



**Foxtrot Media, Inc.**

## **TERMS OF SERVICE**

These Terms of Service (this "Agreement") are between Foxtrot Media, Inc. ("Foxtrot"), a Maryland corporation, and you, and govern your purchase and use of all Foxtrot services (the "Services"), as described in this Agreement and in order forms ("Order Forms") submitted by you and accepted by Foxtrot. By ordering Services you accept the terms of this Agreement. Foxtrot may modify any of the terms and conditions contained in this Agreement at any time in its sole discretion. Any modifications are effective upon posting of the revisions on the Foxtrot website ([www.foxtrotmedia.com](http://www.foxtrotmedia.com)) (the "Site"). Your continued use of the Services following posting of any modifications constitutes your acceptance of the modifications. If you do not agree to the terms of any modification, do not continue to use the Services and immediately notify Foxtrot of your termination of this Agreement in the manner in this Agreement. All Schedules attached to this Agreement and documents linked to this Agreement are incorporated herein by reference and made a part of this Agreement.

### **1. Term and Payment for Services.**

Term. This Agreement will be for an initial term of 1 year from the date of acceptance by you and Foxtrot. This Agreement will be automatically renewed at the end of the initial term or any renewal term for additional periods of 1 year each, unless you or Foxtrot provide the other party with written notice of termination at least 30 days before the end of the then-current term. The initial term and renewal terms are referred to in this Agreement as the "Term." To schedule your account for termination, please contact Foxtrot's billing department at (410) 902-1001 or [billing@foxtrotmedia.com](mailto:billing@foxtrotmedia.com). Foxtrot cannot be held responsible for continued invoicing if the above termination method is not followed. Upon the non-renewal of this Agreement, if there are any then-outstanding Order Forms, then this Agreement will continue until the completion of such Order Forms.

Termination. This Agreement and any Order Form may be terminated: (i) by you or Foxtrot, for convenience, at any time, by giving the other party 30 days prior written notice; (ii) by Foxtrot in the event of nonpayment by you as provided in "Payment" Section below; and (iii) by Foxtrot at any time, without notice, if, in Foxtrot's sole judgment, you are in violation of any terms or conditions of this Agreement. If you terminate this Agreement for convenience, or if Foxtrot terminates this Agreement for your breach, before the end of the term set forth in an Order Form, you will be required to pay immediately all fees and costs accrued before the termination date, all monthly recurring fees for each month remaining in the term of the Order Form and any other amounts you owe to Foxtrot under this Agreement.

Charges. You will pay all charges for your use of the Services at the then current Foxtrot prices. You are responsible for paying all federal, state, and local sales, use, value added, excise duty and any other taxes assessed with respect to the Services, other than taxes based on Foxtrot's net income.

Reimbursable Expenses. You shall reimburse Foxtrot for pre-approved out-of-pocket costs and expenses incurred by Foxtrot in performing the Services under this Agreement.

Payment. You will pay charges in advance or in arrears as set forth in the Order Form. You authorize Foxtrot to charge your credit or debit card to pay for any unpaid charges that may apply to your account. You must notify Foxtrot of any changes to your card account (including, applicable account number or cancellation or expiration of the account), your billing address, or any information that may prohibit Foxtrot from charging your account. Your failure to fully pay any fees and taxes within 72 hours from the applicable due date is a material breach of this Agreement, justifying Foxtrot to suspend its performance and terminate this Agreement. If Foxtrot terminates for your material breach, you will be required to pay immediately all fees and costs accrued before the termination date, all monthly recurring fees for each month remaining in the term of the Order Form and any other amounts you owe to Foxtrot under this Agreement. Late payments may incur a late fee of 1.5% per month, or the highest fee allowable under applicable law, if less. You are responsible for any costs Foxtrot incurs in enforcing collection, including reasonable attorneys' fees, court costs and collection agency fees. To reinstate Services, Foxtrot may impose a reasonable reinstatement fee and require a payment schedule that Foxtrot determines in its discretion is necessary to secure future payments.

Refund and Disputes. All payments to Foxtrot are nonrefundable. This includes any applicable setup fees and subsequent charges regardless of usage. All overcharges or billing disputes must be reported within 60 days of the time the dispute occurred.

