



Mobile FOXTEL from Telstra Terms and Conditions

1. **What is Mobile FOXTEL from Telstra?**

Mobile FOXTEL from Telstra (also known Telstra MOBILE FOXTEL) allows you to:

- (a) view mobile television channels on your mobile handset;
- (b) view an electronic program guide which shows scheduling for all mobile television channels; and
- (c) record programs on FOXTEL instantly by remotely programming your set top unit from your mobile handset.

Remote recording is available for FOXTEL programming and is not available on FOXTEL Box Office channels, all free-to-air channels or pay per view channels. See your FOXTEL pay TV provider for terms.

2. **Eligibility**

2.1 You can have Mobile FOXTEL from Telstra if you:

- (a) are a Telstra mobile post-paid or pre-paid customer;
- (b) are connected to Telstra's 3GSM or Next G™ network; and
- (c) have a compatible approved 3G or Next G™ mobile handset.

2.2 You must have an active subscription to FOXTEL iQ to record programs on FOXTEL instantly by remotely programming your set top unit from your mobile handset.

3. **Coverage**

3.1 You must be in a Telstra 3G or Next G™ coverage area to access Mobile FOXTEL from Telstra.

3.2 The coverage area of Telstra's 3G or Next G™ networks may not be equal to the coverage area of its GSM or GPRS networks. For the latest coverage information, see Our [Coverage Maps](http://www.telstra.com.au/mobile/networks/coverage/maps.cfm) <http://www.telstra.com.au/mobile/networks/coverage/maps.cfm>.

4. **Subscribing to Mobile FOXTEL from Telstra**

You can subscribe to Mobile FOXTEL from Telstra:

- (a) using the WAP interface or Mobile FOXTEL from Telstra TV client on your handset; or
- (b) by contacting us.

5. **Charges**

5.1 When you agree to subscribe to Mobile FOXTEL from Telstra, we will charge you, as applicable:

- (a) a monthly fee which will give you access to Mobile FOXTEL from Telstra for one month from the day you subscribe;
- (b) once-off charges for a day pass to Mobile FOXTEL from Telstra;

(c) a weekly fee which will give you access to Mobile FOXTEL from Telstra for one week from the day you subscribe, available only to eligible Telstra pre-paid customers; and/or

(d) any other subscription fees set out in the Special Promotions Terms and Conditions DOC <http://www.telstra.com.au/foxtel/docs/mobile-foxtel-from-telstra-special-promotions-terms-and-conditions-10-10.doc> or PDF <http://www.telstra.com.au/foxtel/docs/mobile-foxtel-from-telstra-special-promotions-terms-and-conditions-10-10.pdf>, as applicable.

5.2 We will advise you of:

- (a) the monthly subscription fee;
- (b) the once-off day pass charges;
- (c) the weekly subscription fee; and
- (c) any other subscription fees set out in the Special Promotions Terms and Conditions on your mobile handset before you subscribe.

Data charges

5.4 Telstra will not charge you its standard data usage charges for viewing content on Mobile FOXTEL from Telstra.

6. Payment

Billing information

6.1 You agree to provide us with accurate and complete billing information including your legal name, address and telephone number and any changes to your billing information as they happen.

Paying for Mobile FOXTEL from Telstra

6.2 You must pay us the Charges for Mobile FOXTEL from Telstra.

6.3 If you are a post-paid customer, you acknowledge that Telstra, as our agent, will issue a Bill to you for your Charges, and may issue you an interim Bill at any time. If you are a pre-paid customer, you acknowledge that Telstra, as our agent, will deduct the Charges from your account balance.

6.4 You agree to pay Telstra the Charges. Telstra will pass on the Charges to us.

What if you do not pay?

6.5 If you do not pay the Charges you owe us that are set out in a Bill by the due date of the Bill, we will notify you and allow you 14 days to remedy the non-payment. If you do not remedy the non-payment within the 14 day period, we may:

- (a) cancel this Agreement;
- (b) take legal action against you to recover the unpaid amount;
- (c) refer you to a collection agency; and
- (d) report your default to a credit reporting agency.

6.6 If you do not pay the Charges you owe us that are set out in a Bill by the due date of the Bill, additional fees may apply including late payment fees.

