

**Residential Subscription  
Agreement**

Effective from 1 February 2014

**FOXTEL**

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## IMPORTANT INFORMATION

### **Protect Your TV from Damage**

Allowing a still image to be displayed on your television screen for an extended period of time can cause an image to burn in and remain on your screen permanently.

Examples of still images include:

- Channel logos;
- On-screen information; and
- the Foxtel Guide.

Some televisions are more prone to burn-in than others.

We recommend that you consult your television manufacturer's manual for proper operating instructions.

### **1. FOXTEL SUBSCRIPTION AGREEMENT**

This Agreement sets out the terms and conditions on which we will provide you with, and you agree to receive, the Foxtel Service.

This Agreement includes the following documents:

- these terms and conditions;
- the Foxtel Welcome Pack;
- the Application (if relevant) which also describes your cooling off rights under the Australian Consumer Law;
- the Pricing Guide;
- the Work Order; and
- any other terms and conditions that we advise you that apply to any Ancillary Services you take from Foxtel.

#### **1.1 Changes to the Agreement**

We can change any term of this Agreement at any time by giving you 14 days notice. If we make any changes to price, we will provide you with 21 days notice. If we do make changes to the price or some other term of this Agreement, you may have termination rights under clause 2.6.

You can obtain a copy of the current version of this Agreement at any time by contacting us. A copy of the current version of this Agreement is also available on the Foxtel Website.

#### **1.2 How to contact us**

You can contact us by:

- going to the Foxtel Website at [foxtel.com.au](http://foxtel.com.au);
- emailing us at [enquiries@foxtel.com.au](mailto:enquiries@foxtel.com.au);

- writing to us at PO Box 612,  
Moonee Ponds, Victoria, 3039; or
- calling us on 131 999.

If you need to give us a notice in accordance with this Agreement, please contact us by one of the above methods.

## 2. YOUR SUBSCRIPTION

### 2.1 What is the Foxtel Service?

Foxtel will provide you with the Package you subscribe to. You must continue to subscribe to the Entry Level Package to remain a subscriber. If you so choose, your Service may also include Additional Packages, Pay Per View Programs, Stand Alone Channels, and the Foxtel PDR that Foxtel makes available from time to time. If charges apply for these additional services, you authorise us to charge any payment for these services to your Account in accordance with this Agreement.

You may also be able to receive various Free-to-air Channels and (if you subscribe to them) Access Channels through your Foxtel Box (see clauses 8.3 and 8.4). However, these do not form part of the Foxtel Service that Foxtel provides to you.

### 2.2 When does your Agreement begin?

This Agreement starts (subject to any relevant cooling off period) when you:

- sign the Application, or
- agree to take up the Foxtel Service by phone or online.

Your Fixed Term commences on the date we install and activate your Foxtel Service or for customers with Foxtel Self Install Kits, the date when you contact us to activate your Smart Card after completing the self installation process.

### 2.3 How long is the term of your subscription?

We will provide you with the Foxtel Service for the Fixed Term you agree to when you subscribe to the Foxtel Service.

When the Fixed Term ends, we will continue to provide you with the Foxtel Service on the terms of this Agreement until you or we end it.

### 2.4 How can you use the Foxtel Service?

You agree to only access and use the Foxtel Service privately, in your Home. You must not use the Foxtel Service for a commercial purpose or display it in a public area. In addition, you must not do anything inconsistent with our ownership of the Equipment including selling or offering the Equipment for sale, creating or allowing a security or interest to be created over the Equipment or parting with possession of the Equipment. You must not relocate or remove the Equipment from your Home without our prior approval.

You must always use and access the Foxtel Service lawfully and in accordance with this Agreement.

### 2.5 How can Foxtel change the Foxtel Service?

Foxtel may change the Foxtel Service or Ancillary Services at any time, without notice, including:

- changing the scheduled broadcast time of, or withdrawing, any program;
- restricting the features of the Foxtel PDR (including the ability to record); and/or
- adding, withdrawing or changing features or functionality of the Foxtel Service or Ancillary Services.

If we withdraw a Channel from the Package you subscribe to and/or change the way we package the Channels we provide to you, we will provide you with 21 days notice of any such change.

If we do change the Foxtel Service, you may have termination rights under clause 2.6.

### 2.6 When does your Agreement end?

#### *When you can end this Agreement*

You can end your subscription to the Foxtel Service at any time, by providing us with 30 days notice and your Foxtel Service will be disconnected prior to your next Payment Date. You will not receive a refund of any amounts paid.

If you end your subscription during the Fixed Term, then you must pay us an early termination fee unless this Agreement says otherwise. The early termination fee is the lesser of (i) \$300 or (ii) the monthly subscription fees for the Entry Level Package for the number of months left from the date of termination until the Fixed Term ends.

You may end this Agreement before the end of the Fixed Term without being required to pay an early termination fee if we:

- withdraw a Channel or functionality of the Foxtel Service during the Fixed Term which causes a more than nominal detrimental change to the Foxtel Service and we do not replace the Channel or functionality with a similar genre Channel or functionality or reduce the price of the Foxtel Service relating to that Channel or functionality (except in circumstances where the Foxtel Service has been reduced due to your failure to pay);
- increase the subscription fee for the Entry Level Package other than to reflect an increase in CPI;
- are prevented from performing our obligations under this Agreement in a material way at any time due to something beyond our control (for example, a prolonged disruption to electricity); or
- introduce new fees and charges that you must pay that you were not previously required to pay in order to receive the Entry Level Package.

