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## Terms of Service Agreement

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### INTRODUCTION

Welcome to the Foxglove Website Designs website at <http://www.FoxgloveWebsiteDesigns.com> ("Site"). This Agreement explains our obligations to you, and your obligations to us in relation to the service(s) you purchase. In this Terms of Service Agreement ("Agreement"), "Client", "you" and "your" refer to each customer ("Customer") and its agents, including each person listed in your account information as being associated with your account, and "Company", "Foxglove", "we", "us" and "our" refer collectively to Foxglove Website Designs, its agents and subcontractors. You agree that each person listed in your account information as being associated with your account for any services provided to you is your agent with full authority to act on your behalf with respect to such services.

### PLEASE READ THIS AGREEMENT CAREFULLY.

**YOUR REQUEST FOR SERVICES CREATES A CONTRACT BETWEEN YOU AND US, CONSISTING OF THE DESIGN AND/OR SERVICE CONTRACT, THE APPLICABLE SERVICE DESCRIPTION, AND THIS AGREEMENT. YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THIS AGREEMENT, INCLUDING ANY SITE POLICIES, USAGE POLICIES, OR OTHER POLICIES. YOUR USE OF THE SERVICES CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.**

**IF YOU DO NOT AGREE WITH THIS TERMS OF SERVICE AGREEMENT, YOU SHOULD CONTACT US IMMEDIATELY TO CANCEL YOUR ACCOUNT.**

We may modify this Agreement from time to time and such modification shall be effective upon being posted on the Site. You agree to be bound to any changes to this Agreement after any such modification is posted. It is therefore important that you review this Agreement regularly to ensure you are updated as to any changes.

### 1. PRIOR AGREEMENTS

This Agreement supersedes any and all previous Terms of Service Agreements. This Agreement also updates any other previous agreements, whether written or verbal. In cases where there is a conflict of terms, the terms of this Agreement shall take effect.

### 2. CANCELLATION POLICY

- a) We reserve the right to suspend or cancel service:
  - i) by giving you thirty (30) days prior written notice,
  - ii) at any time, without notice, in the event of nonpayment by Customer, and/or
  - iii) at any time, without notice, if, in our sole and absolute discretion and/or judgment, Customer is in violation of any term or condition of this Agreement and related agreements.
- b) You have the right to cancel service at any time by providing written notice through email or postal mail, effective upon our receipt of the notice.
- c) Upon suspension or cancellation by Foxglove, **due to nonpayment** by Customer:
  - i) We may, in our sole discretion, remove some or all of the web page(s), coding, scripts, software, graphics, and other website elements created or provided by us from public and private access and/or the hosting server, until Customer has paid the entire outstanding balance on their account including penalties such as late payment fees, reinstatement fees, returned bank item fees, or other fees that we may have imposed on

Customer's account. The portion of website elements we remove will be limited to those items for which the unpaid balance applies. (For instance, you request that we add a contact form to your web page, but do not pay for it. We will remove only the contact form, not the entire web page.)

- d) Upon cancellation by either party, for any reason:
  - i) You shall be obligated to pay all fees and charges accrued prior to the effectiveness of such cancellation;
  - ii) Foxglove may (but is not obligated to) refund to you all pre-paid fees for services not rendered, less any discount applied for prepayment, provided that you are not in breach of any terms and conditions of your Contract and this Agreement. Refunds will not include deposits, hosting fees, domain registration fees, software fees, setup fees, or any fees paid by us to any third party on your behalf.

### **3. WEBSITE HOSTING, DOMAIN NAME REGISTRATION, AND RELATED FEES**

#### **a) Hosting and Domain Name(s) Purchased Through Third Party Providers:**

- i) You are responsible for all hosting and domain fees that are not included in the services you purchased from us.
- ii) We require that you host your website with one of our preferred providers, or other provider as agreed upon in advance by both parties.