6.7 If you pay a Bill by cheque and the cheque is dishonoured, you must also pay us a fee of \$16.50 (GST inclusive).

6.8 If you pay a Bill by direct debit and there are insufficient funds in the account, you must also pay us a fee of \$11.00 (GST inclusive).

6.9 If you are a pre-paid customer and there are insufficient funds in your account balance to pay for the Charges, Telstra, as our agent, will attempt to deduct the charges two more times. If on the third attempt there are still insufficient funds in your account balance to pay for the Charges we may cancel this Agreement.

When you can subscribe to Mobile FOXTEL from Telstra again

6.10 If we cancel this Agreement for non-payment, you may subscribe to Mobile FOXTEL from Telstra again if you pay all outstanding amounts.

Adjustments

6.11 We can round charges up or down to the nearest whole cent (0.5 cents is rounded up). If you pay a Bill by cash, we may round the amount payable by you to the nearest multiple of 5 cents.

6.12 We can pay you any amounts we owe you by deducting them from amounts you owe us.

Credit Balances

6.13 If you have a credit balance of \$5 or less in any of your accounts with us, we only have to pay it to you if you ask in writing. This is because our administrative costs in doing so exceed \$5.

GST

6.14 If GST is imposed on any supply we make to you under this Agreement and the consideration payable for the supply under any other paragraph of this Agreement is not expressed to be inclusive of GST, you must pay us on demand by us, an additional amount calculated by multiplying the value of that GST-exclusive consideration (without deduction or set-off) by the prevailing GST rate. We will issue a Tax Invoice to you for any supply on which GST is imposed.

7. Spend limits

The amount you can spend on Mobile FOXTEL from Telstra is subject to:

- (a) the default spend limit of your Telstra post-paid or pre-paid mobile plan; or
- (b) any increased or decreased spend limit that Telstra has approved.

8. How you can use Mobile FOXTEL from Telstra

8.1 All Intellectual Property Rights in the content on Mobile FOXTEL from Telstra belong to us, FOXTEL, or the person licensing us or FOXTEL to use the content.

8.2 You may, for your own private purposes only, view the content on Mobile FOXTEL from Telstra on your mobile handset.

8.3 You must not:

(a) do anything with the content on Mobile FOXTEL from Telstra that is not expressly authorised under this paragraph (including copying, retransmitting, relaying, selling or broadcasting the content on Mobile FOXTEL from Telstra to anyone else); or

(b) attempt to circumvent or modify any technological measure (such as digital rights management software on your mobile handset) used to apply the terms set out in this paragraph.

Only for use in Australia

8.4 You may only use Mobile FOXTEL from Telstra in Australia. If you use Mobile FOXTEL from Telstra outside Australia via Telstra's international roaming service (which we do not authorise you to do), you will be charged the international roaming charges set by the overseas network operator on whose network you are roaming.

Electronic program guide

8.5 If you are logged in to FOXTEL iQ, the electronic program guide will show scheduling for FOXTEL Digital television channels in the location where your set top unit is located. Otherwise, the electronic program guide will show scheduling for the FOXTEL Digital channels available in Sydney.

Retransmitted Services

8.6 We may provide you with certain retransmitted free to air broadcast television services as part of the Mobile FOXTEL from Telstra Service, but only if they are included as part of the subscription package to which you subscribe ("Retransmitted Services"). No additional charge will be imposed for the provision of any Retransmitted Services, and we may cease supplying the Retransmitted Services at any time. You acknowledge that we have no control over the Retransmitted Services (for example, scheduling or content) or the supply or non-supply by the relevant broadcaster of a Retransmitted Service.

9. When you can cancel this Agreement

9.1 You can cancel this Agreement:

(a) at any time by:

(i) using the WAP interface or the Mobile FOXTEL from Telstra TV client on your handset;
or

(ii) telling us; or

(b) in accordance with the terms set out under the headings "Changes to this Agreement" and "Circumstances we can't control".

9.2 If you do not tell us to cancel this Agreement, we will continue to charge you the subscription charge.

10. When we can suspend Mobile FOXTEL from Telstra or cancel this Agreement

10.1 In addition to our other rights to cancel this Agreement, we may cancel this Agreement at any time by telling you at least 30 days beforehand.

10.2 If you breach a material term of this Agreement which is capable of being remedied, we will notify you of the breach and allow you a specified time to remedy the breach. If you do not remedy the breach within the time specified, we may cancel this Agreement. Material terms include the terms set out under the headings "Payment", "How you can use Mobile FOXTEL from Telstra" and "Liability".

10.3 If you breach a material term of this Agreement which is not capable of being remedied, we may cancel this Agreement immediately. We will notify you if this occurs.

10.4 We may suspend Mobile FOXTEL from Telstra or cancel this Agreement immediately if:

- (a) FOXTEL suspends or cancels the supply of Mobile FOXTEL from Telstra to us;
- (b) FOXTEL directs us to cancel the supply of Mobile FOXTEL from Telstra to you;
- (c) you use Mobile FOXTEL from Telstra in a way that is prohibited under this Agreement;
- (d) a Regulatory Event occurs; or
- (e) we are notified of your death.

What you pay if the Agreement is cancelled

10.5 If this Agreement is cancelled for any reason, you must pay us the Charges for your use of Mobile FOXTEL from Telstra as well as any other fees or charges for which you are liable to the date this Agreement is cancelled.

Consequences of suspension or cancellation

10.6 If we suspend Mobile FOXTEL from Telstra for any reason, your Charges will be reduced in proportion to the number of days remaining in the month on which Mobile FOXTEL from Telstra is supplied.

10.7 If this Agreement is cancelled for any reason, you may still be able to access Mobile FOXTEL from Telstra until the end of your current monthly subscription. If that is the case, we will not refund you any Charges that relate to the period after which this Agreement ends. If this Agreement is cancelled and you cannot access Mobile FOXTEL from Telstra until the end of your current monthly subscription, we will refund you any Charges that relate to the period after which this Agreement ends unless we cancel this Agreement because of your breach.

10.8 If this Agreement is cancelled for any reason and you later wish to subscribe to Mobile FOXTEL from Telstra again, you will have to wait until the date on which your monthly subscription would have otherwise ended, then subscribe to Mobile FOXTEL from Telstra again and pay us the monthly subscription charge.

11. Liability

Our liability to you

11.1 The contract terms that apply to the supply of Mobile FOXTEL from Telstra are those that are expressly set out in this Agreement and those implied by consumer protection laws that are unable to be excluded. No other terms apply.

11.2 We will provide Mobile FOXTEL from Telstra to you in accordance with this Agreement. However, given the nature of telecommunications systems (including Mobile FOXTEL from Telstra's reliance on systems not owned or controlled by us), we cannot promise that Mobile FOXTEL from Telstra will be continuous or fault-free.

11.3 Concerning our liability to you:

except as set out in the paragraphs below, we accept our liability to you for breach of contract or negligence under the principles applied by the courts;

(b) we will accept liability if it cannot be excluded under any legislation. If that liability cannot be excluded but can be limited under any legislation, we limit our liability to resupplying, repairing or replacing the relevant goods or services (or payment of the cost of resupply, repair or replacement) where it is fair and reasonable to do so;

(c) we are not liable for any loss to the extent that it is caused by you (for example, through your negligence or breach of contract);

(d) we are not liable for any loss to the extent that it results from your failure to take reasonable steps to avoid or minimise your loss; and

(e) we are not liable for any loss caused by us failing to comply with our obligations in relation to your service where that is caused by events outside our reasonable control (such as a failure in equipment that is not owned or operated by us, an industrial strike or an act of God).

11.4 These provisions relating to liability will continue unaffected by cancellation of your service.

Your liability to us

11.5 You are liable to us for breach of contract or negligence under the principles applied by the courts. However, you are not liable to us for any loss to the extent that it is caused by us, FOXTEL, Telstra, or our or FOXTEL's licensors through our, FOXTEL's, Telstra's or the licensors' own wilful default, negligence or breach of this Agreement or any law.

11.6 These provisions relating to liability will continue unaffected by cancellation or suspension of your service.

12. FairPlay policy

12.1 Mobile FOXTEL from Telstra is subject to Telstra's FairPlay Policy. See [Telstra's Fair Play Policy](#).

12.2 In addition, there is a viewing limit of 200 minutes per month for Mobile FOXTEL from Telstra. Once you reach the 200 minutes viewing limit, we may ask you, by SMS or any other means, to moderate your usage. If, after we have asked you to moderate your usage, you (in our reasonable opinion) fail to do so, we may terminate your viewing session and cancel this Agreement. If you do not reach the 200 minutes viewing limit in any month, you cannot carry forward any unused minutes to the next (or any other) month.

