

## **Ovation Channel and Video on Demand Subscriber Agreement “Terms and Conditions”**

### **Introduction**

A. This is a legal agreement between you and Ovation Management Pty Ltd (ABN 33 118 835 019) relating to your subscription to the Ovation Channel and Video on Demand (VOD) Service.

B. For the purpose of this agreement "you" and "your" refers to the person who completes the application to subscribe to the Ovation Channel Service; "we", "us" and "our" refers to Ovation Management Pty Ltd. Capitalised words and phrases have the meaning as described in clause 18.

### **1. Key terms of this Ovation Channel and VOD subscriber agreement**

#### **1.1 This Contract**

1.1.1 Our agreement with you includes the following documents:

- (a) The Ovation Channel Subscription Form;
- (b) The Ovation Privacy and Security Policy; and
- (c) These terms and conditions.

1.1.2 You are authorised to receive the Ovation Channel and/or VOD Service only for private viewing at the Subscriber Address specified by you and you must not re-transmit or re-supply the Ovation Channel Service to any other place including transmission on the Internet or the World Wide Web.

1.1.3 You warrant that all information provided by you to us at any time is true and correct.

#### **1.2 Variation**

1.2.1 We may vary any term of this Contract with the changes taking effect when the changes are posted on the Ovation Website although we will use reasonable endeavours to bring the change to your notice by email sent to the email address that you have provided to us.

1.2.2 We will not use this right to vary the terms of any Promotional Offer which applies to you, and which you have accepted during the term of the Promotional Offer, but otherwise we reserve the right to change or terminate any Promotional Offer any time at our own discretion.

1.2.3 If you can establish that any variation of any term of this Contract has more than a nominal detrimental effect on you, then you may terminate this Contract by giving us at least 30 days notice. Your rights to terminate under this clause do not apply where the variation is a variation of fees and charges as described in **clauses 4 & 5**.

## **2. Subscription Term**

### **2.1 Commencement of this Contract**

You become subject to the terms of this Contract when you submit your acceptance of our offer to supply the Ovation Channel Service (whether in an electronic form or otherwise).

### **2.2 Annual Subscription**

You agree to receive the Ovation Channel Service for a 12-month period commencing from the date service is activated to receive the Ovation Channel and/or VOD service, provided that the end date of the Annual Subscription will vary in accordance with any Promotional Offer that applies to your subscription to the Ovation Channel Service. When your first Annual Subscription expires your subscription will automatically be renewed unless you give notice to us that you want to cancel your subscription.

### **2.3 Minimum Subscription**

You may not cancel your subscription to the Ovation Channel Service during your first Annual Subscription to the Ovation Channel Service; your ability to terminate this Contract is described in **Clause 6** below.

## **3. Subscription Payment**

3.1 You must pay us the Subscription Payment in advance in accordance with the following requirements:

3.1.1 Subject to any Promotional Offer related to the Subscription Payment, you will be charged for the Customer Service from the date service is activated to receive the Ovation Channel and/or VOD Service under this Contract;

3.1.2 We will act on your instruction to pay the Subscription Payment in quarterly or pay monthly by automatic deduction from your debit card or credit card (including any taxes and other fees, as applicable);

3.1.3 We may alter your debit card or credit card instructions if your Subscription Payment changes for any reason; and

3.2 If you have missed any payments you owe to us, we may suspend provision of the Ovation Channel Service without giving you notice.

3.3 Without limiting our rights, If your debit card or credit card is not accepted or you otherwise default on payment we may require immediate payment from you of the Subscription Payment which would otherwise have been payable for the balance of your Annual Subscription.

#### **4. Variation to fees and charges**

4.1 We may change your Subscription Payment at any time by giving you at least 21 days notice:

4.1.1 If required by law or if any regulatory authority requests or requires a change to any aspect of our pricing which affects your Subscription Payment including changes to the rate of GST; and

4.1.2 At our discretion to reflect changes in the quality of programming or changes to reflect our costs of providing the Ovation Channel Service. However, unless it is for a reason described in clause 4.1.1, we may increase your Subscription Payment only once during any financial year.

4.2 Your Subscription Payment may change at any time if you change your Option and you will immediately pay the current price for that new Option from the date you change your Option.

#### **5. GST**

Fees and charges specified in this agreement include goods and services tax at the rate of 10%, where applicable. If the rate of GST is varied at any time, fees and charges will be adjusted as applicable without notice to take account of this variation, and you may not terminate this agreement because of this variation.