#### **b) Hosting and Domain Names Included in Foxglove Services:**

- i) If hosting is included in the services you purchased from us, whether separately or as part of a bundled package, we will host and maintain your website at a hosting provider of our choosing at no additional cost to you.
- ii) If one or more domain name(s) are included in the services you purchased from us, the domain names will be purchased and renewed by us through a registrar of our choosing. You may specify the domain name(s) you want or we will provide recommendations to you. The domain name must be available for purchase through an ICANN-accredited registrar and must have one of the following domain extensions: .com, .org, .net. Prior approval is required for all other domain extensions (.us, .biz, .info, etc.).
- iii) The included hosting service and domain name(s) will be provided at no additional cost to you, provided you satisfy the following conditions:
  - (1) You must be subscribed to a Monthly Package or Service Plan which includes the hosting and/or domain name.
  - (2) You must maintain an active account in good standing with us. (i.e. no late payments)
  - (3) You must agree to and comply with this Terms of Service Agreement.
- iv) You acknowledge that we are resellers and not direct providers of website hosting and domain names. You also acknowledge and agree that we are not responsible for server downtime, misdirected or undeliverable email, or any other server- or domain-related errors. We will make a reasonable effort to provide support and ensure you receive service; however, we cannot make any guarantees that the hosting and domain services will be uninterrupted or error-free.

### **4. BUNDLED SERVICES**

If you purchase services that are sold together as a bundled package ("Package") (e.g., you select a Website package that includes both a domain name and a website design, as opposed to your purchasing such services separately), termination of any part of the services will result in termination of all services provided by us as part of the Package.

### **5. ACCOUNT ACCESS**

**Foxglove Website Designs** hereby agrees to skillfully and faithfully render professional services and is at all times to have complete control of the website, including hosting services and domain name(s). In addition, you may be required to provide access to one or more internet account(s) specifically associated with said website. (For example, to set up an online shopping cart.) You hereby authorize us to access said accounts. You understand that if control of and/or access to said internet accounts is denied, then we may be unable to provide services to you. Such failure to provide services shall not constitute a breach of this contract or limit your obligations under this agreement.

### **6. LICENSING - THIRD PARTY PRODUCTS AND SERVICES**

You acknowledge, understand and agree that we may use our own and/or may purchase third party licenses for products or services that are necessary for us to design and develop the Web Site. Such products may include, but are not limited to website development software, server-side applications, stock images, clip art, "back-end" applications, music, or any other copyrighted work ("Outside Content") which we deem necessary to purchase to design and develop the Web Site. You further acknowledge and understand that, unless otherwise agreed to in writing, any Outside Content used to design and develop the Web Site is owned by us and/or such third parties and cannot be transferred to you and is hereby

specifically not transferred to you and shall remain the property of us and/or such third parties. Outside Content which is owned and/or purchased by us may be used in the design and/or development of other web sites separate from yours.