## **2. Use of Services.**

Acceptable Use Policies. The Foxtrot Acceptable Use Policy (“AUP”) governs the general policies and procedures for use of the Services. The AUP is posted on the Site and may be updated from time to time. BY USING THE SERVICES, YOU AGREE TO BE BOUND BY THE TERMS OF THE AUP AND ANY SUBSEQUENT MODIFICATIONS. FOXTROT MAY TERMINATE YOUR ACCOUNT WITHOUT NOTICE FOR ANY VIOLATION OF THE AUP.

Non-Solicitation. During the term of this Agreement and for a period of 1 year thereafter, you shall neither solicit, directly or indirectly, the employment of, nor hire any of Foxtrot's employees, contractors, directors or officers.

Domain Names. Upon registering your domain name, you are bound by the terms of the registration service's then current domain name policy and the policies of the national DNS registration authorities. Foxtrot will not refund any fees you paid with respect to the registration of a domain name you are unable to use. All new webhosting accounts involving new domains will be set up and entered into our DNS servers within 3 to 5 business days. Due to unforeseen complications, however, this process may sometimes require up to 7 business days. If the new domain is registered by you, there will be no handling fee. If the domain is registered by Foxtrot on your behalf a handling fee will be incurred. New webhosting accounts which involve the transfer of a domain from another provider to Foxtrot will require a minimum of 7 days to be set up and entered into our DNS servers. In some cases, such transfers may take up to 60 days. Due to the unpredictable nature of the transfer process, no guarantees are made regarding the amount of time a specific transfer may take. If the transfer of the domain is done by Foxtrot on your behalf, a handling fee will be incurred. If you cancel service during the transfer period for

any reason, all charges are considered earned.

Security. You are solely responsible for any security breaches affecting servers or accounts under your control. If your server is responsible for or involved in an attack on or unauthorized access into another server or system, Foxtrot will shut it down immediately. You will pay any charges resulting from the cost to correct security breaches affecting Foxtrot or any of its other customers.

Backups. While Foxtrot regularly performs backups, you are still solely responsible for any and all backups of your data. Foxtrot may not be held accountable for any loss of data due to hardware or software failure. Foxtrot highly recommends daily backups for your protection.

Your Warranties and Representations to Foxtrot. You warrant, represent, and covenant to Foxtrot that: (a) you are at least 18 years of age if an individual, (b) you possess the legal right and ability to enter into this Agreement; (c) you will use the Services only for lawful purposes and in accordance with this Agreement and all applicable policies and guidelines, including the AUP; and (d) your content does not and will not infringe or violate any right of any third party (including any intellectual property rights) or violate any applicable law, regulation or ordinance.

IP Numbers. Foxtrot will maintain and control ownership of all Internet protocol ("IP") numbers and addresses that Foxtrot may assign to you. Foxtrot may, in its sole discretion, change or remove any and all IP numbers and addresses.

Third Party Products. Foxtrot may provide you access to other third party software and/or services ("Third Party Products") through reseller relationships Foxtrot has established with certain commercial vendors ("Third Party Vendors"). Unless otherwise notified, you understand that product support for Third Party Products is provided by Foxtrot and not by the Third Party Vendor. Neither Foxtrot nor any Third Party Vendor makes any representations or warranties, express or implied, regarding any Third Party Products. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THIRD PARTY PRODUCTS IS AT YOUR SOLE RISK AND SUCH THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND FROM FOXTROT OR ANY THIRD PARTY VENDOR, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES OR RESULTS, CORRESPONDENCE TO DESCRIPTION, OR NON- INFRINGEMENT OF THIRD PARTY RIGHTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER FOXTROT NOR ANY THIRD PARTY VENDOR WILL BE LEGALLY RESPONSIBLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL, ARISING FROM THE USE OR INABILITY TO USE ANY THIRD PARTY PRODUCT. YOU AGREE TO OBSERVE THE TERMS OF ANY LICENSE AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENT FOR THIRD PARTY PRODUCTS AND THAT YOU SHALL BE FULLY LIABLE TO THIRD PARTY VENDORS AND FOXTROT WITH RESPECT TO ANY IMPROPER USE OF SUCH THIRD PARTY PRODUCTS OR VIOLATION OF LICENSE AGREEMENTS WITH THEM AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENTS.

You shall not (i) remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any Third Party Product or that appear during use of any Third Party Product; or (ii) reverse engineer, decompile, or disassemble any Third Party Product, except and only to the extent that such activity is expressly permitted by applicable law

notwithstanding this limitation.

