

## TERMS OF SERVICE (TOS)

These Foxtrot Media, Inc., a subsidiary of Foxtrot A.V. Inc, a Maryland Corporation, Terms of Service (this "Agreement") and Foxtrot Media, Inc.'s Acceptable Use Policy ("AUP") govern your purchase and use of all Foxtrot Media, Inc. services (collectively, the "Services"), as described in the Order Form(s) submitted by you and accepted by Foxtrot Media, Inc. By ordering hosting services you accept the terms of this Agreement and the AUP in order to use the Services. Foxtrot Media, Inc. may modify any of the terms and conditions contained in this Agreement and the AUP, at any time in its sole discretion. Any modifications are effective upon posting of the revisions on the Foxtrot Media, Inc. web site (the "Site"). Your continued use of the Services following Foxtrot Media, Inc.'s 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 Media, Inc. of your termination of this Agreement in the manner described in Section 1.1 below.

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

**Term.** This Agreement will be for an "Term" of six (6) months from the date the Services are first provided by Foxtrot Media, Inc.. This Agreement will be automatically renewed (the "Renewal Term") at the end of the Initial Term or any Renewal Term for a period of six (6) months unless you provide Foxtrot Media, Inc. with written notice of termination at least 30 days before the end of the Initial Term or Renewal Term, whichever is then applicable. To schedule your account for cancellation, please contact our billing department at (410) 902-1001 or [billing@foxtrotmedia.com](mailto:billing@foxtrotmedia.com). We cannot be held responsible for continued invoicing if the above method is not followed.

**Termination.** This Agreement may be terminated: (i) by you or Foxtrot Media, Inc. during any Renewal Term, without cause, by giving the other party 30 days prior written notice; (ii) by Foxtrot Media, Inc. in the event of nonpayment by you as provided in Section 1.4 below; and (iii) by Foxtrot Media, Inc., at any time, without notice, if, in Foxtrot Media, Inc.'s sole judgment, you are in violation of any terms or conditions of the AUP. If you terminate this Agreement, or if Foxtrot Media, Inc. terminates this Agreement for your breach, before the end of the Initial Term or the Renewal Term, whichever is then applicable, 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 and any other amounts you owe to Foxtrot Media, Inc. under this Agreement.

**Charges.** You will pay all charges for your use of the Services at the then current Foxtrot Media, Inc. 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 Media, Inc.'s net income.

**Payment.** You will pay all charges for the first month six (6) months of service in advance on the first day of the Initial Term. You will continue paying all subsequent charges for Services six (6) months in advance according to the then current price for the Services." You authorize Foxtrot Media, Inc. to charge your credit or debit card to pay for any unpaid charges that may apply to your account. You must notify Foxtrot Media, Inc. 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 Media, Inc. 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 Media, Inc. to suspend its performance and terminate this Agreement. If Foxtrot Media, Inc. 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 and any other amounts you owe to Foxtrot Media, Inc. under this Agreement. You are responsible for any costs Foxtrot Media, Inc. incurs in enforcing collection, including reasonable attorneys' fees, court costs and collection agency fees. To reinstate Services, you must pay for six (6) months of Service in advance on the first day such Services are reinstated and any fees associated with reinstating Services.

**Requirements for using Microsoft software.** Subscribers are prohibited from allowing more than five (5) authenticated users of the Microsoft Windows Server Operating Systems under Microsoft licensing terms and could create liability issues with Microsoft if violated.

Refund and Disputes. All payments to Foxtrot Media, Inc. 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. If you dispute a charge to your credit card issuer that, in Foxtrot Media, Inc.'s sole discretion is a valid charge under the provisions of this Agreement and/or AUP, you agree to pay Foxtrot Media, Inc. an "Investigation Fee" of \$100.00.

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

Acceptable Use Policies. The AUP governs the general policies and procedures for use of the Services. The AUP is posted on the site (or such other location as Foxtrot Media, Inc. may specify) 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 MODIFICATIONS TO THE TERMS. FOXTROT MEDIA, INC. MAY TERMINATE YOUR ACCOUNT WITHOUT NOTICE FOR ANY VIOLATION OF THE AUP OR THIS AGREEMENT.**

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 Media, Inc. 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 Media, Inc. on your behalf a handling fee will be incurred. New webhosting accounts which involve the transfer of a domain from another provider to Foxtrot Media, Inc. will require a minimum of seven (7) days to be set up and entered into our DNS servers. In some cases, such transfers may take up to sixty (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 Media, Inc. 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 Media, Inc. will shut it down immediately. You will pay any charges resulting from the cost to correct security breaches affecting Foxtrot Media, Inc. or any of its other customers.