#### **6. Supply of the Ovation Channel Service & Suspension or Termination**

6.1 If you change address it is your responsibility to inform us of your new address and provide us with any necessary information so that we can supply the Ovation Channel Service to your new address.

6.2 You may terminate this Contract at the end of the Annual Subscription by giving us one month's notice either prior to the end of the Annual Subscription or at any time thereafter.

6.3 We may suspend the supply of the Ovation Channel Service or terminate this agreement:

6.3.1 If we are unable to continue to provide Ovation Channel Service to you for any reason including technical, legal or regulatory reasons; or

6.3.2 If you break any material terms and conditions of this Contract; or

6.3.3 If you purport to terminate this agreement (other than when you have a right to do so); or

6.3.4 As specifically permitted under any other term of this Contract.

6.4 If we do suspend the Ovation Channel Service or terminate this agreement for one of these reasons, we will notify you. Where we have suspended the Ovation Channel Service pursuant to the events described in clause 6.4.1, the Subscription Payment will not be due for payment during the period of that suspension. We will not keep the service suspended for longer than 6 calendar months.

#### **7. Consequences of Termination of this Contract**

7.1 We will not refund any Subscription Payment or other payments made under this Contract if you are unable for any reason to receive the Ovation Channel Service or if this Contract is terminated under clause 6.

7.2 If you or we end this Contract, we will block your access to the Ovation Channel Service and you will not be able to receive the Ovation Channel Service thereafter.

## **8. Changes to Programming**

8.1 We reserve the right to:

8.1.1 Replace or withdraw advertised programmes at any time without notice even if the programming has been advertised as being scheduled for transmission; or

8.1.2 Schedule programming to be transmitted in repeated cycles of programming transmitted over a 24 hour period; or

8.1.3 Change, increase or reduce the number of hours of transmission of the cycles of programming transmitted over a 24 hour period.

## **9. Copyright**

9.1 You must not do any of the following:

9.1.1 Copy (except as allowed under the *Copyright Act 1968 (Cth)*) redistribute or relay the Ovation Channel Service or any part of them or otherwise deal with the Ovation Channel Service or any part of them other than as permitted by the Copyright Act;

9.1.2 Produce, supply or otherwise exploit any programme, service or content (whether audio or audio-visual or otherwise) of the Ovation Channel Service or any part of them or otherwise use any part of the Ovation Channel Service for any commercial purpose whatsoever;

9.1.3 Sell or make any charge for watching the Ovation Channel Service or any part thereof; or

9.1.4 Show the Ovation Channel Service in public to an audience even if no charge is made or otherwise use the Service or any part thereof other than to view the Ovation Channel Service in private for non-commercial purposes at the Subscriber Premises.

## **10. Registration Data & the Privacy Act**

10.1 In completing the channel subscription application you provide the Registration Data, which allow us to provide the Customer Management Services. We will also hold personal information relating to the provision of the Ovation Channel and/or VOD Service to you and personal information provided by you in connection with this Contract or any other products and services that we or any related body corporate may provide to you.

10.2 You agree to provide accurate, current and complete Registration Data. You agree to maintain and update your Registration Data as required to keep it accurate, current, and complete.

10.3 You agree that we may store, use and disclose the Registration Data for purposes permitted by the Privacy Act 1988 (Cth) and purposes that you consent to under this clause. You consent to us using and disclosing your personal information:

10.3.1 to enable us to perform our obligations to you under this Contract;

10.3.2 to enable us to ensure that you perform your obligations under this Contract;

10.3.3 for promotional and marketing purposes, so that unless you notify us under clause 10.4 below, we will use your personal information to contact you (including by post, telephone and email) with promotional and marketing information about services provided by Ovation Management or any related body corporate, and also about third party products and services that may be of interest to you. We will understand that this is an ongoing consent unless you tell us otherwise.

10.4 You may request that your personal information not be used or disclosed for marketing or promotional purposes by contacting us in one of the following ways:

- our website at [www.ovationchannel.com.au](http://www.ovationchannel.com.au)

- writing to us at the Ovation Channel, 'Privacy', Unit 9, 112 Talavera Road, North Ryde NSW 2113. You can unsubscribe from receiving further marketing or promotional emails by using the unsubscribe facility in the message. However, if you unsubscribe facility using this email facility, we will understand it to be a request from you to unsubscribe from electronic communications only (unless you indicate otherwise).