12.3 If you view a single channel on Mobile FOXTEL from Telstra for more than 30 minutes at a time, we will terminate your viewing session and, if you want to view that channel again, you will have to start a new viewing session. Depending on network capacity, a maximum of 15 minutes per viewing session may apply.

13. **Changes to Mobile FOXTEL from Telstra**

13.1 We may, from time to time, change the content or broadcast times on Mobile FOXTEL from Telstra without telling you beforehand.

13.2 We may, from time to time, add new Mobile FOXTEL from Telstra subscription packs and withdraw or change existing Mobile FOXTEL from Telstra subscription packs. Where we have withdrawn an existing Mobile FOXTEL from Telstra subscription pack, we may transfer you to an alternative Mobile FOXTEL from Telstra subscription pack. If we do, we will give you 30 days' prior written notice.

13.3 The channel content on Mobile FOXTEL from Telstra may differ from the channel content of the FOXTEL subscription television channel of the same name and may be modified for mobile handsets.

14. **Changes to this Agreement**

14.1 From time to time, we may change this Agreement (including the Special Promotions Terms and Conditions DOC or PDE, according to the terms set out under this paragraph. These terms do not apply to changes to Mobile FOXTEL from Telstra to which the terms under the paragraph 13 "Changes to Mobile FOXTEL from Telstra" apply or to changes to our contact details.

14.2 We will give you 30 days' prior written notice of any change unless:

(a) we need to immediately make the change in order to act legally or for urgent operational or technical reasons;

(b) the change is a decrease in price. We may decrease any of our prices at any time without telling you beforehand; or

(c) we reasonably consider that the change is likely to have no more than a minor detrimental impact on you.

14.3 Your first use of Mobile FOXTEL from Telstra after we have notified you of a change under paragraph 14.2 will constitute your acceptance of that change.

14.4 If we change this Agreement and you are materially disadvantaged by the change you may cancel this Agreement immediately by either of the methods in paragraph 9.1(a).

15. **Privacy**

We may collect Mobile Television Information

15.1 Personal information concerning your use of Mobile FOXTEL from Telstra will be held in a database ("Mobile Television Information"). The database will contain your name, date of birth, current and previous addresses, telephone/mobile phone number, email address, bank account or credit card details, billing preferences and details, occupation, driver's licence number, your viewing interests, information relating to the provision of channels and any other information relating to you, or provided by you in connection with your use of Mobile FOXTEL from Telstra. You consent to the access, use and disclosure of this information as set out below.

How we use and disclose your Mobile Television Information

15.2 Your Mobile Television Information may be accessed, used or disclosed:

- (a) by us to perform our obligations to you under this Agreement;
- (b) by us to ensure that you perform your obligations under this Agreement;
- (c) by and to Telstra and Telstra's Related Bodies Corporate for the purposes of planning, research, product development, strategic, financial and other business purposes, and promoting and marketing their products and services to you;
- (d) to an officer of a government law enforcement agency who requires the information in connection with the lawful performance of their duty; or
- (e) to the Australasian Telecommunication Fraud and Risk Association or any of its members if we or they reasonably suspect you are or might be engaged in, or might be the victim of, fraudulent or illegal activity.

Viewing habits data

15.3 We may collect information about the programming, advertising and other services which you view, use or access ("Viewing Habits Data") via Mobile FOXTEL from Telstra. We may disclose your Viewing Habits Data to third parties, but this will not include information which identifies you personally to them.

Access

15.4 You have a right to access your Mobile Television Information, subject to some exceptions allowed by law. If you would like to do so, you will need to put your request in writing for security reasons, and either send it by mail to the Information Access Unit , Telstra IAU, Locked Bag 5691, Melbourne Vic 3001 or by facsimile to (03) 9634 2744 or by email to privacy@online.telstra.com.au. We reserve the right to charge a fee for searching for and providing access to your information.