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

Intellectual Property Rights. Your Warranties and Representations to Foxtrot Media, Inc.. You warrant, represent, and covenant to Foxtrot Media, Inc. 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 Media, Inc. will maintain and control ownership of all Internet protocol ("IP") numbers and addresses that Foxtrot Media, Inc. may assign to you. Foxtrot Media, Inc. may, in its sole discretion, change or remove any and all IP numbers and addresses.

Foxtrot Media, Inc. may provide you access to other third party software and/or services ("Third Party Products") through reseller relationships Foxtrot Media, Inc. has established with certain commercial vendors, including without limitation, Microsoft Corporation ("Third Party Vendors"). Unless otherwise notified, Customer understands that product support for Third Party Products is provided by Foxtrot Media, Inc. and not by the Third Party Vendor. Neither Foxtrot Media, Inc. nor any Third Party Vendor makes any representations or warranties, express or implied, regarding any Third Party Products. **CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THIRD PARTY PRODUCTS IS AT CUSTOMER'S SOLE RISK AND SUCH THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND FROM FOXTROT MEDIA, INC. 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 MEDIA, INC. 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. CUSTOMER AGREES TO OBSERVE THE TERMS OF ANY LICENSE AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENT FOR THIRD PARTY PRODUCTS AND THAT CUSTOMER SHALL BE FULLY LIABLE TO THIRD PARTY VENDORS AND FOXTROT MEDIA, INC. 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 Media, Inc. 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 Media, Inc. your server is the source or target of any violation of the AUP or for any other reason which Foxtrot Media, Inc. 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 Media, Inc. to monitor or exert editorial control over the information made available for distribution via the Services. If Foxtrot Media, Inc. takes corrective action because of a possible violation, Foxtrot Media, Inc. 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 Media, Inc. 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 Media, Inc. shall have the right to terminate all service set forth in this Agreement.

**Disclaimed Warranties.** Foxtrot Media, Inc. exercises no control over, and accepts no responsibility for, the content of the information passing through Foxtrot Media, Inc.'s host computers, network hubs and points of presence, or the Internet. 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 MEDIA, INC. 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 MEDIA, INC. DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

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

**Limitations.** IN NO EVENT WILL FOXTROT MEDIA, INC. 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 MEDIA, INC. NOR ITS SUPPLIERS WILL HAVE LIABILITY WITH RESPECT TO FOXTROT MEDIA, INC.'S OBLIGATIONS UNDER THIS AGREEMENT, OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF FOXTROT MEDIA, INC. HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. THE LIABILITY OF FOXTROT MEDIA, INC. AND ITS SUPPLIERS TO YOU FOR ANY REASON AND UPON ANY CAUSE OF ACTION IS LIMITED TO THE AMOUNT YOU ACTUALLY PAID TO FOXTROT MEDIA, INC. 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 MEDIA, INC. UNDER THIS AGREEMENT HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK. ACCORDINGLY, YOU RELEASE FOXTROT MEDIA, INC. AND ITS SUPPLIERS FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIMS IN EXCESS OF THE LIMITATION STATED IN THIS SECTION 6.1.

**Interruption of Service.** Foxtrot Media, Inc. and its suppliers are not liable for any temporary delay, outages or interruptions of the Services. Further, Foxtrot Media, Inc. 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).

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

#### **MISCELLANEOUS PROVISIONS.**

Foxtrot Media, Inc. 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. 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. EXCLUSIVE VENUE FOR ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE THE STATE AND FEDERAL COURTS IN 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 Media, Inc., and any attempted assignment or delegation without such consent will be void. Foxtrot Media, Inc. may assign this Agreement in whole or part. Foxtrot Media, Inc. 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 upon confirmation, sent and received by return receipt email, or upon receipt of delivery of overnight mail. You and Foxtrot Media, Inc. are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between you and Foxtrot Media, Inc.. 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.

**Survival.** All provisions of this Agreement relating to your warranties, intellectual property rights, limitation and exclusion of liability, your indemnification obligations and payment obligations will survive the termination or expiration of the Agreement.