Enforcement Actions. Foxtrot reserves the right to suspend or terminate the Service immediately or take any other corrective action it deems appropriate in its sole discretion if in the sole judgment of Foxtrot your server is the source or target of any violation of the AUP or for any other reason which Foxtrot chooses. If inappropriate activity is detected, all of your accounts in question will be deactivated until an investigation is complete. Prior notification to you is not assured. In some cases, law enforcement will be contacted regarding the activity. These rights of action, however, do not obligate Foxtrot to monitor or exert editorial control over the information made available for distribution via the Services. If Foxtrot takes corrective action because of a possible violation, Foxtrot will not refund to you any fees you paid in advance of the corrective action.

Disclosure Rights. The AUP specifically prohibits the use of our Service for illegal activities. Therefore, you agree that Foxtrot may disclose any and all of your information including assigned IP numbers, account history, account use, etc. to any law enforcement agent who makes a written request without consent or notification to you. In addition, Foxtrot shall have the right to terminate all Services set forth in this Agreement.

Disclaimed Warranties. USE OF THE SERVICES OR ANY INFORMATION THAT MAY BE OBTAINED THEREFROM IS AT YOUR OWN RISK. ALL SERVICES PERFORMED UNDER THIS AGREEMENT ARE PERFORMED "AS IS" AND WITHOUT WARRANTY AGAINST FAILURE OF PERFORMANCE INCLUDING, ANY FAILURE BECAUSE OF COMPUTER HARDWARE OR COMMUNICATION SYSTEMS. FOXTROT DOES NOT MAKE AND DISCLAIMS, AND YOU WAIVE ALL RELIANCE ON, ANY REPRESENTATIONS OR WARRANTIES, ARISING BY LAW OR OTHERWISE, REGARDING THE SERVICES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE. FOXTROT DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. FOXTROT EXERCISES NO CONTROL OVER, AND ACCEPTS NO RESPONSIBILITY FOR, THE CONTENT OF THE INFORMATION PASSING THROUGH FOXTROT'S HOST COMPUTERS, NETWORK HUBS AND POINTS OF PRESENCE, OR THE INTERNET.

### **3. Confidentiality**

Confidential Information Defined. "Confidential Information" means all information not generally known to the public, relating to each party's business, in any form, including, but not limited to, all information that is produced or developed under this Agreement and/or in connection with an Order Form, regardless of whether such information or material is marked "Confidential" or "Proprietary" or by another similar marking. Confidential Information includes, but is not limited to, all information known by a party to be considered confidential and proprietary by the other party or from all relevant circumstances should reasonably be assumed by you or Foxtrot to be confidential and proprietary to the other, including, without limitation, trade secrets, inventions, software, technical processes and formulas, and development methodologies. Confidential Information also includes any information described above which you or Foxtrot obtains from another party and which you or Foxtrot designates as Confidential Information.

Non-Disclosure of Confidential Information. You and Foxtrot recognize that in carrying out this Agreement, we may receive, develop, or otherwise acquire Confidential Information of the other party. All Confidential Information which the parties may now possess, obtain or create during or after the work contemplated by this Agreement will be held confidential by the parties for the benefit of the other, using the same standard of care that each uses to protect its own confidential and proprietary information to prevent the disclosure of the Confidential Information, but in no event less than reasonable care. You and Foxtrot will not directly or indirectly reveal, report, publish or disclose such Confidential Information to any person, firm or corporation not expressly authorized by the owner of such Confidential Information to receive such Confidential Information, or use (or assist any person to use) such Confidential Information except for the benefit of the owner thereof and in the course of their work hereunder. In addition, neither you nor Foxtrot shall appropriate the Confidential Information to its own use, or to the use of any third party. Each party shall require that each of its employees and independent contractors who work on or have access to the Confidential Information be bound to a suitable confidentiality agreement and be advised of the confidentiality provisions of this Agreement.

Disclosure Exception. The foregoing will not apply to the extent you or Foxtrot is required to disclose any Confidential Information by applicable law or legal process, nor will any information be deemed confidential that the receiving party can demonstrate (a) is, as of the time of its disclosure, or thereafter becomes part of the public domain without violation of this Agreement by you or Foxtrot as the receiving party, (b) is already in your or Foxtrot's possession as evidenced by written documents prior to the disclosure thereof by the other party, or (c) is subsequently learned, without violation of this Agreement by the receiving party, from a third party not under a confidentiality obligation to the disclosing party.