Some examples of when you may end this Agreement before the end of the Fixed Term without being required to pay an early termination fee are:

- If we withdraw a sport channel from your Package and we replace it with a general entertainment channel but we do not reduce the price of your Package; or
- If we move a children's channel in your Package to a package that you don't subscribe to and we do not reduce the price of your Package.

### ***When we can end this Agreement***

We can end this Agreement and stop providing you with the Foxtel Service at any time if:

- we believe, on reasonable grounds, that you have caused genuine distress to any of Foxtel's employees, agents or Contractors in connection with the supply of the Foxtel Service to you under this Agreement or have engaged in conduct in relation to the Foxtel Service which is fraudulent or unlawful. If this occurs we will provide you with details of the conduct you are alleged to have engaged in and we will allow you seven days to respond before making any decision as to whether to stop providing you with the Foxtel Service;
- you breach this Agreement (including not making payments as set out in section 7) and if the breach is able

to be remedied, you do not remedy the breach within a reasonable period of receiving notice from us requiring you to do so; or

- we are unable to continue to provide the Foxtel Service to you due to legal, regulatory or technical reasons.

### **2.7 What happens when your Agreement ends?**

Subject to the following paragraph, when this Agreement ends, you must pay us for the Foxtel Service received in full to the date on which this Agreement ends and you stop receiving the Foxtel Service, as well as any other fees or charges which you are required to pay (such as an early termination fee).

If the Agreement is ended under clause 2.6 because we are prevented from performing our obligations under this Agreement in a material way at any time due to something beyond our control, you must pay us for the Foxtel Service received in full to the date on which you stopped receiving the Foxtel Service, as well as any other fees or charges which you are required to pay but you are not required to pay an early termination fee.

### **2.8 Outstanding fees and Equipment return**

We will calculate all of the fees and charges that you owe us when this Agreement ends. If you have been paying by Easypay, you authorise us to deduct this amount from your nominated bank, credit union or credit card account. Otherwise, we will send you an invoice for all amounts owing to us and request that you return the Equipment to us, to a location advised by us, within 14 days after receiving such notice.

If you fail to return the Equipment, we may take legal proceedings to recover the Equipment or charge you an unrecovered equipment fee for each item you do not return.

If you have been charged an unrecovered equipment fee and you subsequently return the item to which that fee relates, we will credit the charges applied and return any monies if the fees have already been paid (subject to the paragraph below).

Despite the cessation of your Foxtel Service, this Agreement will continue until, and only terminate after, the earlier of the date:

- (i) you comply with this subclause 2.8; or
- (ii) 6 months from the termination notice date.

### 3. SETTING UP THE EQUIPMENT

If you are an Owner-Install Customer with a Self Install Kit or a Remote Customer, please see section 9.

#### 3.1 How do you get the Equipment and the Infrastructure installed?

Unless section 9 applies to you, we will organise installation of the Equipment and Infrastructure at your Home.

When you agree to subscribe to the Foxtel Service you will be advised of the amount of the installation fee which you will be required to pay.

You will need to organise your own active telephone line or broadband connection to be able to receive some Foxtel Services and you will be responsible for the costs associated with those Foxtel Services.

You may only use the Equipment and Infrastructure to receive the Foxtel Service and not for any other purpose without our written approval, except to use the Infrastructure to receive the VAST Service.

If there are any other services that are necessary for the installation of the Equipment and Infrastructure to your Home (for example, an electrician) you will be required to pay for the cost of those services. We will notify you if those services are required and any additional costs that you will be required to pay.

#### 3.2 What do you need to do to ensure installation happens?

##### *Provide Access*

You must provide us with access to your Home to enable us to install, maintain, inspect or remove the Equipment or Infrastructure. You must meet our reasonable requirements for the safety of any personnel who perform this work.

##### *Obtain permission*

You must obtain any necessary permission or authorisation (including from your landlord and/or, if you live in an apartment block or townhouse complex, the owner's corporation) for the installation, maintenance, removal and inspection of the

Equipment or Infrastructure at your address. By subscribing to the Foxtel Service, you warrant to us that you have done this.

If we are required to remove some or all of the Equipment or Infrastructure after installation, you may be responsible for the cost of us doing this.

##### *Installation*

We do not guarantee that we will meet any agreed date or time for installation of the Equipment. You or we may terminate this Agreement if installation of the Equipment is not completed within 90 days of you ordering the Foxtel Service and such failure is not due to or contributed to by the terminating party.

We will agree a date for the installation of the Equipment or Infrastructure and you or your authorised representative must be in attendance for the installation. We will try to keep to the agreed date, however circumstances may arise that prevent us from keeping the agreed date. You must also provide us with reasonable prior notice if you cannot meet the agreed date.

#### 3.3 Who owns the Equipment and Infrastructure?

We retain the ownership of the Equipment and the Infrastructure at all times and have the right to use it while you remain a Foxtel customer (subject to section 9).

### 4. USING THE FOXTEL PDR

#### 4.1 Viewing programs in high definition format with the Foxtel PDR

You will only be able to view Channels or programs that are broadcast in a high definition format if your television is capable of receiving a high definition signal and is HDCP compliant, and if you have subscribed to the HD Foxtel PDR, and the relevant Additional Package.

#### 4.2 Recording to the Foxtel PDR

You may record programs to the Foxtel PDR that are available on the Package you subscribe to.

The Foxtel PDR is a temporary recording device only. Programs that you have recorded or downloaded to the Foxtel PDR may be erased from the Foxtel PDR for a number of reasons, including if:

- our program suppliers require this to happen after a certain period of time;
- there are power surges or severe weather conditions;
- we reformat or conduct maintenance work on the Foxtel PDR, or the Foxtel PDR or Smart Card is defective or you upgrade to a new Foxtel PDR with a new Smart Card;
- we alter your Account details, your Account Number or your Smart Card Number; and/or
- you attempt to use the Foxtel PDR otherwise than in accordance with its operating instructions or this Agreement.

Where reasonably practicable, we will provide you with prior notice that programs on your Foxtel PDR may be erased.

We are not responsible for any programs that are erased or cannot be retrieved from your Foxtel PDR.

Please note that from time to time we may download content, additional features and/or functionality to the Foxtel PDR, and that this may affect the total amount of space available to you for recording programs.

## 5. MANAGING YOUR SUBSCRIPTION

### 5.1 How can you change your Package or Foxtel Box?

You can upgrade your Package at any time (for a minimum period of one month). If you upgrade during a Bill Period you will be charged the fee(s) set out in the Pricing Guide for the additional services in arrears at the end of that Bill Period and the upgrade will take effect immediately. After that, the fees will be payable in advance like all the other fees for your Package.

You can downgrade your Package at any time (however you must always subscribe to the Entry Level Package) and if you do downgrade then the change to your Package will not take effect until the end of the current Bill Period and you will not receive a refund of any amounts paid.

You can change your Foxtel Box at any time by contacting us, but any change to your Foxtel Box will be subject to the availability at the time of your request.

### 5.2 How can you suspend your subscription?

You can temporarily suspend your Foxtel Service at any time. You will need to pay the suspension fees specified in the Pricing Guide and ensure your account balance is up to date.

You can suspend the Foxtel Service for a minimum of one week and a maximum of 3 months and the relevant fee as set out in the Pricing Guide shall apply. You may only suspend the Foxtel Service once in a 12 month period.

If you decide to suspend the Foxtel Service, you need to provide us with a date on which you want the Foxtel Service to be re-activated, otherwise we will automatically reactivate the Foxtel Service 3 months after we suspend it and will provide you with the same Package that you subscribed to before you suspended the Foxtel Service, however you may no longer be eligible for any discounts you were receiving and may not be able to access or retrieve any programs which were recorded or downloaded to the Foxtel PDR prior to the suspension of your Foxtel Service.

If you also subscribe to an Access Channel then you will need to contact the channel provider to reactivate that service.

### 5.3 Moving the Foxtel Service to your new address

If you are moving house, you must let us know if you wish to transfer the Foxtel Service to your new address. This may require you to change from one form of Infrastructure to another (e.g. satellite to cable) and the Foxtel Service you will receive at your new address may be different to what you currently receive. You may also be unable to access any programs that you recorded or downloaded to the Foxtel PDR once we transfer the Foxtel Service to your new address. You may also be required to pay a fee as set out in the Pricing Guide.

If we are unable to transfer the Foxtel Service to your new address for any reason the transfer will be treated as notice to terminate this Agreement and the rules set out at section 2 will apply.

### 5.4 Nominating an authorised representative

You can authorise someone else over the age of 18 years to act as your agent in relation to your Account. In order to do so, you will need to give us some personal information about

that person, obtain that person's consent for you to provide their personal information to us and inform them of the matters in section 10, including why we have collected their personal information and what we can do with it. We will assume that the person you've authorised has consented to you giving us their personal information.

The person you nominate will have the authority to do most things in relation to your Account that you do (including changing your Package, for which charges will be incurred). However, please note that your authorised representative will not be able to add another authorised representative.

### **5.5 Managing your Account**

You can manage your Account online on the Foxtel Website.

You must take reasonable steps not to disclose any username, passwords, passcodes (including but not limited to PINs) or account information to unauthorised persons. You must advise us of any unauthorised access or use of your Foxtel Service or Online Account, as you will be liable for any transaction that is initiated from Equipment we provide to you.

### **5.6 Parental Control Feature**

We will provide you with a Personal Identification Number (PIN) to use in conjunction with your Foxtel Box.

You must keep your PIN safe and you can use the PIN to restrict access to Channels, Pay Per View Programs, and certain programs based on their classification.

## **6. EQUIPMENT AND INFRASTRUCTURE USE AND REPAIRS**

### **6.1 When will we repair and replace the Equipment and the Infrastructure?**

We will repair, maintain and, if necessary, replace or send you replacement Equipment and Infrastructure at our cost (including the cost of any handling or shipping fees or technician visit fees) while you receive the Foxtel Service unless this Agreement says otherwise.

If the Equipment or Infrastructure is faulty because you have damaged or mistreated it or used it improperly or otherwise than in accordance with this Agreement, then we will charge you our reasonable costs of repairing or replacing it, including any replacement fee set out in the Pricing Guide.

We will charge you for any work required (as set out in the Pricing Guide) to try to find or repair a fault if you report a problem and we find that there is no fault, or the fault was not caused by us.

### ***Proper use of Equipment and Infrastructure***

You must:

- use the Equipment and Infrastructure in accordance with any manuals we give you or our instructions or directions;
- keep the Equipment and any Infrastructure in good and useable condition at all times (fair wear and tear excepted) until it is returned to or collected by us; and
- notify us as soon as possible if the Equipment or Infrastructure is faulty, damaged, destroyed or interfered with in any way.

### ***Improper use of Equipment, Infrastructure and Foxtel Service***

Improper use of the Equipment, Infrastructure and Foxtel Service includes:

- any use of or permission to a third party to use, any equipment or device which may copy, reproduce, republish, post, broadcast, transmit, split, record, decrypt, re-encode or affect the Foxtel Service, or which is intended to override any content protection measure;
- any attempt to affix the Equipment to any property at your Home or move the Equipment or Infrastructure;
- any attempt to repair, interfere with or make any connections to the Equipment or Infrastructure we own without our consent (except for the VAST Service);
- any attempt to insert, remove or replace the Smart Card, unless we ask you to;
- breaking the tamper evident seal on the Foxtel Box or tampering with, or opening or attempting to open, the Foxtel Box at any time;
- any attempt to remove or tamper with any hardware contained in the Foxtel Box, including the hard drive, at any time;

- any attempt to do anything that is inconsistent with our or our Suppliers' rights in the Equipment or Infrastructure, including removing any marking or notice which identifies the Equipment or Infrastructure or who owns the Equipment or Infrastructure; or
- any use, or permission to a third party to use, the Equipment or Infrastructure for any commercial purposes.

### **6.2 How to get the remote control replaced?**

We will repair and, if necessary, replace your remote control at our cost in accordance with any guarantees under this Agreement and as required by law. We will replace your remote at our cost within the first 12 months of your Foxtel Service except in circumstances where the remote control is faulty because you have damaged or mistreated it, or used it otherwise than in accordance with this Agreement, in which case we will charge you a replacement fee as specified in the Pricing Guide.

### **6.3 What if the Equipment or Infrastructure is lost or stolen?**

You need to contact us immediately if any Equipment or Infrastructure is lost or stolen. You should also contact the police if any Equipment or Infrastructure is stolen.

You may also need to give us any report or incident number which the police give you when you report the stolen Equipment or Infrastructure. We may charge you a replacement fee for any lost or stolen Equipment or Infrastructure.

### **6.4 What happens if you ask us to remove or relocate your Equipment and Infrastructure?**

If you ask us to remove or relocate the Equipment or Infrastructure after we have installed it (including re-pointing the satellite dish), we may charge you a fee as specified in the Pricing Guide.

Unless this Agreement or the law says otherwise, we are not obliged to repair any damage to your Home or any of your property or equipment caused by the removal or relocation of the Equipment or Infrastructure by somebody other than us.

### **6.5 Signing Work Orders**

You (or your authorised representative) are required to sign a Work Order when we repair, maintain, relocate, remove, install or add to any Equipment or Infrastructure. When you sign the Work Order you acknowledge that you have received this Agreement and that the Equipment and Infrastructure is functioning to your satisfaction and that you are satisfied with the work we have done.

### **6.6 Exercising of rights**

You need to be aware that any person who has provided us with finance can exercise our rights in respect of the Equipment or our Infrastructure in our place.

## **7. MAKING PAYMENTS**

### **7.1 Paying us for the Foxtel Service**

You must provide us with accurate and complete billing information including your legal name, address and telephone number. You must pay us every month, in advance of the next Bill Period:

- your Subscription Fee for the Package you have subscribed to;
- any installation fees; and
- all other charges for the Foxtel Service (including any Pay Per View Program charges) that have been incurred at your Home and/or on your Account during the current or a previous Bill Period, that have not yet been paid.

We will calculate the above amounts on or around your Payment Date. All Foxtel Services to your Home will be billed to the same account, and have the same Bill Period.

### **7.2 How do you pay?**

There are two ways you can pay us:

- Easy pay – we can debit the amount that you owe us each month directly from a bank account, credit union account, or credit card nominated by you; or
- Invoice – we can invoice you every month, for which we will charge you the monthly account processing fee as set out in the Pricing Guide. You must ensure payment is made to us by the date stated on your invoice.

Once you have set up a direct debit via Easypay (either by completing and signing an Easypay form or doing so over the phone), on or around the Payment Date each month, we will debit your nominated account for the amount due. We will not automatically send you an invoice but you can access one through your Online Account. If you ask us to, we will send you a paper one and charge you the fee specified in the Pricing Guide.

If you do not pay by Easypay, payment will be due and must be paid by the date stated on your invoice.

### **7.3 What happens if you do not pay?**

If (i) an Easypay payment is declined or (ii) you fail to pay us the total amount due by the date specified on an invoice or (iii) your payment is unsuccessful, we will notify you by text message, email, letter or telephone that an amount is overdue. If the amount outstanding is not immediately paid then we can do one or more of the following:

- charge you the late payment fee specified in the Pricing Guide;
- charge you a dishonour fee specified in the Pricing Guide;
- restrict the Foxtel Service you can receive from us;
- erase, or prevent the retrieval of, any program you have recorded or downloaded to the Foxtel PDR;
- suspend the Foxtel Service until all amounts due have been paid (this means your access to any Access Channel you have subscribed to will also be suspended);
- terminate this Agreement;
- take legal action against you to recover the unpaid amount; and/or
- refer you to a collections agency.

### **7.4 What happens on reconnection?**

If you pay all outstanding amounts after your Account has been suspended for non-payment, we will reconnect you and may charge a reconnection fee specified in the Pricing Guide. We may also require you to pay all future fees and charges by Easypay before we reconnect you. We will provide you with the same Package that you subscribed to before the Foxtel Service was suspended, however you may no longer be eligible for any discounts you were receiving prior to the suspension.

### **7.5 Do fees and charges include GST?**

The Subscription Fee and the other charges set out in the Pricing Guide include GST where applicable. If any other amounts are payable under this Agreement (being amounts not set out in the Pricing Guide) and such amounts incur GST, you will be required to pay us the relevant amount of GST. Any GST payable is displayed on your invoice and if an item is exempt for GST it will be clearly marked.

### **7.6 Can fees and charges change?**

We can change all fees and charges in connection with the Foxtel Service at any time. If we make any changes to fees and charges, we will provide you with 21 days notice of any such change. We can also impose new fees or charges. If this occurs, you may have termination rights under clause 2.6.

## **8. OTHER EXTRAS**

### **8.1 Pay Per View Programs**

You can purchase Pay Per View Programs for an additional fee. Some Pay Per View programs will not be available to all Foxtel Boxes and may require a broadband internet connection. These downloads may be metered by your Internet Service Provider.

### **8.2 Special Event Packages**

You can add Special Event Packages to your Package when they are available.

You will be charged the fee for the Special Event Package (which will be notified to you at the time of your order) at the next Payment Date after you order the Special Event Package (which may be in advance of the Special Event).

You can remove the Special Event Package at any time before the Special Event commences. If you have been charged for the Special Event Package and remove the Special Event Package prior to the start of the Special Event, we will provide you with a refund via a credit to your Foxtel Account. After the Special Event starts, we will not provide you with a refund if you decide to remove the Special Event Package.

### **8.3 Receiving Free-to-air Channels through the Foxtel Box**

You may be able to receive Free-to-air Channels through the Foxtel Box. The Free-to-air Channels do not form part of the Foxtel Service and may be withdrawn at any time. No additional charges will be imposed on you if you receive the Free-to-air Channels through the Foxtel Box.

Foxtel has no control over the Free-to-air Channels (including, for example, scheduling, content or the availability of services such as closed captions). If you have any concerns about these matters, you should contact the Free-to-air Channel provider. If you are not receiving your Free-to-air Channels properly we recommend you check your free to air digital TV antenna.

### **8.4 Using your Foxtel Box to receive Access Channels**

You may be able to access subscription television channels provided by third parties through your Foxtel Box. We call these Access Channels. Access Channels do not form part of the Foxtel Service and if you want to receive them, you must separately subscribe to them by contacting the relevant Access Channel provider.

If you subscribe to an Access Channel you acknowledge that:

- you are responsible for all costs and charges payable in connection with your access and subscription to the Access Channel; and
- if you or we end this Agreement for any reason, you will no longer be able to receive the Access Channel through your Foxtel Box.

## **9. SPECIAL EQUIPMENT RULES - OWNER INSTALL CUSTOMERS, FOXTEL SELF INSTALL KITS AND REMOTE CUSTOMERS**

If you live in an area where you are classified as an Owner Install Customer or Remote Customer, or purchase a Foxtel Self Install Kit then this section of the Agreement applies to you.

### **9.1 Purchasing, installing, and maintaining your Infrastructure**

You will own the Infrastructure and be responsible for it as follows:

- (i) if you are an Owner Install Customer – you must provide the Infrastructure (and customers in some areas may be eligible to purchase a Foxtel Self Install Kit) which will belong to you and you will be responsible for arranging a qualified installer to install the Infrastructure and its ongoing maintenance and operation and ensure compliance with the System Specifications in order for you to receive the Foxtel Service. Once you have installed the Equipment and Infrastructure please contact us and we will activate your Foxtel Service.
- (ii) if you are a Remote Customer – we will provide and install your Equipment and Infrastructure and the following applies:
  - a. in addition to your rights at law as set under section 11, if your Infrastructure fails to comply with its specifications during the first three months from installation through no fault of yours, and you contact us, we will (at our choice) replace or repair the Infrastructure at no cost to you; and
  - b. upon expiry of the three month period referred to above, you will be entirely responsible for the ongoing maintenance and operation and ensure compliance with the System Specifications in order for you to receive the Foxtel Service, except to the extent that clause 11.1 applies.

If you wish to remove or relocate any Infrastructure, you will need to engage a qualified installer at your cost to undertake this work.

### **9.2 Other types of Self Install customers**

If you are a customer who has all of the necessary Infrastructure already installed and in working order at your address, you may be eligible to order a Foxtel Self Install Kit to install the Equipment yourself in accordance with the System Specifications. If you are unable to install the Equipment in accordance with the System Specifications and you ask us to come to your Home and conduct the installation, we may charge you, unless the fault was caused by us or the Equipment.

### **9.3 Repairing, replacing and adding our Equipment**

We own the Equipment which you use to receive the Foxtel Service. All of the rules set out in this Agreement regarding the Equipment (but not the Infrastructure) apply to you.

## 10. YOUR PRIVACY AND PERSONAL INFORMATION

### 10.1 Consent

By entering into this Agreement, you consent to us collecting, using and disclosing your Personal Information on the terms of this Agreement and Foxtel's Privacy Policy.

## 11. LEGAL RIGHTS AND LIABILITIES

### 11.1 Your Rights

#### *Guarantees on Foxtel Service / Equipment*

Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other terms, implied or imposed by any legislation that cannot be lawfully excluded or limited including the Australian Consumer Law or any other relevant law of the Commonwealth, a State or Territory. You may have rights under the Australian Consumer Law which contains guarantees that protect the purchasers of goods and services in certain circumstances.

Our goods and services provided to you under this Agreement come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other loss or damage it causes. You are also entitled to have any such goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

#### *In circumstances we can't control*

If we are prevented from performing our obligations under this Agreement in a material way at any time for a reasonable period because of an event or cause beyond our control (for example, terrorism or a disruption to electricity):

- we will tell you, unless the circumstances prevent us from doing so;
- the Foxtel Service and your access to any Access Channel may be suspended for the period for which we cannot perform our obligations. If that period is during the Fixed Term, the Fixed Term will be extended by the period of the suspension. You will not be charged for the Foxtel Service while it is suspended; and
- you can choose to terminate this Agreement and you may not be required to pay an early termination fee.

### 11.2 Exclusion of implied conditions and warranties

Apart from any rights you have that cannot be lawfully excluded, we do not make any promises or assurances to you about the Foxtel Service, the Foxtel Guide, the Equipment, Infrastructure and/or this Agreement. We do not accept responsibility for the accuracy of information contained in the Foxtel Service.

To the maximum extent permitted by law, all terms, conditions and warranties, whether express or implied by legislation or the common law or otherwise relating to this Agreement and/or the provision by us of the Foxtel Service, the Foxtel Guide, the Equipment or Infrastructure are expressly excluded.

### 11.3 Your liabilities

In addition to any rights against you that we may have under this Agreement, you will be liable to us and must keep us, our Foxtel Partners, Related Companies and Suppliers indemnified against any loss, cost, expenses, damage or other liability (including legal costs on a solicitor/client basis) arising out of any claim or demand against us by you or any person other than you, which arises from or is connected with our installation, supply, maintenance, repair or removal of the Foxtel Service, the Equipment or Infrastructure to you or your use of the Foxtel Service, Equipment or Infrastructure, unless the loss, costs, expense, damage or other liability is caused by our, Telstra's, our Foxtel Partners', Related Companies', or Suppliers' wilful default, negligence or breach of this Agreement or any law.

### 11.4 When we are not responsible

Subject to your rights under the Australian Consumer Law, unless there is default, negligence or breach of this Agreement or any law by us or our Foxtel Partners, Related Companies, Suppliers or any of our agents, Contractors or employees, we will not be responsible to you or any other person in connection with:

- your operation and use of the Equipment, Infrastructure, the telephone line or broadband internet connection;
- any misuse or failure of the Foxtel Service or the Foxtel Guide caused by you or anyone else at your address;
- any loss of programming recorded or downloaded to the Foxtel PDR, your tablet or computer;
- any loss you suffer if you do not receive an Access Channel or a Free-to-air Channel, or your access or subscription to an Access Channel is terminated; and/or
- any loss you or any other person suffer as a result of:

- (i) any misuse or unauthorised use of the PIN, your Login Details, your Account Number or your Smart Card Number; or
  - (ii) any other cause where the cause is outside our reasonable control.
- any damage to your own equipment that you use to receive the Foxtel Service (for example, your television, computer, video recorder, tablet or mobile phone or other device, including any burn-in suffered to your television monitor).

### **11.5 Indirect loss**

Except where we have breached any of your rights under the Australian Consumer Law or any other applicable legislation which cannot be lawfully excluded or limited, we are not responsible in any way for any indirect or consequential loss that arises out of or in connection with this Agreement, the Foxtel Service, the Equipment and/or the Infrastructure.

### **11.6 Exercise of our rights**

Unless this Agreement says otherwise, we are also allowed to exercise all the other rights and powers we have under law. When this Agreement ends, any rights that have not been fulfilled which you have against us or we have against you will continue to exist after this Agreement ends.

We may exercise our rights (including giving or refusing consent) in any way we consider appropriate. If we do not do something when we are entitled to (for example, impose a late payment fee), that does not mean we are giving up the right to do so.

### **11.7 Commissions**

We may pay commission to any person who introduced you to us.

### **11.8 Laws relating to this Agreement**

This Agreement is governed by the laws of the State or Territory in which your Home is located.

If part of this Agreement is not legally enforceable, that part will be cut from this Agreement. All other parts of the Agreement will continue.

If you want to assign or transfer this Agreement to someone, you need our permission. Please contact us.

We may transfer or assign any of our rights or obligations under this Agreement.

### **11.9 How we can contact you – notices**

Unless this Agreement says otherwise, we can give you notices by sending a letter to your address (by post or email), Foxtel Box messaging, SMS or by including the relevant information on the Foxtel Website.

### **11.10 Reading and interpreting this Agreement**

In this Agreement:

- headings are for convenience only and do not affect how this Agreement is interpreted;
- the singular includes the plural, and the plural includes the singular;
- if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- a reference to us includes our successors, permitted substitutes and permitted assignees; and
- a reference to law or to a provision of a law includes a change to it or a re-enactment of it, a provision substituted for it and a regulation or statutory instrument issued under it.

### **11.11 ASTRA Codes**

We are regulated by ASTRA's codes of practice for subscription television broadcasting and narrowcasting services which have been registered with the Australian Communications and Media Authority. The codes regulate issues such as the classification of program material and the framework for dealing with complaints. You can obtain a copy of the codes by contacting us or via the ASTRA website [www.astra.org](http://www.astra.org)

## **12. DEFINITIONS**

Some words in this Agreement have a special meaning and are explained below.

**Access Channel** means a subscription television channel provided by a third party which does not form part of the Foxtel Service, but which you may be able to access through your Foxtel Box.

**Account** means your account with us to receive the Foxtel Service and Account Number means the number assigned to your Account

**Additional Package** means a programming package (other than the Entry Level Package) set out in the Pricing Guide which you choose to include as part of your Package, for an additional charge.

**Agreement** means the agreement between you and us authorising you to receive the Foxtel Service which is made up of these terms and conditions as varied from time to time, as more particularly described in section 1.

**Ancillary Services** means any additional or extra services or features provided to you from time to time by Foxtel.

**Application** means, where you have agreed to subscribe to the Foxtel Service via a door-to-door or kiosk sales person, the form you sign that asks us to install the Equipment and Infrastructure and provide the Foxtel Service to you.

**ASTRA** means the Australian Subscription Television and Radio Association.

**Australian Consumer Law** means the consumer protection legislation set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

**Authorised Provider** means any other person or entity with whom we have arrangements in relation to providing the Foxtel Service. This may include but is not limited to any entity that provides call centre services to us based in India, the Philippines and the United States and mercantile agents who help us to collect overdue payments to enable them to provide those services to us or administer payment arrangements in connection with those services and may also include analysts and content and channel providers.

**Bill Period** means the period for which your monthly charges are applied, commencing on the anniversary of the activation date of your Foxtel Service and ending at midnight on the day before the next bill period, unless otherwise agreed with you.

**Channel** means any channel that is available in a Package. A Channel may include a radio, audio or games channel.

**Contractors** means contractors, agents and third parties with whom we have entered into agreements or arrangements with from time to time in order to act on our behalf in connection with:

- contacting you; or
- providing you with information pertaining to the Foxtel Service or any products and services that we or our Related Companies offer from time to time; or
- performing, planning, research, product development and strategic, financial and other business purposes in relation to our products and services on our behalf.

**CPI** means the All Groups Consumer Price Index published by the Australian Bureau of Statistics.

**Easypay** means a direct debt payment service that automates the monthly payment of the Foxtel Service from either your credit card or nominated bank account.

**Entry Level Package** means the minimum programming package required to be purchased by all subscribers in order to receive the Foxtel Service.

**Equipment** means the equipment provided to you and owned or controlled by Foxtel that is required to receive the Foxtel Service and including: the Foxtel Box, the remote control, Smart Card, cabling from the wall-plate to the Foxtel Box and from the Foxtel Box to your television or video equipment, if applicable. It also includes any other such equipment that is already installed by Foxtel at your address before the beginning of your Foxtel Service.

**Fixed Term** means the period for which you have signed up to receive the Foxtel Service as set out in clause 2.3.

**Foxtel** means Foxtel Cable Television Pty Limited, its agents and Contractors (if you are in a Metro Area) and means Austar Entertainment Pty Ltd, its agents and Contractors if you are in a Regional Area) and when used in the context of the Equipment, includes the owner of any Equipment.

**Foxtel Box** means the standard set top unit or Foxtel PDR, we supply to you from time to time when you subscribe to the Foxtel Service.

**Foxtel Guide** means the on-screen electronic program guide that is provided as part of the Foxtel Service (and includes the data contained within it and the underlying computer programs) and which can be accessed using your remote control unit or the buttons on the front panel of the Foxtel Box.

**Foxtel Management** means Foxtel Management Pty Limited.

**Foxtel Partners** means Telstra Corporation Limited, The News Corporation Limited (or any of their subsidiaries or affiliates), Foxtel Management, Foxtel Partnership and Telstra Pay TV Pty Limited.

**Foxtel Partnership** means the partnership between Sky Cable Pty Limited and Telstra Media Pty Limited.

**Foxtel PDR** means the personal digital recorder and set top unit we supply to you from time to time when you subscribe to the Foxtel Service.

**Foxtel Self Install Kit** means the kit that is available for purchase by approved persons to enable them to install the Equipment themselves to receive the Foxtel Service.

**Foxtel Service** means the Package you subscribe to, together with any other services you use, purchase or subscribe to from time to time from Foxtel.

**Foxtel Website** means [www.foxtel.com.au](http://www.foxtel.com.au) or such other website as Foxtel may advise from time to time.

**Foxtel Welcome Pack** means the kit that we provide you with when you first subscribe to the Foxtel Service.

**Free-to-air Channels** means any commercial television or national broadcasting service that you are able to access through the Equipment and Infrastructure.

**Government agencies** include:

- agencies or individuals appointed by a government (including the Telecommunications Industry Ombudsman, the Australian Communications and Media Authority or other law enforcement agencies) responsible for investigating and resolving disputes or complaints concerning your use of the Foxtel Service; and
- the Telecommunication Fraud and Risk Association or any of its members.

**GST** means any value added, consumption, turnover or similar tax, impost or duty on goods and/or services.

**HDCP** means High-bandwidth Digital Content Protection.

**Home** means the address specified in the Work Order and where the Equipment and Infrastructure is installed.

**Infrastructure** means any infrastructure installed at your Home which is required to receive the Foxtel Service including any of the following: the satellite receiving dish, incidental cabling, optical fibre, coaxial cable, ducts, conduits, the isolation box, the wall plate and dishmount, the multiswitch, the amplifier, low noise blocker (LNB), diplexer and phone socket. It also includes any other infrastructure that is already installed at your address by Foxtel before the beginning of your Foxtel Service.

**Interactive Advertiser** means any advertiser advertising on any Channel or Free-to-air Channel on the Foxtel Service that offers a promotion or the provision of information or a product to be sent to you or someone at your address using an Interactive Foxtel Service.

**Interactive Service** means a service or enhancement that may be provided to you through the Foxtel Box which allows interaction with or via the Foxtel Box.

**Login Details** means the user name and password you have selected to login to your Online Account.

**Metro Area** means those areas that are not Regional Areas.

**Online Account** means an account on the Foxtel Website.

**Owner Install Customer** means any customer who resides in an owner install area as advised by Foxtel at the time this Agreement is entered into by the parties, including customers who reside in Regional North West Australia

**Package** means the programming package you choose to subscribe to from time to time, which must include the Entry Level Package together with any other Channels, Additional Packages, Stand Alone Channels or Special Event Packages you have chosen to subscribe to from Foxtel.

**Pay Per View Program** means a program or movie offered through Foxtel On Demand, for which you are charged a fee to view that program.

**Payment Date** means the monthly anniversary of the date we first provide the Foxtel Service to you, unless agreed otherwise with you and is the date when your Easypay direct debit payment is scheduled to be taken each month.

**Pricing Guide** means the Foxtel price guide, as varied from time to time.

**Regional Area** means the geographical areas of Australia including Hobart, Darwin, the Gold Coast (where the Foxtel service is provided by satellite distribution) and all areas outside metropolitan capital cities (except for Western Australia) and the external territories such as Lord Howe and Norfolk Island.

**Related Company** means a company or entity that is wholly owned (directly or indirectly) by the Foxtel Partnership.

**Remote Customer** means any customer who resides in a remote area as advised by Foxtel at the time this Agreement is entered into by the parties

**System Specifications** means the specifications for the installation of the Infrastructure set out at the end of this Agreement.

**Smart Card** means the secure card that activates your Foxtel Box and Smart Card Number means the unique number assigned to your Smart Card.

**Special Event** means major events that Foxtel may choose to broadcast from time to time.

**Special Event Package** means a programming package for a Special Event that you choose to include, for an additional charge, in your Package from time to time.

**Stand Alone Channel** means a Channel set out in the Pricing Guide, which you choose to include, for an additional charge as part of your Package.

**Subscription Fee** means the monthly fee (as specified in the Pricing Guide) that you must pay for the delivery of the Package you subscribe to, as it varies from time to time.

**Suppliers** means the contractors, agents and third party suppliers with whom we have entered into agreements or arrangements with from time to time in order to act on our behalf in connection with this Agreement, as well as any owner of the Equipment.

**Telstra** means Telstra Multimedia Pty Limited.

**Term** means the Fixed Term and any extension of it according to the terms of this Agreement.

**VAST Service** means the Viewer Access Satellite Television digital TV satellite service that enables viewers who cannot receive digital services from the terrestrial transmitters that serve their area to have access to a free-to-air satellite TV service.

**we** and **us** means Foxtel.

**Work Order** means any form, whether in electronic or hard copy format, signed by you or on your behalf when we install, repair, maintain, relocate, remove or add to any Equipment or Infrastructure, or otherwise visit your address about the Foxtel Service.

**you** you means the Foxtel customer named as the account holder on the Work Order or identified as the account holder in our database.

## 13. SYSTEM SPECIFICATIONS

**System Specifications** - for Owner Install Customers and Remote Customers.

Recommended Specifications for the Satellite System are as follows:

- Minimum Satellite dish size should be 90cm
- For a single Foxtel Box, a single output 10.7 GHz low noise block converter (LNB) see specification below
- Where more than one standard Foxtel Box is used, a dual output Wide band 10.7 GHz low noise block converter (LNB) is required
- A multi switch is required when connecting multiple set top units
- Splitters are not to be used
- F type and or IEC Compression type connectors are required (not crimp type)
- RG6 Quad shield black coaxial cable

### **LNB Specification**

RF Input Frequency	11.7 – 12.75 GHz
RF Output Frequency	1000 – 2050 MHz
Local Oscillator (L.O.)	10.7 GHz

### **Information on the location of the Satellite C1 & D3 used by Foxtel:**

- C1: Location: 156 degrees E  
D/L: 12250 to 12750 MHz  
Polarity: linear
- D3: Location: 156 degrees E  
D/L: 11700 to 12200 MHz  
Polarity: linear

The Infrastructure must be capable of receiving both vertical and horizontal polarised signals from the satellites carrying Foxtel (Optus C1 and D3) in order for you to access all channels and channel enhancements.

Note that if you are an Owner Install Customer, you should select your Infrastructure carefully as the availability and quality of the Foxtel signal you receive is likely to be detrimentally affected by using a dish and LNB combination that does not meet the above specifications.

**For all enquiries call 131 999**

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