## 7. BILLING AND PAYMENT TERMS

- a) Deposits:** We may require that you provide a deposit prior to providing services, which we may apply against any unpaid amounts at any time. Deposits will appear on your bills as credits, from which we will deduct our charges. Deposits will not earn interest.
- b) Due Dates:**
- i) When we require a deposit, payment of the full deposit amount is due before work will commence.
  - ii) Invoices for per-project, non-recurring and/or occasional per-request services are due with a Net Term of 15 days.
  - iii) Service Plan, Monthly Package, and other recurring invoices are due by the Pay By or Renew By date.
- c) Payment Methods:** Accepted payments methods include cash, cashier's check or money order, and credit card/PayPal. Payments sent via US Mail or delivered in person will be credited to the Client's account **upon receipt**. All fees are payable in US dollars. Personal checks will NOT be accepted unless approved in advance.
- d) Additional Services Requests:** By requesting additional services that are not listed as included in the services you purchased, the Client understands that additional fees may apply. Such services will be billed at the hourly service rate in effect on the date the service is provided.
- e) Service Rate Increases:** We reserve the right to increase service rates at any time. Client will be notified by email or postal mail at least thirty days in advance of such an increase and will have the option to continue using Foxglove Website Designs service or to cancel their service account.
- i) Any Service Plan (monthly maintenance plan) time remaining on the account will continue to be available to the Client until their billing term expires.
  - ii) If the Client purchased additional prepaid service time from the Foxglove Website Designs website, said prepaid service time will be available for the period of time advertised when the purchase was made.
- f) Refunds:** If Client cancels at any time, then deposit money is non-refundable. All other refunds will be handled on a case-by-case basis. Unless otherwise agreed in writing, prepaid service fees will not be refunded. Refunds will not be given, under any circumstance, after 30 days from any project delivery date, software sale, product sale, or service provided unless otherwise agreed to in writing by Foxglove Website Designs.
- g) Third Party Fees:** Unless otherwise agreed in writing, all third-party fees such as those for hosting, advertising, and eCommerce credit card payment processing are the Client's responsibility.
- h) Miscellaneous Fees:**
- i) **Late Payment Fee:** A one-time late payment fee of \$25 will be charged on all overdue accounts. \*Payment must be received **on or before the due date** to avoid the late payment charge.
  - ii) **Delivery Fees:** A nominal fee may apply if Client requests delivery of materials on CD and/or via postal mail.
  - iii) **Returned Bank Item Fee:** A \$35.00 fee is charged when your bank does not honor your check or electronic payment. We will attempt to notify you by email and/or phone that the payment wasn't honored before taking further action on *Failure to Pay*, however it is your responsibility to make sure your payment was made successfully.
  - iv) **Reinstatement Fee:** If your account is suspended or cancelled due to non-payment, we may charge a \$50.00 fee to reinstate your account and restore / un-archive any website files that were removed or archived by us.
- i) Full Purchase Fee (Monthly Package Accounts):** In the event the Client wishes to purchase full unlimited usage rights to the design, Foxglove Website Designs may approve such purchase after the

Client has fulfilled their minimum length of service.

**j) Failure to Pay:**

**i) Monthly Package Accounts (Packaged / Bundled Services)**

- (1) A “*Monthly Package Account*” account is an account for which the Customer has purchased services as part of a package that includes two or more of the following: website design, hosting services, domain name registration, monthly maintenance services, SEO (Search Engine Optimization), SES (Search Engine Submission), or any other service we offer as part of a package.

Failure to make any payment on or before the due date will result in website being removed from public viewing, files removed from the server, suspension and/or cancellation of service, and a reconnection fee.

**ii) Service Plan Accounts (Website Maintenance Plan Accounts)**

- (1) A “*Service Plan*” account is an account for which the Customer purchased service time at a discounted price as part of a maintenance plan (Service Plan).

Failure to renew your Service Plan by making your payment by the due date (or “renew by” date) will result in cancellation of your Service Plan or Monthly Maintenance Plan. We may choose, but are not required to, provide service on a per-request basis or allow you to sign up for one the Service Plans currently available through our website. You will no longer be eligible for previously offered plan discounts.

**iii) Service On Request Accounts and Per Project / Per Design Accounts**

- (1) A “*Service On Request*” account is an account for which service is provided upon the Customer’s request, and the Customer is not subscribed to a Service Plan or has exceeded the amount of service time available through their subscribed Service Plan.
- (2) A “*Per Project*” or “*Per Design*” account is an account for which a project or design is currently being built, for which a project quote was provided by us and accepted by you.

If you fail to make any payment on or before the due date, we may, in our sole discretion, remove from public and private access and/or the hosting server, some or all of the web page(s), coding, scripts, software, graphics, and other website elements created or provided by us, until Customer has paid the entire outstanding balance on their account including penalties such as late payment fees, reinstatement fees, returned bank item fees, or other fees that we may have imposed. The portion of website elements we remove will be limited to those items for which the unpaid balance applies. (For instance, you request that we add a contact form to your web page, but do not pay for it. We will remove only the contact form, not the entire web page.)