Remedy. You and Foxtrot acknowledge that breach of this Section, including disclosure of any Confidential information, or disclosure of other information which, at law or in good conscience or equity, ought to remain confidential, may give rise to irreparable injury to the disclosing party or the owner of such information, that may be inadequately compensable in damages. Accordingly, the disclosing party may seek to obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available.

#### **4. Limitation and Exclusion of Liability.**

Limitations. IN NO EVENT WILL FOXTROT, ITS AFFILIATES, OR ITS SUPPLIERS HAVE ANY LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF INFORMATION DISTRIBUTED OR MADE AVAILABLE FOR DISTRIBUTION VIA THE SERVICES THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES. NEITHER FOXTROT, ITS AFFILIATES, NOR ITS SUPPLIERS WILL HAVE LIABILITY WITH RESPECT TO FOXTROT'S OBLIGATIONS UNDER THIS AGREEMENT, OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF FOXTROT HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. THE LIABILITY OF FOXTROT AND ITS SUPPLIERS TO YOU FOR ANY REASON AND UPON ANY CAUSE OF ACTION IS LIMITED TO THE AMOUNT YOU ACTUALLY PAID TO FOXTROT UNDER THIS AGREEMENT DURING THE 3 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM ACCRUED. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY,

MISREPRESENTATIONS, AND OTHER TORTS. THE FEES FOR THE SERVICES SET BY FOXTROT UNDER THIS AGREEMENT HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK. ACCORDINGLY, YOU RELEASE FOXTROT AND ITS SUPPLIERS FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIMS IN EXCESS OF THE LIMITATION STATED IN THIS SECTION.

Interruption of Service. Foxtrot and its suppliers are not liable for any temporary delay, outages or interruptions of the Services. Further, Foxtrot is not liable for any delay or failure to perform its obligations under this Agreement, where the delay or failure results from any act of God or other cause beyond its reasonable control (including, any mechanical, electronic, communications or third-party supplier failure or general health crisis).

Indemnification. In agreeing to this Agreement, you agree to indemnify, defend and hold harmless Foxtrot, its employees, directors, partners, representatives and affiliates, for any violation by you or your customers of this Agreement that results either in loss to Foxtrot or the bringing of any claim against Foxtrot by any third-party. For example, if Foxtrot is sued because of your or your customer's activity related to the Services, you will pay any damages awarded against Foxtrot, its employees, directors, partners, representatives and affiliates, plus all costs and attorney's fees.

## **5. Miscellaneous Provisions.**

Foxtrot and you agree that, except as otherwise expressly provided in this Agreement, the Order Form(s) or the terms and conditions of use of any third party software products, there shall be no third party beneficiaries to this Agreement, including but not limited to the insurance providers for either party or your customers. You hereby expressly grant Foxtrot the right to use and reproduce your trademarks in Foxtrot's marketing materials, advertisements, press releases, promotional brochures, presentation portfolios, Foxtrot's website, or in any media now known or later developed, solely for the purpose of identifying you as a client and describing and displaying Foxtrot's Services provided to you. THIS AGREEMENT IS MADE UNDER AND WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MARYLAND (EXCEPT THAT BODY OF LAW CONTROLLING CONFLICTS OF LAW) AND SPECIFICALLY EXCLUDING FROM APPLICATION TO THIS AGREEMENT THAT LAW KNOWN AS THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS AND THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA). EXCLUSIVE VENUE FOR ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE THE STATE AND FEDERAL COURTS WITH JURISDICTION OVER BALTIMORE COUNTY, MARYLAND, AND EACH PARTY IRREVOCABLY CONSENTS TO SUCH PERSONAL JURISDICTION AND WAIVES ALL OBJECTIONS THERETO. In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this Agreement will remain in full force and effect. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party. You may not sell, assign or transfer its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of Foxtrot, and any attempted assignment or delegation without such consent will be void. Foxtrot may assign this Agreement in whole or part. Foxtrot also may delegate the performance of certain Services to third parties. All notices, demands, requests or other communications required or permitted under this Agreement shall be deemed given when delivered personally, sent by facsimile or email upon confirmation, sent

and received by return receipt email, or upon receipt of delivery of overnight mail. You and Foxtrot are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between you and Foxtrot. This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. Any provisions of this Agreement that, in order to fulfill the purposes of such provisions, need to survive the termination or expiration of this Agreement, shall be deemed to survive for as long as necessary to fulfill such purposes.