client's order. Client shall be entitled to change its nominated address to another physical address and/or fax number in South Africa by way of written notice to OVATION ART.

27. Any notice to Client or OVATION ART must in order to be valid and effective, be in writing and either be hand delivered to the recipient's physical address or transmitted by fax. Any notice sent by electronic communication other than fax shall not be valid or effective.

28. These terms and conditions shall be governed and construed in accordance with the laws of the Republic of South Africa.

29. Nothing in these terms and conditions constitutes either party as the agent, principal, representative or partner of the other, and no party shall be entitled to hold out to any third party that the relationship between the parties is that of a partnership, joint venture or the like.

Signed on behalf of \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ at \_\_\_\_\_

Signature: \_\_\_\_\_  
\_\_\_\_\_

Print name:

Witness: \_\_\_\_\_  
\_\_\_\_\_

Witness: