

## FOXTEL COMMERCIAL SUBSCRIPTION AGREEMENT TERMS & CONDITIONS (the *Terms & Conditions*)

### IMPORTANT TV CARE INFORMATION

Do not allow a still image to be displayed on your television screen for an extended period of time. This can cause a permanent residual image (burn-in) remaining on your screen. Examples of still images include:

- channel logos and certain channel formats;
- images displayed in a 4:3, 14:9 and 16:9 mode that are different to your television set up;
- on-screen information (for example tickers on news channels) that are part of programmes;
- games and interactive services (including any onscreen icons);
- audio channels; and
- FOXTEL Electronic Programme Guide.

Plasma, Rear Projection and LCD televisions are at a higher risk of burn-in. These televisions are more prone to burn-in during the first 200 hours of use. Always consult your television manufacturer's manual for proper operating instructions. Please see clause 14 of this Agreement.

The satellite Service may be affected by severe weather conditions. If you experience signal problems that you suspect may be caused by severe weather, and for any other technical issues please call our customer service centre on 1300 130 188.

### 1. FOXTEL COMMERCIAL SUBSCRIPTION AGREEMENT

- 1.1 This Agreement sets out the terms and conditions on which we will provide you with the Services and install and maintain the Equipment and Infrastructure.
- 1.2 This Agreement contains the entire agreement between the parties with respect to their subject matter. It sets out the only matters to be relied on by the parties and supersedes all earlier conduct between the parties.
- 1.3 Where a term of the Schedule conflicts with the Terms & Conditions, the terms of the Schedule will prevail.
- 1.4 FOXTEL may change any term or condition of the Terms & Conditions at any time by giving notice to you no later than when that notice becomes effective.
- 1.5 Some of the words in these terms have particular meanings; please see clauses 25 and 26.

### 2. PERMISSION, ACCESS AND VISITING THE PREMISES

- 2.1 You promise us that you have obtained any necessary permission or authorisation for the Works. This may include authorisations from your local council, authorisations required under Heritage Legislation, or authorisations required by the manager and/or owner of the Premises.
- 2.2 You need to obtain permission from your building manager and/or owner to allow FOXTEL to enter the common property at the Premises from time

to time to perform the Works. Unless you notify us otherwise, we assume that you have obtained this permission prior to the installation of the Equipment or Infrastructure.

- 2.3 If we are required by you to perform the Works, we are not responsible for any damage to common property arising from the Works, unless the law says otherwise. You will be responsible for the cost of any damage to common property arising from the Works, and you may be regarded as having terminated this Agreement.
- 2.4 You must provide us with access to the Premises to enable us to perform the Works. You must meet our reasonable requirements about the safety of any FOXTEL Representatives who perform the Works.
- 2.5 You must provide any training to FOXTEL Representatives free of charge that you may require to allow us to access the Premises.
- 2.6 We will agree a date with you on which we will perform the Works. We will try to keep the agreed date, but we are not responsible for any loss you suffer if we fail to do this for any reason.

### 3. INFRASTRUCTURE AND PRE-INSTALLED EQUIPMENT

- 3.1 This Agreement assumes that all necessary Infrastructure will be installed at the Premises prior to any installation of the Equipment.
- 3.2 You must ensure that the correct Infrastructure has been installed at the Premises.
- 3.3 You must contact us before the Equipment is installed and we will inform you of what additional Infrastructure you may be required to purchase to complete the installation of the Equipment.
- 3.4 You acknowledge that if the incorrect or insufficient Infrastructure is installed at the Premises, or if it is installed incorrectly, you may not be able to receive the Services or you may receive a degraded Service. We are not liable for any degradation to or loss of the Services as a result of incorrect or insufficient Infrastructure being installed at the Premises.
- 3.5 If any Equipment that we need to provide you with to receive the Services is already installed and in working order at the Premises, or any new address to which you transfer the Services, we may use it to provide you with the Service.

### 4. CLOSED INTERNET PROTOCOL INTERNAL RETICULATION SYSTEM (CIPIRS) – this clause only applies where you use a CIPIRS

- 4.1 You must obtain agreement from your supplier of the CIPIRS (the *CIPIRS Supplier*) that the CIPIRS Supplier will comply with FOXTEL's digital rights management (*DRM*) and digital encryption (*Encryption*) requirements, which FOXTEL will supply to you and/or the CIPIRS Supplier on or before the commencement of the Term.

- 4.2 If the CIPIRS does not meet the DRM or Encryption requirements then FOXTEL may terminate this Agreement or suspend the Service (where neither the DRM or Encryption meet the specifications provided by FOXTEL) with immediate effect or (where only the DRM does not meet the specifications provided by FOXTEL) suspend or cease the delivery of any Channel where DRM is required to be implemented for the delivery of that Channel via CIPIRS.
- 4.3 If FOXTEL suspends the Service pursuant to clause 4.2, then the Service will remain suspended until such time as you and/or the CIPIRS Supplier implements the required DRM and Encryption to FOXTEL's reasonable satisfaction. You will remain liable for any Subscription Fees during the period of suspension. If the required DRM and Encryption is not implemented within 30 days of notice being provided by FOXTEL, then FOXTEL has the right to terminate this Agreement with immediate effect and you may still be liable for the Cancellation Fee.
- 4.4 If FOXTEL suspends a Channel or Channels pursuant to clause 4.2, then the Channel(s) will remain suspended until such times as you and/or the CIPIRS Supplier implements the required DRM or Encryption to FOXTEL's reasonable satisfaction. You will remain liable for any Subscription Fees during the period of suspension. If the required DRM or Encryption is not implemented within 30 days of notice being provided by FOXTEL, then FOXTEL has the right to remove the affected Channel(s) from your package and your Subscription Fees will be reduced by the value of the Channel(s) as notified to you by FOXTEL, or FOXTEL may terminate this Agreement and you must pay the Cancellation Fee.
- 4.5 For FOXTEL to establish that the CIPIRS has the necessary DRM and Encryption, FOXTEL will, on reasonable notice to you, have the right to inspect and audit your CIPIRS during the Term. You must supply FOXTEL with any documentation relating to the CIPIRS as reasonably requested by FOXTEL, subject to any confidentiality restrictions imposed on you.
- 5. FOXTEL INSTALLED EQUIPMENT – this clause applies where FOXTEL and you agree that FOXTEL will install the Equipment.**
- 5.1 Where you agree with FOXTEL for it to install the Equipment, FOXTEL will install, or will procure the installation of, the Equipment at the Premises and maintain the Equipment up to the Infrastructure headend at the Premises, integrate the Channels for an Integrated System, and maintain the Equipment for a Direct Feed system.
- 5.2 FOXTEL will install the Equipment at the Premises as soon as practicable after you request it to do so.
- 5.3 At all times FOXTEL will remain the owner of the Equipment. FOXTEL may add or substitute Equipment in its absolute and sole discretion.
- 5.4 You must keep the Equipment in good and useable condition at all times (fair wear and tear excepted) until returned to, or collected by, FOXTEL.
- 5.5 FOXTEL permits you to use the Equipment in accordance with this Agreement. Only FOXTEL can authorise Works on the Equipment. No person (including you) is allowed to perform Works on the Equipment without FOXTEL's prior written authorisation. If you, or someone authorised by you, performs Works on the Equipment without FOXTEL's prior written authorisation, you will be liable to FOXTEL for any loss FOXTEL incurs.
- 5.6 By signing the work order at the time of installation, you acknowledge that the Equipment and the Infrastructure are in working order and that you approve the quality of reception of the Service as at the date of installation of the Equipment.
- 5.7 You must not remove any marking which identifies the Equipment as belonging to FOXTEL.
- 5.8 FOXTEL may use the Equipment to deliver the subscription television services of a third party subscription television service provider to the Premises.
- 5.9 FOXTEL will ensure or will procure that the installation of the Equipment at the Premises is in consultation with you. However, for technical and commercial reasons, FOXTEL has the final decision on installation. FOXTEL will at all times use reasonable endeavours to ensure that the Equipment is in proper working order, but FOXTEL does not guarantee that the Equipment will be fault free. If you experience a problem with the Equipment, you should report it by telephoning FOXTEL on 1300 130 188. If you report a fault and FOXTEL finds that there is no fault or the fault was not caused by FOXTEL, FOXTEL may charge you for any work FOXTEL has done to try to find the fault or repair it.
- 6. CUSTOMER INSTALLED EQUIPMENT – This clause applies where FOXTEL and you agree that you will install the Equipment.**
- 6.1 Where you have opted to install the Equipment, you must organise and pay for the installation of the Equipment by a qualified installer at the Premises as soon as practicable.
- 6.2 You must ensure the Equipment is installed in accordance with the Equipment Installation Guide. If you encounter any problems installing the Equipment, please contact us. For on-going enquiries not associated with the installation of the Equipment or activation of the Service, please contact FOXTEL on 1300 130 188.
- 6.3 At all times FOXTEL will remain the owner of the Equipment. FOXTEL may add or substitute Equipment in its absolute discretion.
- 6.4 You must keep the Equipment in good and useable condition at all times (fair wear and tear excepted) until returned to, or collected by, FOXTEL.
- 6.5 FOXTEL permits you to use the Equipment in accordance with this Agreement. You will organise and pay for any Works. Only authorised technicians are allowed to perform Works on the Equipment. No person is permitted to perform Works on the Equipment without FOXTEL's prior authorisation. If you, or someone authorised by

- you perform Works on the Equipment without FOXTEL's prior written authorisation, you will be liable to FOXTEL for any loss FOXTEL incurs.
- 6.6 By telephoning FOXTEL to activate the service you acknowledge that the Equipment and Infrastructure is in working order and that you approve the quality of reception of the Services as at the date of installation of the Equipment and Infrastructure.
- 6.7 You must not remove any marking which identifies the Equipment as belonging to FOXTEL.
- 6.8 FOXTEL may use the Equipment to deliver the subscription television services of a third party subscription television service provider to the Premises.
- 6.9 You will at all times use reasonable endeavours to ensure that the Equipment and Infrastructure is in proper working order. FOXTEL does not guarantee that the Equipment will be fault free. If you experience a problem with the Equipment or Infrastructure, you should report it by telephoning a qualified installer.
- 6.10 If you report a fault and FOXTEL finds that there is no fault or the fault was not caused by FOXTEL, FOXTEL may charge you for any work FOXTEL has done to try to find the fault or repair it. If the fault is with the Equipment, replacement Equipment will be provided by FOXTEL and you will organise and pay for the required Works with your local qualified installer.
- 6.11 FOXTEL will not repair any damage to the Premises caused by the installation of the Equipment or Infrastructure by your installer.
- 6.12 You are responsible for maintenance of the Equipment and Infrastructure. If you require maintenance or repair of the Equipment or Infrastructure, you must organise and pay for it with a qualified installer.
- 7.4 You must only provide the Services to the number of Outlets specified in the Schedule unless you notify FOXTEL in writing and receive FOXTEL's prior written consent to a change in the specified number of Outlets and pay any additional fees required by FOXTEL.
- 7.5 The Outlets must not be connected in any public viewing area except with the prior written consent of FOXTEL. You acknowledge that FOXTEL is not permitted to allow the Restricted Area Channels to be broadcast in a Public Viewing Area. Upon notice to you, FOXTEL may cease supplying programming and/or Channels in its absolute discretion to any Public Viewing Area.
- 7.6 Subject to copyright laws, you must not copy any of the Services or Retransmitted Services, or videotape, split, redirect, redistribute or otherwise offer or supply a Service or the Services or Retransmitted Services to any other place other than the specified Outlets, or to any other person or entity without FOXTEL's prior written authorisation.
- 7.7 You must not use, exhibit, cause or permit the viewing of the FOX Sports Channels and/or SKY Racing channel in a public viewing area which holds a liquor license or connect the FOX Sports Channels and/or SKY Racing channel to any television or monitor in a public viewing area which holds a liquor license (whether directly or indirectly by means of any device or otherwise) without prior written authorisation of FOXTEL.
- 7.8 You must not use or authorise the use of a Broadcasting Decoding Device to gain access to the Service without prior FOXTEL authorisation. You also agree not to duplicate, alter, retransmit or redistribute the Channels, including making any change to the picture aspect ratio (for example by inserting digital signage on screen), in any way including but not limited to via the internet.
- 7.9 If you breach any one or more of clauses 7.4, 7.5, 7.6, 7.7 or 7.8 you will immediately become liable to pay FOXTEL Subscription Fees at the rate applicable for use of the Channels in a Public Viewing Area or the rate applicable for use of the FOX Sports Channels in a Public Viewing Area which holds a liquor license under FOXTEL's or the relevant channel provider's applicable terms and conditions, less the applicable subscription fee paid by you under this Agreement, and FOXTEL may in addition terminate this Agreement.

## 7. FOXTEL SERVICES

- 7.1 Once the Equipment is installed, FOXTEL will provide you with the Services for the Term in accordance with the terms of this Agreement for viewing on the number of Outlets specified in the Schedule and, subject to clauses 15 and 17, FOXTEL Management will provide the Retransmitted Services to you.
- 7.2 FOXTEL may vary channel content or transmission times or stop providing Channels without notice.
- 7.3 FOXTEL may from time to time vary the programs and scheduling of the programming which makes up the Services without notice to you and without any adjustment to the Subscription Fee. From time to time, FOXTEL may also add, withdraw or change features or functionality of the Service. Where circumstances arise that are outside FOXTEL's reasonable control, FOXTEL may also stop providing the Services or any Channels comprising the Services without notice. FOXTEL is not liable for any loss or disappointment you may suffer as a result.
- 7.10 You may upgrade or downgrade to another Service during the Term. If you decide to upgrade during the Term, you must pay the increase in the Subscription Fee from the date nominated as the date of the upgrade. If you elect to downgrade, you accept that the downgrade will not take effect until the first day of your next Billing Cycle.
- 7.11 FOXTEL will provide you with the number of Monthly Programme Guides set out in the Schedule. You acknowledge that FOXTEL is not liable to you where it is unable to provide the Monthly Programme Guide for any reason beyond FOXTEL's control.
- 7.12 If you ask FOXTEL to change the Premises at which the Services are provided (for example,

you have moved to a new address), FOXTEL cannot guarantee that it will be able to provide the Services at the new address. You will have to pay any charges for installing the Services at the new address. If you want FOXTEL to provide the Services at another place in addition to the Premises, you will have to sign a separate Agreement with FOXTEL for the Service provided at that place.

7.13 You must ensure compliance with the terms of this Agreement by:

- a) all occupants of the Premises that receive the Services and the Retransmitted Services; and
- b) all your contractors, sub-contractors, employees and permitted assignees.

7.14 If you sub-let, FOXTEL will be entitled to market other FOXTEL channel packages directly to all occupants of the Premises for the purpose of upgrading to another FOXTEL channel package. In the event that a customer upgrades to another FOXTEL channel package, then you will have no liability for fees connected with the provision of those additional services other than the Subscription Fee.

7.15 You may use the FOXTEL name and logo in connection with the promotion of the FOXTEL service or your services generally, provided that you first obtain FOXTEL's written approval for such use.

7.16 FOXTEL will provide access to the FOXTEL iQ Service in its absolute and sole discretion. If you are granted access to the FOXTEL iQ Service, you acknowledge and agree that we may from time to time download content, additional features or functionality to the FOXTEL iQ and that this may affect the total amount of space available to you for recording programs. You will only be able to record programmes to the FOXTEL iQ that are available on the Service supplied to you by FOXTEL. You may not be able to record all programs.

7.17 You acknowledge and agree that any programs that you have recorded to the FOXTEL iQ may be erased and irretrievable from the FOXTEL iQ for any reason and that FOXTEL is not liable to you for any programs that are erased or cannot be retrieved from your FOXTEL iQ, including if any of the following events occurs:

- a) you or we cancel the FOXTEL iQ Service or this Agreement is otherwise terminated in accordance with its terms;
- b) if we are required to do so by our content suppliers;
- c) power surges or severe weather conditions;
- d) we reformat the FOXTEL iQ;
- e) we alter your account details or your subscriber identification number;
- f) you attempt to use the FOXTEL iQ otherwise than in accordance with its operating instructions; or
- g) the FOXTEL iQ, including the Smartcard, is defective in any way or ceases to operate.

## 8. FEES AND CHARGES

8.1 For Equipment installed pursuant to clause 5, FOXTEL may charge you for any reasonable cost it incurs for Works performed on the Equipment.

8.2 For Equipment installed pursuant to clause 6, FOXTEL may charge you for any reasonable cost it incurs for Works performed on the Equipment.

8.3 You must pay FOXTEL the Subscription Fees every month in advance. You must pay the first month's Subscription Fee, and the Installation Fee for Equipment installed pursuant to clause 5, when you sign this Agreement. If you are being supplied the Retransmitted Services these are supplied to you at no further charge.

8.4 At any time, including on the anniversary of the Commencement Date, FOXTEL may change the Subscription Fee and may impose new fees and charges with 30 days prior notice. If FOXTEL changes the Subscription Fee to reflect an increase above CPI you may terminate this Agreement without penalty by giving FOXTEL 30 days written notice. Otherwise, your continued subscription will be deemed acceptance of any such change.

8.5 If you elect to pay by direct debit from your bank account, or from your credit card, you may need to sign an authorisation form and return it to us. We will then arrange for your bank or credit provider to debit your account each month in the amount of your Subscription Fees.

8.6 If any payment is not received within 14 days after the Due Date, FOXTEL may charge you a Late Fee of 5% of the overdue amount. If any payment is not received within 30 days after the Due Date, FOXTEL may charge you an Additional Collection Fee.

8.7 If any cheque is dishonoured, FOXTEL will charge you a Dishonoured Cheque Fee.

8.8 If any direct debit is returned or dishonoured, FOXTEL may charge you a Dishonoured Payment Fee.

8.9 For Equipment installed pursuant to clause 5, FOXTEL will only be obliged to repair any damage to the Premises caused by Works performed on the Equipment to the extent that such damage is caused or contributed to by FOXTEL.

8.10 For Equipment installed pursuant to clause 6, FOXTEL is not liable for any damage caused to your Premises as a result of the removal or re-installation of the Equipment or Infrastructure.

8.11 Where FOXTEL must pay GST on supplies under this Agreement, FOXTEL can charge you this amount. GST is included in the prices provided to you.

8.12 If you are permitted by FOXTEL to broadcast any Channel into a public viewing area, then you will be responsible for paying any public performance licence fees to the relevant Collecting Society.

8.13 You may only licence the FOX Sports Channels for use in a Public Viewing Area which holds a liquor licence with FOXTEL's prior written authorisation. If you do so, then you acknowledge and agree that the Subscription Fees that you must pay for the FOX Sports Channels are subject to change at any time. FOXTEL will advise you of any such changes in advance. If you have not licensed the FOX Sports Channels

for use in a Public Viewing Area which holds a liquor licence, but we are informed that you are screening the FOX Sports Channels to such premises, then you will be in breach of this Agreement and clauses 7.9 and 15.1 will apply.

- 8.14 If you do not pay a Subscription Fee by the Due Date (or, in the case where you are paying us by direct debit, have still not paid us on the day which is 8 days after the Due Date), and we continue to supply the Service and you continue to accept that supply, then we will treat you as if you had made an application to us for credit for an amount equal to the unpaid Subscription Fee. Our continued supply of the Service will constitute approval of that application and extension of credit to you. The unpaid amount will then become due on the date which is 8 days after the last day of the Billing Cycle during which the Due Date fell (the **Deferred Due Date**) instead of its original Due Date.
- 8.15 Just because we continue to supply you with the Service after you fail to pay us does not mean that we cannot exercise any rights that we may have under this Agreement at any time.
- 8.16 If any unpaid Subscription Fee remains unpaid for a further 60 days after the Deferred Due Date and we have taken steps to recover the relevant amount, we may report your default to a credit reporting agency. If we report your default to a credit reporting agency your credit rating may be affected and you may have difficulty obtaining credit in the future.
- 8.17 If we suspend the Service for non-payment, we may reconnect you if you pay all outstanding amounts. You must pay a reconnection fee.
- 8.18 If we suspend the Service, and then reconnect it once you have paid the amount outstanding, then:
- if the suspension was during the Term, the Term will be extended by the period for which the Service was suspended;
  - we may require you to pay all charges by direct debit; and
  - the Billing Cycle and Billing Date may change.
- 8.19 If you cannot receive the Service and FOXTEL is not at fault, you must continue to pay the Subscription Fees.
- 8.20 We may pay commission to any person who introduces you to us.
- 9. YOUR AUTHORISATIONS AND YOUR CAPACITY**
- 9.1 Information concerning you will be held in a database. The database will contain your name, address, Premises, telephone numbers, Services, bank account or credit card details, billing details, information relating to the provision of Services and information provided by you in connection with the Agreement or the Services.
- 9.2 The information may only be used or disclosed as set out in paragraphs 9.2 and 9.3 and as permitted by the *Privacy Act* 1988 (Cth). The information may be used or disclosed:
- to enable FOXTEL or any member of the FOXTEL Group to enable FOXTEL to perform its obligations to you under this Agreement; and
  - to enable FOXTEL to ensure that you perform your obligations under the Agreement.
- 9.3 The information may be disclosed:
- and used by FOXTEL and/or any member of the FOXTEL Group, for the purpose of planning, research and product development and the promotion and marketing (whether targeted, direct or indirect) of their products and services; and
  - to government agencies or individuals appointed by a government (including the Telecommunications Industry Ombudsman and the Australian Communications and Media Authority) responsible for investigating and resolving disputes or complaints concerning your use of the Service to enable the investigation and resolution of a dispute or complaint; and
  - to the Australasian Telecommunication Fraud and Risk Association or any of its members and/or to any of the FOXTEL Group if we or they suspect you are or might be engaged in, or might be the victim of, fraudulent, illegal or suspicious activity.
- 9.4 You consent to the use and disclosure of information as set out in paragraphs 9.2 and 9.3, although, if you do not want the information to be used for direct marketing by the parties referred to in paragraphs 9.2 and 9.3, please write to us at FOXTEL's Address at the beginning of this Agreement or contact the Customer Solutions Centre on 131 999 and we will ensure that the information is not used for this purpose.
- 9.5 Notwithstanding any other provision of this clause 9, any information concerning you will be collected, kept, used and disclosed by FOXTEL's privacy policy. You will be able to obtain a copy of FOXTEL's privacy policy from [www.foxtel.tv](http://www.foxtel.tv) or by contacting FOXTEL on 131 999.
- 9.6 For Equipment installed pursuant to clause 5, you will provide safe access to FOXTEL at all reasonable times (including after termination of this Agreement) to enter the Premises to perform Works on the Equipment and make installation alterations (subject to the provision of reasonable notice by FOXTEL).
- 9.7 You must indemnify FOXTEL against any liability it may incur to any person with an interest in the Premises in connection with the installation, repair and maintenance of the Equipment to the extent that such liability is caused by or contributed to by your act or omission.
- 9.8 For Equipment installed pursuant to clause 6, you will provide safe access to FOXTEL at all reasonable times (including after termination of this Agreement) to enter the Premises to inspect or retrieve the Equipment (subject to the provision of reasonable notice by FOXTEL) and you must indemnify FOXTEL against any liability it may incur to any person with an interest in the Premises in connection with your installation, repair and maintenance of the Equipment or Infrastructure.
- 9.9 If the person who signs the Agreement is not the Authorised Person named as customer in the

Agreement, that person promises FOXTEL and FOXTEL Management that he or she is authorised to sign on behalf of the person or company named as customer. If you would like another Authorised Person to have access to your account details, or to be able to upgrade or downgrade your Service, then you need to sign an authority to disclose.

## 10. YOUR RESPONSIBILITIES

- 10.1 You must notify FOXTEL as soon as possible if any of the details in the Schedule change which may effect your Subscription Fee. FOXTEL may retrospectively charge for any additional fees due.
- 10.2 For Equipment installed pursuant to clauses 5 and 6, you must notify FOXTEL as soon as possible if there is any problem with the Equipment, or if the Equipment is damaged, stolen, lost, destroyed, or interfered with in any way.
- 10.3 For Equipment installed pursuant to clause 6:
- a) you must notify your local installer as soon as possible if there is any problem with the Equipment or Infrastructure; and
  - b) you acknowledge and agree that you are responsible for the Works performed on the Equipment and Infrastructure and for any malfunction or interruption in the Services which is caused by a fault in the Infrastructure. FOXTEL will have no liability or obligations in relation to the Works performed on the Equipment or Infrastructure.

## 11. FOXTEL'S RESPONSIBILITIES

- 11.1 Subject to 11.3, for Equipment installed pursuant to clause 5, if any of the Equipment or the Installation Alteration becomes defective at any time, lost, destroyed or damaged by reason of mistreatment, improper use, negligence or breach of this Agreement by you, FOXTEL may perform Works on the Equipment or Installation Alteration, but may charge you its reasonable costs, including the replacement value of the Equipment.
- 11.2 Subject to paragraph 11.3, for Equipment installed pursuant to clause 6, if any of the Equipment becomes defective at any time, lost, destroyed or damaged by reason of mistreatment, improper use, negligence or breach of this Agreement by you, FOXTEL may provide you with replacement Equipment but may charge you its reasonable costs, including the replacement value of the Equipment. You must organise and pay for Works on the Equipment with your local qualified installer.
- 11.3 FOXTEL will not be liable for default or failure in performing its obligations under this Agreement resulting directly or indirectly from strikes or labour disputes, a shortage of suitable parts or components, your installation, operation and use of the Equipment, any damage caused by weather, your failure to comply with this Agreement or any other cause beyond the reasonable control of FOXTEL.
- 11.4 FOXTEL, Telstra and TMPL will have no liability to repair or maintain the Equipment or

Infrastructure to the extent that it suffers any damage, loss or destruction or malfunction caused or contributed to by your negligent act or omission.

## 12. SUSPENDING THE SERVICE

- 12.1 You may suspend the Service on seven days notice once in each 12 month period during the Term, if we agree to it, with a minimum of 9 months between each suspension.
- 12.2 If we agree to let you suspend the Service, you must pay any outstanding fees. If we require a suspension bond from you, it will be used to satisfy any amounts you owe us which have not yet been charged to your account when you suspend the Service.
- 12.3 While the Service is suspended you will not be able to receive the Service and you will not be able to receive any third party subscription television service provider. It is your responsibility to contact any third party subscription television provider in this regard.
- 12.4 If we agree to allow you to suspend, you may suspend the Service for a minimum of 1 week and a maximum of 3 months. You must provide us with a date on which the Service will be re-activated and we will re activate the Service on that date. If you don't provide a date, we will reactivate the Service automatically 3 months after we suspend it.
- 12.5 Unless you tell us otherwise, when the Service is reactivated we will provide you with the same Channels that you received before you suspended. If you also receive a service from a third party subscription television service provider then you may need to contact them to reactivate that service. We will credit the remainder of your suspension bond against the Subscription Fee which is payable for the first Billing Cycle after the Service is reactivated.
- 12.6 If you suspend during the Fixed Term then the Fixed Term will be extended by the period of any suspension.

## 13. WARRANTIES

- 13.1 You warrant to FOXTEL that:
- a) you have the power and authority to enter into and carry out your obligations under this Agreement and have taken all necessary corporate action to authorise the entry into and performance of your obligations under this Agreement;
  - b) you have current public liability insurance sufficient to cover all FOXTEL Representatives while attending the Premises;
  - c) you have obtained all requisite consents and approvals from all persons with an interest in the Premises in connection with any Works on the Equipment and Infrastructure;
  - d) you will ensure that the use of the Equipment and Infrastructure by those receiving the Services under this Agreement will not result in any damage to the Equipment or the Infrastructure (as applicable); and

- e) without limitation to paragraph (d), you will use your best endeavours to prevent any unauthorised use of the Equipment, Infrastructure or the Channels.

13.2 For Equipment installed pursuant to clause 6, you also warrant to FOXTEL that:

- a) the capacity of the Equipment and Infrastructure to transmit the Services as at the date of this Agreement will continue for the Term and you will not alter or reduce this capacity such that FOXTEL is prevented from providing Services pursuant to the terms of this Agreement;
- b) the Equipment and Infrastructure will be properly maintained during the Term;
- c) where maintenance of the Infrastructure involves interference with the Equipment, FOXTEL's prior authorisation must be obtained;
- d) the compatibility of the Infrastructure and the Equipment as at the date of this Agreement will continue for the Term and you will not do anything to affect that compatibility; and
- e) you acknowledge that FOXTEL's ability to provide the Services is dependant upon your maintaining the Equipment and Infrastructure and accordingly FOXTEL makes no warranties in this respect. FOXTEL will have no liability to you for any fault or lack of capacity in the Equipment or Infrastructure or any failure by you to receive the Services because of events beyond its reasonable control.

13.3 FOXTEL warrants to you that:

- a) it has the power and authority to enter into and carry out its obligations under this Agreement and has taken out all necessary corporate action to authorise the entry into and performance of its obligations under this Agreement; and
- b) it has obtained all the requisite consents and approvals necessary to carry out its obligations under this Agreement.

#### 14. INDEMNITY AND LIMITATION OF LIABILITY

- 14.1 For Equipment installed pursuant to clause 5, you must indemnify FOXTEL against any loss, damage, liability, expense, fines, cost or charge arising from or incurred in connection with any fault in the Equipment or the Services due to your negligence or wilful misuse, or any unauthorised use of the Equipment or Services, or late payment of fees, or breach of this Agreement by you.
- 14.2 For Equipment installed pursuant to clause 6 you must indemnify FOXTEL against any loss, damage, liability, expense, fines, cost or charge arising from or incurred in connection with any fault or lack of capacity in the Equipment or Infrastructure, your installation of the Equipment and Infrastructure, any fault in the Equipment or the Services due to your negligence or wilful misuse, or any unauthorised use of the Equipment or Services, or late payment of fees, or breach of this Agreement by you.
- 14.3 FOXTEL will have no liability to you in connection with your failure to receive the Services or for any loss or damage you may suffer as a result of your

acts or omissions, or the acts or omissions of your contractors, employees, permitted assignees or occupants of the Premises.

14.4 To the maximum extent permitted by law, the liability of FOXTEL in connection with this Agreement (including liability for negligence) is limited to:

- a) in the case of goods supplied in connection with this Agreement, the replacement or repair cost of the goods (whichever is the lesser); and
- b) in the case of services provided in connection with this Agreement, the cost of supplying the services again.

14.5 This Agreement is qualified by any provisions of a statute which apply to the Agreement and which cannot be excluded. To avoid doubt, this clause 14 applies even after the Agreement is terminated.

#### 15. IF YOU BREACH THIS AGREEMENT

15.1 In addition to anything else, FOXTEL can terminate this Agreement at any time, immediately and without notice if:

- a) you breach any of the terms of the Agreement;
- b) FOXTEL believes that the Services or Retransmitted Services are being used in a way forbidden by clauses 7.4, 7.5, 7.6, 7.7 or 7.8;
- c) if you are found to be in breach of any statutes, rules and regulations which may be in force from time to time and any approvals, directions, requirements, notices, orders or permits of any authority which in the reasonable opinion of FOXTEL would have a material adverse effect on your ability to discharge your obligations under this Agreement; or
- d) you are declared insolvent or are liquidated or unable to pay your debts.

15.2 If FOXTEL terminates the Agreement pursuant to clause 15.1 and later at your request FOXTEL agrees to reconnect the Services you must pay a reconnection fee and any other applicable fees.

15.3 FOXTEL may, at its option and without prejudice to its rights and remedies under this Agreement, terminate this Agreement at any time by giving written notice to you of its intention to terminate in the event that adequate satellite capacity is no longer available to FOXTEL.

#### 16. TERM AND ENDING THIS AGREEMENT

16.1 This Agreement will continue for the Term subject to earlier termination pursuant to this Clause 16 or any other applicable clause set out in this Agreement.

16.2 Upon termination, the rights of the parties granted by this Agreement will cease. The obligations of the parties which have accrued but have not been discharged at the date of termination will not be affected by termination. All moneys owing by you to FOXTEL up to the date of termination will upon termination become due and payable.

16.3 You must return the Equipment within 7 days of the date of termination or provide FOXTEL with

access to the Premises to collect the Equipment. If you do not return the Equipment, or the Equipment cannot be recovered by FOXTEL for any reason outside of its control, then FOXTEL may charge you a Collection Fee or charge you a Replacement Fee or recovery fee for the FOXTEL Equipment. You acknowledge that such fee represents FOXTEL's reasonable costs of recovering or replacing such equipment.

- 16.4 A cancellation fee equal to 50% of your total remaining Subscription Fee for the Term (the **Cancellation Fee**) is payable by you if you terminate the Services before the expiration of the Term or Further Term or on termination by FOXTEL for breach of this Agreement by you before the expiration of the Term.
- 16.5 If this Agreement is terminated while the Service is suspended and you have given us a suspension bond the balance of the bond (if any after being deducted to satisfy any amounts you owe us) will be refunded to you once we are satisfied all amounts you owe us have been paid.
- 16.6 Notwithstanding clause 16.4, the Cancellation Fee is not payable if you terminate this Agreement because:
- you have relocated your business to an address which cannot provide access to the Services; or
  - you cease trading and do not sell your business as a going concern; and
  - you can provide sufficient evidence to FOXTEL (acting reasonably) of either of these occurrences, or
  - FOXTEL does not consent to the transfer of this Agreement pursuant to clause 18.1.
- 16.7 Termination of this Agreement by any means whatsoever will have no effect upon the provisions of this Clause 16 which will remain in effect, nor upon the liability for damages or otherwise of any party for breach of this Agreement nor for payment of moneys due under this Agreement.
- 16.8 If FOXTEL has evidence to believe, on reasonable grounds, that you have committed a serious infringement (for example acted fraudulently in applying for or in receiving the Service or caused genuine distress to any FOXTEL Representative) we can terminate this Agreement without notifying you first.

## 17. RETRANSMITTED SERVICES

- 17.1 To the extent permitted by law and subject to a request from you in writing, FOXTEL Management may provide you as separate services, without obligation and without further charge your local commercial television network(s) or station(s), the ABC and the SBS (if broadcast in your area) that are retransmitted on the FOXTEL platform (the **Retransmitted Services**).
- 17.2 The Retransmitted Services will be provided to you by FOXTEL Management by retransmitting those free-to-air broadcasts. You will not be receiving the Retransmitted Services directly from the TV broadcaster's equipment.
- 17.3 If for any reason FOXTEL Management ceases to provide any or all of the Retransmitted

Services to its subscribers or is otherwise prohibited from providing you the Retransmitted Services then those services may be immediately terminated in the sole discretion of FOXTEL Management and FOXTEL Management is not liable for any loss or disappointment you may suffer as a result. Termination of those services will not affect the provision by FOXTEL of the Service.

- 17.4 For the avoidance of doubt, if the provision of the Retransmitted Services is terminated by FOXTEL Management in accordance with clause 17.3, there will be no reduction whatsoever in the Subscription Fees or any other amounts payable by you under this Agreement.
- 17.5 You acknowledge that FOXTEL Management provides the Retransmitted Services for your convenience only and does so without obligation to you.

## 18. TRANSFERRING THE SERVICE OR THIS AGREEMENT

- 18.1 If you are proposing to sell your business, or otherwise wish to transfer the right to receive the Services or any other right under the Agreement, to anyone else, then you must seek FOXTEL's prior consent in writing, which will not be unreasonably withheld.
- 18.2 FOXTEL may transfer any of its rights or obligations under the Agreement. If FOXTEL does this it will give you notice.

## 19. CONFIDENTIALITY

- 19.1 Subject to paragraphs 19.2 and 19.3, neither party will disclose any confidential information or documents supplied by the other party in connection with this Agreement which are not in the public domain.
- 19.2 A party may disclose any confidential information or documents:
- in enforcing this Agreement or in a proceeding arising out of or in connection with this Agreement;
  - if required under a binding order of a Governmental Agency or under a procedure for discovery in any proceedings;
  - if required under any law or any administrative guideline, directive, request or policy whether or not having the force of law and, if not having the force of law, the observance of which is in accordance with the practice of responsible bankers or financial institutions similarly situated;
  - as required or permitted by this Agreement;
  - to its legal advisers and its consultants; or
  - with the prior written consent of the other party.
- 19.3 The existence of this Agreement and its terms are confidential and must not be disclosed by either party to a third party except in the circumstances described in paragraphs 19.2.
- 19.4 This paragraph 19 survives the termination of this Agreement.

## 20. AUDIT

You acknowledge that FOXTEL may, at its election and with reasonable notice, enter the Premises in order to conduct an audit of the Equipment and number of Outlets and the location of those Outlets on the Premises.

## 21. NOTICES

21.1 Any notice given under this Agreement:

- a) must be in writing addressed to the intended recipient at the address in the Schedule or the address last notified by the intended recipient to the sender;
- b) must be signed by a person duly authorised by the sender;
- c) will be taken to have been given when delivered by mail, received by facsimile or left at the Premises. If delivery or receipt occurs on a day when business is not generally carried on in the place to which the notice is sent, or is later than 4pm (local time), it will be taken to have been duly given at the commencement of business on the next day when business is generally carried on in that place; and
- d) FOXTEL can also give you notice by including relevant information in the Monthly Programme Guide or on the FOXTEL Business Website.

21.2 FOXTEL's Address for notices under this Agreement is:

Att: FOXTEL Business Sales  
 5 Thomas Holt Drive  
 North Ryde  
 NSW 2113

(FOXTEL's Address).

## 22. NO WAIVER

No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

## 23. SEVERABILITY

Any paragraph of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to the jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of that paragraph in any other jurisdiction.

## 24. MISCELLANEOUS

24.1 This Agreement contains the whole of the Agreement between FOXTEL and you. FOXTEL may update the FOXTEL Commercial Subscription Agreement Terms & Conditions from time to time by giving notice.

24.2 Any provision of this Agreement which is illegal, void or unenforceable will be ineffective only to the extent that it is illegal, void or unenforceable and without invalidating the remaining provisions.

24.3 This Agreement is governed by the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

## 25. INTERPRETATION

25.1 Headings and any explanatory text in this Agreement are for convenience only and do not affect how this Agreement is interpreted.

25.2 In this Agreement:

- a) the singular includes the plural, and the plural includes the singular;
- b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- c) a reference to a party includes its successors, permitted substitutes and permitted assigns (and where applicable its legal personal representatives);
- d) 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.

## 26. DEFINITIONS

**Account Service Fee** means the fee set out in the Schedule that FOXTEL may charge you for the ongoing management and administration of your FOXTEL account.

**Additional Collection Fee** means any fee which FOXTEL may reasonably charge you from time to time to cover its additional costs of administration and collection of any amounts due and payable under this Agreement but unpaid.

**Agreement** means the FOXTEL Commercial Subscription Agreement Terms & Conditions, the Schedule, the Work Order which you signed on the installation of the Service, and the FOXTEL Welcome Pack.

**Authorised Person** means a person/s appointed by you and who has your authority to access your account information and to do all things to your account that you may do as the account holder.

**Billing Cycle** means, unless this Agreement says otherwise, the period from and including a Billing Date to (and including) the day before the next Billing Date.

**Billing Date** means the date we first provide the Service to you and the same date in each calendar month after that (unless there is no such date in a month, in which case the Billing Date that month will be the last day of that calendar month); or any other date we tell you will be your Billing Date (for example, if you are disconnected for non-payment and we subsequently reconnect you your Billing Date may change).

**Broadcasting Decoding Device** means a device (including a computer program) that is designed or adapted to enable access to the Services without the authorisation of FOXTEL by circumventing or facilitating the circumvention of the technical means or arrangements that protect access to the FOXTEL Service.

**Cancellation Fee** means the fee referred to in clause 16.4.

**Channels** means the programming package which you have requested and FOXTEL has agreed to supply.

**CIPIRS Supplier** means the supplier of a CIPIRS defined in clause 4.1.

**Closed Internet Protocol Internal Reticulation System (CIPIRS)** means a reticulation system distributing FOXTEL services throughout a building by means of private internet protocol.

**Collecting Society** means each of the Australasian Mechanical Copyright Owners Society, the Australasian Performing Rights Association Limited, the Phonographic Performance Company of Australia Pty Limited and any other statutory or voluntary copyright owners collecting society authorised or licensed to collect in respect of any exercise of the rights.

**Collection Fee** means any fee which FOXTEL may reasonably charge from time to time to cover its costs of collection of the FOXTEL Equipment and the Smart Card.

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

**Direct Feed** means an installation that reticulates the FOXTEL RF signal throughout a building so that each individual display device is coupled with a FOXTEL set-top unit.

**Dishonoured Cheque Fee** means the amount charged by FOXTEL's bank from time to time in relation to a dishonoured cheque.

**Dishonoured Payment Fee** means the fee you must pay to FOXTEL if any direct debit is returned or dishonoured.

**DRM** means FOXTEL's digital rights management system for the CIPIRS as advised by FOXTEL from time to time.

**Due Date** in relation to a Billing Cycle means: if you have arranged to pay by direct debit, your Billing Date; or if you have not arranged to pay by direct debit, the requested payment date stated on your statement. This is usually around 14 days after your Billing Date.

**Encryption** means the digital encryption for the CIPIRS as advised by FOXTEL from time to time.

**Equipment** means the equipment (including any replacement Equipment) owned by FOXTEL and necessary to receive the Services and permitted for you to use by FOXTEL including, but not limited to, a set-top unit, conditional access module, Smart Card, and incidental cabling.

**Equipment Installation Guide** means the self-installation guide which is provided with the Equipment and which is used to install the Equipment.

**Fixed Term** means the period for which you have signed up to receive the Service as indicated when you subscribed to the Service and notified to you in the FOXTEL Welcome Pack or Work Order, starting from the first date that you receive the Service.

**FOX Sports Channels** means FOX Sports One, FOX Sports Two, FOX Sports Three, Fox Sports News, ESPN, FUEL TV and/or such other channels as may be determined by FOXTEL from time to time.

**FOXTEL** means FOXTEL Cable Television Pty Limited (ACN 069 008 797) and its employees, agents, sub-agents, contractors and sub-contractors, any person working in its business and employees of its agents, sub-agents and any person working in its business.

**FOXTEL's Address** means the address set out in clause 21.2.

**FOXTEL Business Website** means [www.foxtelbusiness.com.au](http://www.foxtelbusiness.com.au)

**FOXTEL Commercial Subscription Agreement Term & Conditions** means the terms and conditions set out herein.

**FOXTEL Group** means any company within the FOXTEL Group of companies and any contractor or agent of FOXTEL or FOXTEL Management who has been contracted by FOXTEL or FOXTEL Management.

**FOXTEL Management** means FOXTEL Management Pty Limited (ABN 65 058 671 938).

**FOXTEL Representatives** means the employees, contractors, or sub-contractors, agents of FOXTEL.

**FOXTEL Welcome Pack** means the kit which we send or give to you when you subscribe for the Service.

**Further Term** means the further term defined in clauses 4.a. and 4.b. of the Schedule.

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

**Heritage Legislation** means any legislation or regulations governing the performance of work in buildings of historical interest.

**Infrastructure** means the infrastructure (if any) which you or someone on your behalf install at your Premises to receive the Services and includes: the Integrated System, satellite receiving dish, modulators, incidental cabling, optical fibre, coaxial cable, ducts, conduits, the isolation box, the wall plate and dish mount, the multiswitch, the amplifier and low noise blocker. It also includes any other infrastructure which is already installed at the Premises or is added or substituted by you or us or as requested by you from time to time as contemplated by this Agreement.

**Installation Alteration** means any alteration to the Premises as are necessary for the continued supply of the Services at the Premises.

**Integrated System** means a system with a headend located in a central location transmitting the signal of a designated channel to each set-top unit which is then combined and modulated onto a MATV or CIPIRS distribution system connected to all display devices.

**Late Fee** means the fee referred to in clause 8.4 which is an administrative fee to cover any costs that FOXTEL may incur should you not pay any fees or charges, including but not limited to the Subscription Fees, in the time required.

**Master Antenna Television System (MATV)** means a cable system owned by you which is a means of distribution of the Services from the MATV or Integrated System headend.

**Monthly Programme Guide** means the FOXTEL Magazine specified in the Schedule.

**Outlet** means a single television screen only, the number of which is set out in the Schedule.

**Premises** means the premises as specified as the address of the premises in the Schedule and is the location to which the Services will be provided by FOXTEL.

**Public Viewing Area** means any location open to the public inside or outside your Premises.

**Replacement Fee** means any fee which FOXTEL may reasonably charge from time to time to cover the cost of replacing the FOXTEL Equipment.

**Restricted Area Channels** means the following channels: Disney, Showtime, Showcase, Showtime Greats, Movie One, Movie Greats, Movie Extra, FOXTEL Box Office, Main Event, Adults Only Channel, Retransmitted Services, and any other channel that FOXTEL may advise from time to time.

**Retransmitted Services** has the meaning set out in clause 17.1.

**Schedule** means the schedule accompanying the Agreement.

**Services** means each and all of the subscription television services selected by you as set out in this Agreement.

**Smart Card** means the decoder card issued to you for insertion into the FOXTEL Equipment to enable you to receive the channels.

**Subscription Fee** means the monthly fee that you must pay for the delivery of the Services and as varied in accordance with this Agreement.

**Telstra** means Telstra Corporation Limited (CAN 051 775 556).

**Term** means the term set out in the Schedule.

**TMPL** means Telstra Multimedia Pty Limited (ACN 069 279 072) and its employees, agents, sub-agents and employees of its agents and sub-agents.

**Work Order** means any form signed by you or on your behalf when we install, repair, maintain, relocate, remove or add to any Equipment or Infrastructure or otherwise attend at your Premises about the Service.

**Works** means the installation, connection, disconnection, maintenance, alteration, inspection, repair, removal, re-installation, service or any other work performed on the Equipment and/or Infrastructure.

**You** means the business, company or other legal entity named as subscriber and to the extent permitted by law, references to "you" and "your" include your employees, contractors, agents, permitted assignees or occupants of the Premises.