10.5 Further information on how we handle personal information about you including your right to seek access to personal information that we may hold about you can be found in our Privacy Policy which is available at "FAQ Ovation Channel" on our website at [www.ovationchannel.com.au](http://www.ovationchannel.com.au)

## **11. Commissions**

We may pay a commission to any person who introduces you to us.

## **12. Performance of obligations & waiver**

12.1 We may use Authorised Persons to perform our obligations under this Contract.

12.2 We may assign or transfer this Contract or our rights under it to a third party.

12.3 The failure of any party hereto to enforce at any time any of the provisions of this Contract will not be construed to be a waiver of such provisions or of such party's rights thereafter to enforce such provisions.

## **13. Notices**

If you or we give a notice that is required under this Contract it must be in writing and sent by email or pre-paid post (or both) to the following addresses:

13.1 You must send email communications to the email addresses designated for Customer Management Services which are listed on the Ovation Website;

13.2 You must send letters by pre-paid post to our postal address which is listed on the Ovation Website;

13.3 We will send email communications to the email address you set out in the Ovation Channel Subscription Form or subsequently provide to us in accordance with clause 10; or

13.4 We will send letters by pre-paid post to the postal address you set out in the Ovation Channel Subscription Form or subsequently provide to us in accordance with clause 10.

#### **14. Liability**

14.1 We and any Pay TV Platform through which you may receive the Ovation Channel Service do not guarantee, represent, or warrant that your use of the Ovation Channel Service will be uninterrupted or error-free and, subject to your rights and remedies under the relevant Fair Trading Laws, we and any Pay TV Platform through which you receive the Ovation Channel Service will not be liable in contract, tort or otherwise for any loss (including consequential loss and damages suffered by you that is directly or indirectly caused by:

14.1.1 Any fault in any Equipment you use; or

14.1.2 Any interruption or loss of access to the Ovation Channel Service resulting from any act or omission of the Pay TV Platform through which you receive the Ovation Channel Service; or

14.1.3 The ending by you or us of this Contract in accordance with this Contract; or

14.1.4 Our failure to provide the Ovation Channel Service; or

14.1.5 Your breach of any term of this Contract.

14.2 For the purpose of this clause 14 only, the Pay TV Platform through which you receive the Ovation Channel Service will be deemed to be a party to this Contract with our entering into this Contract as an agent of such Pay TV Platform.

14.3 Except for such conditions or warranties that are otherwise required by law to be implied into this Contract, all warranties, conditions and representations are excluded from your agreement with us to the maximum extent permitted by law. To the maximum extent permitted by law, our liability or the liability of the Pay TV Platform (including liability for negligence) in connection with provision of the Ovation Channel the service provided by the Pay TV Platform and your use of any equipment is limited at our option or at the option of the Pay TV Platform as the case may be, to: (a) in the case of goods supplied, the replacement or repair cost of the goods (whichever is the lesser); and (b) in the case of services, the cost of supplying the services again.

14.4 You indemnify ourselves and any Pay TV Platform through which you receive the Ovation Channel Service jointly and severally and hold them and ourselves harmless in respect of any claim, action, loss (including consequential loss and damages suffered by you), liability, damage, cost or expense (including legal fees on a full indemnity basis) incurred or suffered by them and ourselves arising out of or in connection with your breach of this Contract, or any act or omission by you in connection with the Ovation Channel Service or any other services provided by us or provided by the Pay TV Platform.

#### **15. Interpretation**

15.1 Headings and marginal notes including cross-references to clauses, items, paragraphs and parts used in this Contract and in any of the related documents described in Clause 1.1, have been included for ease of reference only and not for the purposes of interpretation of this Contract.

15.2 In this Contract “including” and similar expressions are not to be interpreted as words of limitation; examples of things that are provided in this Contract are not to be interpreted as limiting the meaning of the concept for which the example is provided.

15.3 In this Contract, where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

15.4 This Contract may not be construed adversely to a party only because that party was responsible for preparing it.

## **16. Entire agreement & jurisdiction**

16.1 This Contract constitutes the entire understanding between the parties hereto and replaces all prior understandings and agreements between the parties.

16.2 This Contract is to be interpreted in accordance with the laws of the State of New South Wales, Australia and the courts of New South Wales will have the exclusive jurisdiction in relation to any disputes related to this Contract.

