



## Terms of Service

### **FOSTER SWIFT WEBSITE TERMS OF SERVICE**

**Welcome to the Foster Swift Collins & Smith, P.C. website.** Please carefully read these terms and conditions before using these Foster Swift Web Pages. By using The Foster Swift Site you indicate your agreement to these terms and conditions. If you do not accept these terms and conditions, please do not use the Foster Swift Site.

#### **1. YOUR RELATIONSHIP WITH FOSTER SWIFT**

1.1 Your use of Foster Swift, Collins & Smith, P.C.'s (Foster Swift) products, software, The Foster Swift Site and web sites (referred to collectively as the "The Foster Swift Site" in this document) is subject to the terms of a legal agreement between you and Foster Swift. "Foster Swift" means Foster, Swift, Collins, & Smith, P.C., whose principal place of business is at 313 South Washington Square, Lansing, MI 48933-2193, United States. This document explains how the agreement is made up, and sets out some of the terms of that agreement.

1.2 The materials on our website have been prepared by Foster, Swift, for informational purposes only and do not convey legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship with the Foster Swift firm. Such a relationship can only exist via an executed engagement letter with the firm. Please do not send Foster Swift any information about any matter that may involve you until you speak with one of our attorneys and receive our authorization to send such information to us.

1.3 Unless otherwise agreed in writing with Foster Swift, your agreement with Foster Swift will always include, at a minimum, the terms and conditions set out in this document. These are referred to below as the "Universal Terms".

1.4 Your agreement with Foster Swift will also include the terms of any Legal Notices applicable to The Foster Swift Site, in addition to the Universal Terms. All of these are referred to below as the "Additional Terms". Where Additional Terms apply to a Service, these will be accessible for you to read either within, or through your use of, that Service.

1.5 The Universal Terms, together with the Additional Terms, form a legally binding agreement between you and Foster Swift in relation to your use of The Foster Swift Site. It is important that you take the time to read them carefully. Collectively, this legal agreement is referred to below as the "Terms".

1.6 If there is any contradiction between what the Additional Terms say and what the Universal Terms say, then the Additional Terms shall take precedence in relation to that Service.

1.7 Electronic mail ("e-mail") sent to Foster Swift or any of its lawyers will not create an attorney-client relationship and will not be treated as confidential. Please do not send Foster Swift or any of its lawyers confidential information unless and until a formal attorney-client relationship has been established.



## **2. ACCEPTING THE TERMS**

2.1 In order to use The Foster Swift Site, you must first agree to the Terms. You may not use The Foster Swift Site if you do not accept the Terms.

2.2 You can accept the Terms by actually using The Foster Swift Site. In this case, you understand and agree that Foster Swift will treat your use of The Foster Swift Site as acceptance of the Terms from that point onwards.

2.3 Before you continue, you should print off or save a local copy of the Universal Terms for your records.

## **3. PROVISION OF THE FOSTER SWIFT SITE**

3.1 Foster Swift is constantly innovating in order to provide the best possible experience for its users. You acknowledge and agree that the form and nature of The Foster Swift Site which Foster Swift provides may change from time to time without prior notice to you.

3.2 As part of this continuing innovation, you acknowledge and agree that Foster Swift may stop (permanently or temporarily) providing The Foster Swift Site (or any features within The Foster Swift Site) to you or to users generally at Foster Swift's sole discretion, without prior notice to you. You may stop using The Foster Swift Site at any time. You do not need to specifically inform Foster Swift when you stop using The Foster Swift Site.

3.3 You acknowledge and agree that if Foster Swift disables access to your account, you may be prevented from accessing The Foster Swift Site, your account details or any files or other content which is contained in your account.

## **4. USE OF THE FOSTER SWIFT SITE BY YOU**

4.1 In order to access The Foster Swift Site, you may be required to provide information about yourself (such as identification or contact details) as part of the registration process for the Service, or as part of your continued use of The Foster Swift Site. You agree that any registration information you give to Foster Swift will always be accurate, correct and up to date.

4.2 You agree to use The Foster Swift Site only for purposes that are permitted by (a) the Terms and (b) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions (including any laws regarding the export of data or software to and from the United States or other relevant countries).