# FOXTROT MEDIA, INC. ACCEPTABLE USE POLICY (AUP)

## Background

Foxtrot Media, Inc.'s Acceptable Use Policy (AUP) is designed to provide a clear understanding of the rules, regulations and restrictions regarding the use of Foxtrot Media, Inc.'s services.

From time to time Foxtrot Media, Inc. may impose reasonable rules and regulations regarding the use of its services. The AUPs are not exhaustive and Foxtrot Media, Inc. reserves the right to modify the AUPs at any time, effective upon either the posting of the modified AUPs to our website or notification of the modified AUPs.

By registering for and using the services, and thereby accepting the terms and conditions of the Terms of Service Agreement or its equivalent, you agree to abide by the AUPs as modified from time to time. Any violation of the AUPs may result in the suspension or termination of your account or such other action as Foxtrot Media, Inc. deems appropriate. An unlisted activity may also be a violation of the AUPs if it is illegal, irresponsible, or disruptive use of the Internet. No credits will be issued for any interruption in service resulting from policy violations.

VIOLATION OF ANY AUP IS STRICTLY PROHIBITED AND MAY RESULT IN THE IMMEDIATE TERMINATION OR SUSPENSION OF THE SERVICES YOU RECEIVE FROM FOXTROT MEDIA, INC.. YOU SHALL REMAIN SOLELY LIABLE AND RESPONSIBLE FOR YOUR USE OF THE SERVICES AND ANY AND ALL CONTENT THAT YOU DISPLAY, UPLOAD, DOWNLOAD OR TRANSMIT THROUGH THE USE OF THE SERVICES. "CONTENT" INCLUDES, WITHOUT LIMITATION, YOUR E-MAIL, WEB PAGES, PERSONAL HOME PAGES, AND DOMAIN NAMES. IT IS FOXTROT MEDIA, INC.'S POLICY TO TERMINATE REPEAT INFRINGERS. FOXTROT MEDIA, INC. RESERVES THE RIGHT TO REFUSE SERVICE TO ANYONE AT ANY TIME

## Customer Security Responsibilities

The customer is solely responsible for any breaches of security affecting servers under customer control. If a customer's server is involved in an attack on another server or system, it will be shut down and an immediate investigation will be launched to determine the cause/source of the attack. In such event, the customer is responsible for the cost to rectify any damage done to the customer's server and any other requirement affected by the security breach. The labor used to rectify any such damage is categorized as emergency security breach recovery and is currently charged at \$195 USD per hour. Enquiries regarding security matters may be directed to [abuse@foxtrotmedia.com](mailto:abuse@foxtrotmedia.com).

## System And Network Security

Violations of system or network security are prohibited, and may result in criminal and civil liability. Foxtrot Media, Inc. may investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected. Examples of system or network security violations include, without limitation, the following:

Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network.

Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network.

Interference with service to any user, host or network including, without limitation, mailbombing, flooding, deliberate attempts to overload a system and broadcast attacks.

Forging of any TCP-IP packet header or any part of the header information in an e-mail or a newsgroup posting.

High-risk services, which are services which tend to attract denial of service attacks, are strictly prohibited. This includes, but is not limited to, IRC related services and selling of shell accounts.

Violators of the policy are responsible, without limitations, for the cost of labor to clean up and correct any damage done to the operation of the network and business operations supported by the network, and to respond to complaints incurred by Foxtrot Media, Inc.. Such labor is categorized as emergency security breach recovery and is currently charged at \$195 USD per hour required. Enquiries regarding security matters may be directed to [abuse@foxtrotmedia.com](mailto:abuse@foxtrotmedia.com). Foxtrot Media, Inc. is concerned with the privacy of online communications and web sites. In general, the Internet is neither more nor less secure than other means of communication, including mail, facsimile, and voice telephone service, all of which can be intercepted and otherwise compromised. As a matter of prudence, however, Foxtrot Media, Inc. urges its customers to assume that all of their online communications are insecure. Foxtrot Media, Inc. cannot take responsibility for the security of information transmitted over Foxtrot Media, Inc.'s facilities.

### **Password Protection**

The customer is responsible for protecting customer's password and for any authorized or unauthorized use made of customer's password. The customer will not use or permit anyone to use Foxtrot Media, Inc.'s service to guess passwords or to access other systems or networks without authorization. Foxtrot Media, Inc. will fully cooperate with law enforcement authorities in the detection and prosecution of illegal activity.