## **17. Electronic Signatures and Contracts**

You acknowledge that your electronic submissions to us (including completion of a request to subscribe to the Ovation Channel Service via the Ovation Website or the Call Centre) constitute your agreement and intent to be bound by and to pay any Subscription Payments due. Your agreement and intent to be bound by electronic submissions applies to all records relating to all transactions you enter into with us, including applications by you for the supply of any Ovation Channel Services, any policies, guides, guidelines and, contractual documents provided in electronic formats, notices of variation of the terms of this Contract and notices of cancellation delivered electronically.

## **18. Definitions**

**Annual Subscription** means a 12-month period commencing from the date your service is activated to receive the Ovation Channel Service provided that the end date of the Annual Subscription will vary in accordance with any Promotional Offer that applies to your subscription to the Ovation Channel Service.

**Authorised Persons** means our employees, independent contractors, agents or suppliers who we may use from time to time to provide the Ovation Channel Services and the Customer Management Services.

**Call Centre** means our Customer Management Service provider described in on the Ovation Website.

**Contract** means the agreement comprising the documents described in clause 1.1.1 and any changes we may make to them in accordance with this Contract authorising you to receive the Ovation Channel Service.

**Customer Services** means the services and any other services we provide you under this Contract including Ovation Channel Service and the Customer Management Services.

**Customer Management Service** means the communication and information systems we put in place, including our Call Centre and world wide web site, which allow you to: subscribe to the

Ovation Channel Service; fix technical issues related to your receiving the Ovation Channel Service; deal with invoicing and with payment of your account; update customer information; and receive answers to any questions regarding the Ovation Channel Service.

**Equipment** means any related equipment that is necessary to receive the services.

**Fair Trading Laws** means any fair trading or consumer affairs laws applicable to the supply of the Ovation Channel Services in the state or territory in which the Subscriber Premises are situated and includes the *Competition and Consumer Act 2010* (Cth).

**Minimum Term** means the minimum term during which you are obligated to first subscribe to the Ovation Channel and/or VOD Service under this Contract which minimum term is described in subscription application form or in any Promotional Offer and which minimum term commences from the date service is activated to receive the Ovation Channel Service unless otherwise stated in the Option chosen by you.

**Ovation Channel** means the arts programming channel that is marketed under the "Ovation" brand-name.

**Ovation Channel Service** means the supply of the Ovation Channel and any extra channel(s) or pay-per-view services that we may supply you from time to time.

**Ovation Channel Subscription Form** means the short-form of the terms of supply of the Ovation Channel Service provided to you by the Call Centre, or available to you on the Ovation Website, on which form or web page you provide your details and choose your payment method in order to subscribe to the Ovation Channel.



**Ovation Website** means [www.ovation.com.au](http://www.ovation.com.au) and includes any other World Wide Web site designated by us as an official website.

**Pay TV Platform** means any entity licenced under s. 96 of the *Broadcasting Services Act 1992* (Cth) to provide a subscription television broadcasting service.

**Personnel** means directors, officers, employees, independent contractors, agents, advisers and representatives.

**personal information** is information from which your identity reasonably can be ascertained and includes your name, address, contact details (including your telephone numbers and email address), information your debit card or credit numbers or bank account details.

**Privacy Policy** means the statement in compliance with our obligations under the Privacy Act 1988 (Cth) that sets out how we will store and manage your Registration Data and any other personal information about you.

**Promotional Offer** means any offering by us on specific terms and conditions related to the term of subscription or the cost of subscription to the Ovation Channel Service or any specific offer related to the availability of extra channel(s) or pay-per-view services.

**Registration Data** means the personal information and other information that you are required to provide in order to receive the Ovation Channel Service.

**related body corporate** has the same meaning as in s. 50 of the *Corporations Act 2001* (Cth).

**Subscription Payment** means the payments you must pay us to provide the Ovation Channel Service.

**Subscriber Premises** means the street address or premises licensed under your agreement with the Pay TV Platform through which you receive your pay television service from the Pay TV Platform and is the location at which the Equipment is installed to which the Ovation Channel Service will be provided by us.

**Television** means a visual display unit or any device, which is now known or developed in the future that can reproduce audio-visual material and includes:

(a) Television receivers or sets that can display audiovisual material using any form of technology to deliver the audiovisual material to the screen of the receiver or set; or

(b) Computer monitors or visual display units that are connected to or are part of any personal computer, mobile telephone or portable communication technology that can display audiovisual material.

\*\*\*\*\*END OF THE TERMS AND CONDITIONS