4.3 You agree not to access (or attempt to access) any of The Foster Swift Site by any means other than through the interface that is provided by Foster Swift. You specifically agree not to access (or attempt to access) any of The Foster Swift Site through any automated means including use of scripts or web crawlers.

4.4 You agree that you will not engage in any activity that interferes with or disrupts The Foster Swift Site (or the servers and networks which are connected to The Foster Swift Site).



4.5 Unless you have been specifically permitted to do so in a separate agreement with Foster Swift, you agree that you will not reproduce, duplicate, copy, sell, trade or resell The Foster Swift Site or the information (text) that appears on the site for any purpose.

4.6 You agree that you are solely responsible for (and that Foster Swift has no responsibility to you or to any third party for) any breach of your obligations under the Terms and for the consequences (including any loss or damage which Foster Swift may suffer) of any such breach.

## **5. YOUR PASSWORDS AND ACCOUNT SECURITY**

5.1 You agree and understand that you are responsible for maintaining the confidentiality of passwords associated with any account you use to access The Foster Swift Site.

5.2 Accordingly, you agree that you will be solely responsible to Foster Swift for all activities that occur under your account.

5.3 If you become aware of any unauthorized use of your password or of your account, you agree to notify Foster Swift immediately.

## **6. CONTENT IN THE FOSTER SWIFT SITE**

6.1 You understand that all information (such as data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images) which you may have access to as part of, or through your use of, The Foster Swift Site are the sole responsibility of the person from which such content originated. All such information is referred to below as the "Content".

6.2 You should be aware that Content presented to you as part of The Foster Swift Site, including but not limited to advertisements in The Foster Swift Site and sponsored Content within The Foster Swift Site may be protected by intellectual property rights which are owned by the sponsors or advertisers who provide that Content to Foster Swift (or by other persons or companies on their behalf). You may not modify, rent, lease, loan, sell, distribute or create derivative works based on this Content (either in whole or in part) unless you have been specifically told that you may do so by Foster Swift or by the owners of that Content, in a separate agreement.

6.3 Foster Swift reserves the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse or remove any or all Content from any Service.

6.4 You agree that you are solely responsible for (and that Foster Swift has no responsibility to you or to any third party for) any Content that you create, transmit or display while using The Foster Swift Site and for the consequences of your actions (including any loss or damage which Foster Swift may suffer) by doing so.



## **7. PROPRIETARY RIGHTS**

7.1 You acknowledge and agree that Foster Swift owns all legal right, title and interest in and to The Foster Swift Site, including any intellectual property rights which subsist in The Foster Swift Site (whether those rights happen to be registered or not, and wherever in the world those rights may exist). You further acknowledge that The Foster Swift Site may contain information which is designated confidential by Foster Swift and that you shall not disclose such information without Foster Swift's prior written consent.

7.2 Unless you have agreed otherwise in writing with Foster Swift, nothing in the Terms gives you a right to use of Foster Swift's trade names, trademarks, service marks, logos, domain names, and other distinctive brand features.

7.3 Other than the limited license set forth in Section 11, Foster Swift acknowledges and agrees that it obtains no right, title or interest from you under these Terms in or to any Content that you submit, post, transmit or display on, or through, The Foster Swift Site, including any intellectual property rights which subsist in that Content (whether those rights happen to be registered or not, and wherever in the world those rights may exist). Unless you have agreed otherwise in writing with Foster Swift, you agree that you are responsible for protecting and enforcing those rights and that Foster Swift has no obligation to do so on your behalf.

7.4 You agree that you shall not remove, obscure, or alter any proprietary rights notices (including copyright and trade mark notices) which may be affixed to or contained within The Foster Swift Site.

7.5 Unless you have been expressly authorized to do so in writing by Foster Swift, you agree that in using The Foster Swift Site, you will not use any trade mark, service mark, trade name, logo of any company or organization in a way that is likely or intended to cause confusion about the owner or authorized user of such marks, names or logos.

## **8. LICENSE FROM FOSTER SWIFT**

8.1 Foster Swift gives you a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use the software provided to you by Foster Swift as part of The Foster Swift Site as provided to you by Foster Swift (referred to as the "Software" below). This license is for the sole purpose of enabling you to use and enjoy the benefit of The Foster Swift Site as provided by Foster Swift, in the manner permitted by these Terms.