### **Contact Information**

Customers are responsible for maintaining their contact information with Foxtrot Media, Inc. such that the email address is always reachable even in the event of their Foxtrot Media, Inc. servers being shut down.

### **Internet Etiquette**

The customer is expected to be familiar with and to practice good Internet etiquette (Netiquette). The customer will comply with the rules appropriate to any network to which Foxtrot Media, Inc. may provide access. The customer should not post, transmit, or permit Internet access to information the customer desires to keep confidential. The customer is not permitted to post any material that is illegal, libelous, tortuous, indecently depicts children or is likely to result in retaliation against Foxtrot Media, Inc. by offended users. Foxtrot Media, Inc. reserves the right to refuse or terminate service at any time for violation of this section. This includes advertising services or sites via IRC or USENET in clear violation of the policies of the IRC channel or USENET group.

### **Copyright Infringement - Software Piracy Policy**

The Foxtrot Media, Inc. network may only be used for lawful purposes. Transmission, distribution, or storage of any information, data or material in violation of United States or state regulation or law, or by the common law, is prohibited. This includes, but is not limited to, material protected by copyright, trademark, trade secret, or other intellectual property rights. Making unauthorized copies of software is a violation of the law, no matter how many copies you are making. If you copy, distribute or install the software in ways that the license does not allow, you are violating federal copyright law. If caught with pirated software, you or your company may be liable under both civil and criminal law, and you may be fined up to \$250,000 and/or receive up to 5 years in jail. In compliance with the Digital Millennium Copyright Act (the "DMCA"), please send DMCA notifications of claimed copyright infringements to [abuse@foxtrotmedia.com](mailto:abuse@foxtrotmedia.com). Foxtrot Media, Inc. will cooperate fully with any civil and/or criminal litigation arising from the violation of this policy.

### **Network Responsibility**

Customers have a responsibility to use the Foxtrot Media, Inc. network responsibly. This includes respecting the other customers of Foxtrot Media, Inc.. Foxtrot Media, Inc. reserves the right to suspend and or cancel service with any Customer who uses the Foxtrot Media, Inc. network in such a way that adversely affects other Foxtrot Media, Inc. customers. This includes but is not limited to:

Attacking or attempting to gain unauthorized access to servers and services that belong to Foxtrot Media, Inc. or its customers (i.e. computer hacking), and/or

Participating in behavior which result in reprisals that adversely effect the Foxtrot Media, Inc. network or other customers' access to the Foxtrot Media, Inc. network.

Foxtrot Media, Inc. will react strongly to any use or attempted use of an Internet account or computer without the owner's authorization. Such attempts include, but are not limited to, "Internet Scanning" (tricking other people into releasing their passwords), password robbery, security hole scanning, port scanning, etc. Any unauthorized use of accounts or computers by a Foxtrot Media, Inc. customer, whether or not the attacked account or computer belongs to Foxtrot Media, Inc., will result in severe action taken against the attacker. Possible actions include warnings, account suspension or cancellation, and civil or criminal legal action, depending on the seriousness of the attack. Any attempt to undermine or cause harm to a server, or customer, of Foxtrot Media, Inc. is strictly prohibited.

Violations of this policy may be reported directly to the FBI's Infrastructure Protection & Computer Intrusion Squad at <http://www.fbi.gov/programs/ipcis/ipcis.htm>. Foxtrot Media, Inc. will cooperate fully with any civil and/or criminal litigation arising from the violation of this policy.

### **Lawful Purpose**

All services may be used for lawful purposes only. Transmission, storage, or presentation of any information, data or material in violation of any applicable law, regulation, or AUP is prohibited. This includes, but is not limited to:

- copyrighted material or
- material protected by trade secret and other statute or
- dissemination of harmful or fraudulent content.

Using any Foxtrot Media, Inc. service or product for the purpose of participating in any activity dealing with subject matters that are prohibited under applicable law is prohibited.

Any conduct that constitutes harassment, fraud, stalking, abuse, or a violation of federal export restriction in connection with use of Foxtrot Media, Inc. services or products is prohibited. Using the Foxtrot Media, Inc. network to solicit the performance of any illegal activity is also prohibited, even if the activity itself is not performed. In addition, knowingly receiving or downloading a file that cannot be legally distributed, even without the act of distribution, is prohibited.

Servers hosted within Foxtrot Media, Inc. network are open to the public. You are solely responsible for your usage of the Foxtrot Media, Inc. network and servers and any statement you make on servers hosted within the Foxtrot Media, Inc. network may be deemed "publication" of the information entered. Acknowledging the foregoing, you specifically agree not to use our service in any manner that is illegal or libelous.

### **Child Pornography on the Internet**

Our policy on child pornography is zero tolerance. Foxtrot Media, Inc. will cooperate fully with any criminal investigation into a Customer's violation of the Child Protection Act of 1984 concerning child pornography. Customers are ultimately responsible for the actions of their clients over the Foxtrot Media, Inc. network, and will be liable for illegal material posted by their clients.

According to the Child Protection Act, child pornography includes photographs, films, video or any other type of visual presentation that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity, or the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years or any written material or visual representation that advocates or counsels sexual activity with a person under the age of eighteen years.

Violations of the Child Protection Act may be reported to the U.S. Customs Agency at 1-800-BE-ALERT.

### **Commercial Advertisements with E-mail**

Foxtrot Media, Inc. takes a zero tolerance approach to the sending of Unsolicited Commercial E-mail (UCE) or SPAM over our network. Very simply, this means that customers of Foxtrot Media, Inc. may not use or permit others to use our network to transact in UCE. Foxtrot Media, Inc. is a self-managed environment, and it is the responsibility of Foxtrot Media, Inc.'s customers to ensure that no UCE/UBE is sent. Customers of Foxtrot Media, Inc. may not host, or permit hosting of, sites or information that is advertised by UCE from other networks. Violations of this policy carry severe penalties, including termination of service.

Unsolicited commercial email (UCE) is defined by Foxtrot Media, Inc. as any electronic communication (e-mail, ICQ, IRC, Instant Messenger, pop-up ads via Windows Messenger Service, etc.) sent for purposes of distributing commercial information of any kind, soliciting the purchase or sale of products or services, or soliciting any transfer of funds to a recipient who has not agreed to receive such communication.

Unsolicited bulk e-mail (UBE) is defined by Foxtrot Media, Inc. as any electronic communication (e-mail, ICQ, IRC, Instant Messenger, pop-up ads via Windows Messenger Service, etc.) to multiple recipients who have not agreed to receive such communication.

Use of the Foxtrot Media, Inc. network, servers or services to transmit any unsolicited commercial or unsolicited bulk e-mail is expressly prohibited, as is hosting web sites or services on a server which are advertised in any UCE/UBE.

Mailing lists must be true opt-in mailing lists. Before sending any email to a listed user, a confirmation email with a tracking number must be sent to the new subscriber, to which they must respond with a confirmation that they wish to be added to the list. You must keep these confirmations on file so that in the case that a spam complaint is made against you, you have proof that the user did indeed opt-in. In addition, you must provide at least one easy way to opt out; see the MAPS guidelines ( <http://mail-abuse.org/rbl/manage.html> ) for details. Opt-out requests must be honored immediately.

Customers of Foxtrot Media, Inc. are strictly prohibited from using or permitting others to use UCE or SPAM over our network. As our Customers are ultimately responsible for the actions of their clients over the Foxtrot Media, Inc. network, it is advisable that Customers develop a similar, or stricter, policy for their clients.

Violation of Foxtrot Media, Inc.'s SPAM policy will result in severe penalties. Upon notification of an alleged violation of our SPAM policy, Foxtrot Media, Inc. will initiate an immediate investigation upon receipt of the complaint. Upon notification, the customer has 24 hours in which to reply. During the investigation, Foxtrot Media, Inc. may restrict customer access to the network to prevent further violations. If a customer is found to be in violation of our SPAM policy, Foxtrot Media, Inc. may, at its sole discretion, restrict, suspend or terminate customer's account. Further, Foxtrot Media, Inc. reserves the right to pursue civil remedies for any costs associated with the investigation of a substantiated policy violation. Foxtrot Media, Inc. will notify law enforcement officials if the violation is believed to be a criminal offense.

Violation of Foxtrot Media, Inc.'s SPAM policy may be reported to [abuse@foxtrotmedia.com](mailto:abuse@foxtrotmedia.com).