- k) Billing Disputes:** You have ninety (90) days to dispute any charge or payment processed by Foxglove. If you have a question concerning a charge you believe is incorrect, please contact us at [info@foxglovewebsitedesigns.com](mailto:info@foxglovewebsitedesigns.com).

**8. SERVICE PLANS (Website Maintenance Plans)**

**a) OVERVIEW**

We offer a discount on website maintenance and service fees to our Customers in the form of Service Plans. These plans are an affordable way for you to keep your website fresh and up-to-date.

**b) PLAN COVERAGE**

Service Plan time may be applied towards any of the following services:

- i) Minor website updates, including changes to text, colors, and images; the addition or removal of links; changes to keywords and descriptions for search engine optimization; changes in e-mail address setup or forwarding; changes to one or two form elements (contact forms, PayPal forms, etc.); and other similar minor work.
- ii) Support / resolution involving routine as well as unexpected changes on your server. (For example, your hosting provider upgrades their software and your website no longer functions properly due to the change.)

iii) Any training and assistance provided upon your request.

**c) COVERAGE EXCLUSIONS**

Items that are not covered by the Service Plan:

- i) Additional pages, forms, or dynamic content beyond what is provided in your contract\*  
*\*Refer to your contract for detailed information*
- ii) Major changes to the layout or color scheme of your pages
- iii) Graphic design or advanced editing of images
- iv) Switching to a different payment processor or method of accepting online payments
- v) Moving your website to another hosting provider
- vi) Generally, any major work that's beyond the scope of what's listed in your contract

Any work that's not covered by your Service Plan will be billed upon completion. In some cases, a deposit may be required.

**d) LEGACY ACCOUNTS – Accounts created by Dirt Cheap Web Designs prior to March 1<sup>st</sup>, 2008.**

**i) SERVICE PLAN RATES WILL BE HONORED**

When you signed your contract with Dirt Cheap Web Designs, a Service Plan (or “Fee for Minor Updates”) was included to offer a discount on service fees to keep your website fresh and up-to-date.

If you were signed up for an active Service Plan as of March 1<sup>st</sup>, 2008, you will continue to receive your specially discounted rate as long as you renew your Service Plan on or before the “Renew By” or “Pay By” date and your account is in good standing.

**9. THIRD PARTY PROVIDERS**

The Client understands that any services provided by third parties require a separate contract. Examples of third party providers and services include, but are not limited to:

- a)** Internet Service Provider (ISP) services, such as dial-up and high speed internet access,
- b)** Hosting services such as those provided by iPower,
- c)** Domain registration services such as those provided by GoDaddy, and
- d)** E-Commerce / Payment Processing services such as those provided by PayPal.

**10. PERFORMANCE LIABILITY**

**Foxglove Website Designs** does not warrant that the operation of Web pages will be uninterrupted or error-free. In no event will **Foxglove Website Designs** be liable to the Client or any third party for any damages, including any lost profits, lost savings or other incidental, consequential or special damages arising out of the operation of or inability to operate these Web pages or Web site.

In the event that the Client or other agent acting on the behalf of the Client accesses files and disrupts the layout or functionality of the web site, Foxglove Website Designs can work to get the web site back up and running at the regular hourly rate.

**11. PRIVACY**

We will not rent, sell, distribute, reveal, or otherwise make available any Customer information, with the exception of listing our Client's website and brief development notes in our portfolio and on our website. We may also post a small excerpt of written text from the customer's communications with us as a testimonial on our website. If you object to being listed for any reason, you should contact us immediately and we will promptly remove your information.

**12. JURISDICTION**

This Agreement shall be governed in accordance with the laws of the State of Wisconsin. All disputes under this Agreement shall be resolved by litigation in the courts of the State of Wisconsin including the federal courts therein. Each party hereby consents to the jurisdiction of such courts, agrees to accept service of process by mail, and hereby waives any jurisdictional or venue defenses otherwise available to it. Notwithstanding the foregoing, Foxglove Website Designs may pursue enforcement of intellectual property rights and the protection of confidential information in such other jurisdictions as through injunctive or other equitable relief through the courts.