8.2 You may not (and you may not permit anyone else to) copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code of the Software or any part thereof—unless this is expressly permitted or required by law, or unless you have been specifically told that you may do so by Foster Swift, in writing.

8.3 Unless Foster Swift has given you specific written permission to do so, you may not assign (or grant a sub-license of) your rights to use the Software, grant a security interest in or over your rights to use the Software, or otherwise transfer any part of your rights to use the Software.

## **9. Content license from you**



9.1 You retain copyright and any other rights you already hold in Content which you submit, post or display on or through, The Foster Swift Site. By submitting, posting or displaying the content you give Foster Swift a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute any Content which you submit, post or display on or through, The Foster Swift Site. This license is for the sole purpose of enabling Foster Swift to display, distribute and promote The Foster Swift Site and may be revoked for certain The Foster Swift Site as defined in the Additional Terms of those The Foster Swift Site.

9.2 You agree that this license includes a right for Foster Swift to make such Content available to other companies, organizations or individuals with whom Foster Swift has relationships for the provision of syndicated the Foster Swift Site, and to use such Content in connection with the provision of those the Foster Swift Site.

9.3 You understand that Foster Swift, in performing the required technical steps to provide The Foster Swift Site to our users, may (a) transmit or distribute your Content over various public networks and in various media; and (b) make such changes to your Content as are necessary to conform and adapt that Content to the technical requirements of connecting networks, devices, the Foster Swift Site or media. You agree that this license shall permit Foster Swift to take these actions.

9.4 You confirm and warrant to Foster Swift that you have all the rights, power and authority necessary to grant the above license.

## **10. EXCLUSION OF WARRANTIES**

10.1 NOTHING IN THESE TERMS SHALL EXCLUDE OR LIMIT FOSTER SWIFT'S WARRANTY OR LIABILITY FOR LOSSES WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, ONLY THE LIMITATIONS WHICH ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU AND OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

10.2 YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE FOSTER SWIFT SITE IS AT YOUR SOLE RISK AND THAT THE FOSTER SWIFT SITE ARE PROVIDED "AS IS" AND "AS AVAILABLE."

10.3 IN PARTICULAR, FOSTER SWIFT, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO YOU THAT:

(A) YOUR USE OF THE FOSTER SWIFT SITE WILL MEET YOUR REQUIREMENTS,

(B) YOUR USE OF THE FOSTER SWIFT SITE WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR,



(C) ANY INFORMATION OBTAINED BY YOU AS A RESULT OF YOUR USE OF THE FOSTER SWIFT SITE WILL BE ACCURATE OR RELIABLE, AND

(D) THAT DEFECTS IN THE OPERATION OR FUNCTIONALITY OF ANY SOFTWARE PROVIDED TO YOU AS PART OF THE FOSTER SWIFT SITE WILL BE CORRECTED.

10.4 ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE FOSTER SWIFT SITE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

10.5 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM FOSTER SWIFT OR THROUGH OR FROM THE FOSTER SWIFT SITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.

10.6 FOSTER SWIFT FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

## **11. LIMITATION OF LIABILITY**

11.1 SUBJECT TO OVERALL PROVISION IN PARAGRAPH 11.1 ABOVE, YOU EXPRESSLY UNDERSTAND AND AGREE THAT FOSTER SWIFT, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS SHALL NOT BE LIABLE TO YOU FOR:

(A) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR EXEMPLARY DAMAGES WHICH MAY BE INCURRED BY YOU, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY.. THIS SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR THE FOSTER SWIFT SITE, OR OTHER INTANGIBLE LOSS;

(B) ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY YOU, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE AS A RESULT OF:

(I) ANY RELIANCE PLACED BY YOU ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY ADVERTISING, OR AS A RESULT OF ANY RELATIONSHIP OR TRANSACTION BETWEEN YOU AND ANY ADVERTISER OR SPONSOR WHOSE ADVERTISING APPEARS ON THE FOSTER SWIFT SITE;

(II) ANY CHANGES WHICH FOSTER SWIFT MAY MAKE TO THE FOSTER SWIFT SITE, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE FOSTER SWIFT SITE (OR ANY FEATURES WITHIN THE FOSTER SWIFT SITE);