### **IP Address Overlap**

Foxtrot Media, Inc. administers the network on which customer servers reside. The customer cannot use IP addresses which were not assigned to them by Foxtrot Media, Inc. staff. Any server found using IPs which were not officially assigned will be suspended from network access until such time as the IP addresses overlap can be corrected.

### **IRC**

Foxtrot Media, Inc. does not allow the use of IRC on the Foxtrot Media, Inc. network. This includes, but is not limited to, the use of IRC clients, server software, bots or anything related to IRC. Violators' servers will be suspended.

### **FTP Backup**

FTP Backup is intended to be used by existing Foxtrot Media, Inc. customers for remote backup of files and data. Foxtrot Media, Inc. recommends a diverse backup strategy including customer-site backups in addition



to FTP Backup, and thus Foxtrot Media, Inc. does not guarantee the availability or condition of any data or files stored on its servers. FTP Backup may not be used to share files with the general public nor may illegal or otherwise prohibited data or files be stored on Foxtrot Media, Inc. servers. Connections to FTP Backup are permitted only from Foxtrot Media, Inc. servers. Use of FTP Backup is subject to Foxtrot Media, Inc. Terms of Service and Acceptable Use Policy.

### **Network Performance**

Foxtrot Media, Inc. accounts operate on shared resources. Excessive use or abuse of these shared network resources by one customer may have a negative impact on all other customers. Misuse of network resources in a manner which impairs network performance is prohibited by this policy and may result in termination of your account.

Network-intensive applications which may negatively impact other Foxtrot Media, Inc. customers include, but are not limited to, peer-to-peer or audio/video streaming applications. Foxtrot Media, Inc. reserves the right to limit or terminate such activities.

### **Billing**

The customer understands that the customer is responsible for paying for any network resources that are used to connect the customer's server to the Internet. The customer may request that the customer's server be disconnected from the Internet, but the customer will still be responsible for paying for any network resources used up to the point of suspension or cancellation.

### **Suspension**

Foxtrot Media, Inc. reserves the right to suspend network access to any customer if, in the judgment of the Foxtrot Media, Inc. network administrators, the customer's server is the source or target of the violation of any of the other terms of the AUPs or for any other reason which Foxtrot Media, Inc. chooses. If inappropriate activity is detected, all accounts of the Customer in question will be deactivated until an investigation is complete. Prior notification to the Customer is not assured. In extreme cases, law enforcement will be contacting regarding the activity. The customer will not be credited for the time the customer's machines were suspended. The Customer will be credited on a prorated basis based on the monthly fees the Customer pays for the servers that are suspended for the time the Customer's machines were suspended.

### **Cancellation**

Foxtrot Media, Inc. reserves the right to cancel service at any time. If inappropriate activity is detected, all accounts of the customer in question will be deactivated until an investigation is complete. Prior notification to the Customer is not assured. In extreme cases, law enforcement will be contacting regarding the activity. All fees paid in advance of cancellation are non-refundable if Foxtrot Media, Inc. institutes its right of cancellation. Any violation of policies which results in extra costs will be billed to the customer (i.e. transfer, space etc.).

### **Indemnification**

Foxtrot Media, Inc. wishes to emphasize that in signing the Master Services Agreement or its equivalent, customer indemnifies Foxtrot Media, Inc. for any violation of the Master Services Agreement or its equivalent, law or AUP that results in loss to Foxtrot Media, Inc. or the bringing of any claim against Foxtrot Media, Inc. by any third-party. This means that if Foxtrot Media, Inc. is sued because of a customer's or a customer of a customer's activity, the customer will pay any damages awarded against Foxtrot Media, Inc., plus costs and reasonable attorney's fees.

### **Disclaimer of Responsibility**

Foxtrot Media, Inc. is under no duty to look at each customer's or user's activities to determine if a violation of the AUPs has occurred, nor do we assume any responsibility through our AUPs to monitor or police

Internet-related activities. Foxtrot Media, Inc. disclaims any responsibility for any such inappropriate use and any liability to any person or party for any other person's or party's violation of this policy.

All Sub-Networks, resellers and managed servers of Foxtrot Media, Inc. must adhere to the above policies. Failure to follow any term or condition will be grounds for immediate Cancellation.

INDIRECT OR ATTEMPTED VIOLATIONS OF THE AUPs AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON YOUR BEHALF SHALL BE CONSIDERED VIOLATIONS OF THESE AUPs BY YOU.