15.5 If you do not want your Mobile Television Information to be used or disclosed by Telstra and Telstra's Related Bodies Corporate for the purposes of planning, research, product development, strategic, financial and other business purposes, and promoting and marketing their products and services to you, please contact us and we will ensure that your Mobile Television Information is not used for these purposes. You can write to or call us at any time even after you have been our customer for some time and even if you had previously given us your consent.

Your location information

15.5 When you subscribe to Mobile FOXTEL from Telstra, you agree, as the relevant mobile service account holder, to Telstra and its related bodies corporate collecting and using the location of your mobile handset to provide you with Mobile FOXTEL from Telstra (including the electronic program guide).

16. Other terms

Notices

16.1 You can give us notice under this Agreement, or contact us, by telephoning us on 125 111 for post-paid customers or 125 8880 for pre-paid customers (call charges apply).

16.2 We can give you notices, or contact you, by letter to your address, telephone call, or by SMS, MMS, electronic mail or any other form of electronic message. We may contact you to provide you with information about Mobile FOXTEL from Telstra or to promote and market our services or those of our related bodies to you. If you do not wish us to promote or market to you, please call 1800 039 059.

Circumstances we can't control

16.3 If we are prevented from performing our obligations under this Agreement as a result of an event or cause beyond our reasonable control (for example, an act of God, war, terrorism or disruption to electricity):

- (a) we will tell you, unless the circumstances prevent us from doing so;
- (b) we will suspend Mobile FOXTEL from Telstra for the period for which we cannot perform our obligations; and
- (c) if, the event or causes subsists for 5 days or more, we or you can also choose to cancel this Agreement.

Assignment

16.4 You agree that at any time, we may assign the rights under, and novate the benefits and obligations of, this Agreement to Telstra and that Telstra may assume our liabilities and obligations under this Agreement.

16.5 We will notify you if this occurs. We and you agree and Telstra acknowledges that with effect from the date of our notice, this Agreement is cancelled and a new agreement is created on the same terms as this Agreement except that:

- (a) Telstra replaces us in any capacity under this Agreement as if Telstra was an original party to this Agreement instead of us; and
- (b) Telstra has no obligations or liability under this Agreement before the date of our notice.

Parties

16.6 Telstra is a party to this Agreement but only in relation to the sections headed "Assignment" and "Liability", where Telstra is specifically referred to. To that extent only, we have entered into this Agreement on behalf of Telstra. FOXTEL is a party to this Agreement but only in relation to the section headed "Liability", where it is specifically referred to. To that extent only, we have entered into this Agreement on behalf of FOXTEL.

Capacity

16.7 You promise that you are over 18.

After this Agreement ends

16.8 Any rights which either party has against the other party under this Agreement which are not fulfilled or any obligations which have accrued when the Agreement is ended will continue to exist. In particular, any rights either party has under the section headed "Liability" and any obligation to pay Charges in respect of periods before the end of the Agreement will continue even after the Agreement is ended.

Law

16.9 This Agreement is governed by the laws of the Australian state or territory in which your address is located.

17. Definitions

Bill means a consolidated account setting out a statement of charges for Mobile FOXTEL from Telstra and may include charges for other services you obtain from Telstra and/or other persons.

Charges means the charges set out in paragraph 5.1.

FOXTEL is a reference to FOXTEL Management Pty Limited (ABN 65 068 671 938), its agents and contractors.

Mobile FOXTEL from Telstra means the service described in these terms, provided according to the mobile television programming package which you choose to subscribe to from time to time.

GST means the tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the related imposition Acts of the Commonwealth.

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Mobile Television Information has the meaning given in paragraph 15.1.

Regulatory Event means:

(a) a determination by the Australian Competition and Consumer Commission or by the Australian Communications Authority;

(b) a determination by a court of law; or

(c) an anticipation by us on reasonable grounds acting in good faith,

that this Agreement, or any part of it, or any action taken or required to be taken in accordance with it, contravenes or may contravene the Trade Practices Act 1974 (Cth) or any other applicable law.

Related Bodies Corporate has the meaning given in the Corporations Act 2001 (Cth).

Tax Invoice has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Telstra is a reference to Telstra Corporation Limited (ABN 33 51 775 556).

Viewing Habits Data has the meaning given in paragraph 15.3.

we, us and **our** are references to Telstra Pay TV Pty Limited (ABN 65 095 931 614).

The FOXTEL trade mark is used under licence by FOXTEL Management Pty Limited.