(III) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY CONTENT AND OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH YOUR USE OF THE FOSTER SWIFT SITE;

(III) YOUR FAILURE TO PROVIDE FOSTER SWIFT WITH ACCURATE ACCOUNT INFORMATION;

(IV) YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL;

11.2 THE LIMITATIONS ON FOSTER SWIFT'S LIABILITY TO YOU IN PARAGRAPH 11.1 ABOVE SHALL APPLY WHETHER OR NOT FOSTER SWIFT HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

## **12. ADVERTISEMENTS**

12.1 Some of The Foster Swift Site are supported by advertising revenue and may display advertisements and promotions. These advertisements may be targeted to the content of information stored on The Foster Swift Site, queries made through The Foster Swift Site or other information.

12.2 The manner, mode and extent of advertising by Foster Swift on The Foster Swift Site are subject to change without specific notice to you.

12.3 In consideration for Foster Swift granting you access to and use of The Foster Swift Site, you agree that Foster Swift may place such advertising on The Foster Swift Site.

## **13. OTHER CONTENT**

13.1 The Foster Swift Site may include hyperlinks to other web sites or content or resources. Foster Swift may have no control over any web sites or resources which are provided by companies or persons other than Foster Swift.

13.2 You acknowledge and agree that Foster Swift is not responsible for the availability of any such external sites or resources, and does not endorse any advertising, products or other materials on or available from such web sites or resources.

13.3 You acknowledge and agree that Foster Swift is not liable for any loss or damage which may be incurred by you as a result of the availability of those external sites or resources, or as a result of any reliance placed by you on the completeness, accuracy or existence of any advertising, products or other materials on, or available from, such web sites or resources.

## **14. EXPORT CONTROLS**

14.1 Your use of The Foster Swift Site will comply with all applicable laws, rules and regulations that govern the export of technical data.



## **15. CHANGES TO THE TERMS**

15.1 Foster Swift may make changes to the Universal Terms or Additional Terms from time to time. When these changes are made, Foster Swift will make a new copy of the Universal Terms available at <http://www.fosterswift.com/> and any new Additional Terms will be made available to you from within, or through, the affected The Foster Swift Site.

15.2 You understand and agree that if you use The Foster Swift Site after the date on which the Universal Terms or Additional Terms have changed, Foster Swift will treat your use as acceptance of the updated Universal Terms or Additional Terms.

## **16. GENERAL LEGAL TERMS**

16.1 Sometimes when you use The Foster Swift Site, you may (as a result of, or through your use of The Foster Swift Site) use a service or download a piece of software, or purchase goods, which are provided by another person or company. Your use of the Foster Swift Site, software or goods may be subject to separate terms between you and the company or person concerned. If so, the Terms do not affect your legal relationship with these other companies or individuals.

16.2 The Terms constitute the whole legal agreement between you and Foster Swift and govern your use of The Foster Swift Site (but excluding any the Foster Swift Site which Foster Swift may provide to you under a separate written agreement), and completely replace any prior agreements between you and Foster Swift in relation to The Foster Swift Site.

16.3 You agree that Foster Swift may provide you with notices, including those regarding changes to the Terms, by email, regular mail, or postings on The Foster Swift Site.

16.4 You agree that if Foster Swift does not exercise or enforce any legal right or remedy which is contained in the Terms (or which Foster Swift has the benefit of under any applicable law), this will not be taken to be a formal waiver of Foster Swift's rights and that those rights or remedies will still be available to Foster Swift.

16.5 If any court of law, having the jurisdiction to decide on this matter, rules that any provision of these Terms is invalid, then that provision will be removed from the Terms without affecting the rest of the Terms. The remaining provisions of the Terms will continue to be valid and enforceable.

16.6 The Terms, and your relationship with Foster Swift under the Terms, shall be governed by the laws of the State of Michigan without regard to its conflict of laws provisions. You and Foster Swift agree to submit to the exclusive jurisdiction of the courts located within the county of Ingham, Michigan to resolve any legal matter arising from the Terms and that any action must be brought by the user within one (1) year following the date the claim first accrued, or shall be deemed waived. Notwithstanding this, you agree that Foster Swift shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.