fairkom Cloud Terms and Conditions

Last changed: 18 July 2017

Preamble

fairkom is an association for the promotion of medial communication and immaterial assets of the public domain, located at Badgasse 3, 6850 Dornbirn, Austria, (hereinafter referred to as 'fairkom') also offers services via the Internet. This includes, for example, e-mail, web portals with or without content management systems, synchronizable data storage devices, chat, image galleries or posting systems.

These supplementary terms complement the fairkom general terms and conditions and define, in particular, the contractual relationship between the customer and fairkom as regards the utilization of services selected by the customer that are made available via the Internet.

1. Subject Matter of the Agreement

fairkom grants the customer the right to use the service for a limited time but without restrictions as to the location (hereinafter referred to as the 'agreement'). This includes the non-exclusive and non-transferrable permission

(i) to store and manage data on the fairkom IT Infrastructure maintained on fairkom cloud servers,

(ii) to utilize the software products executed there, and

(iii) to utilize cloud apps and/or mobile apps that are provided as part of the service package selected by the customer.

2. Service

The permission granted and the services rendered by fairkom according to the agreement are referred to as the 'service package'.

2.1 The characteristics, condition and specific design of the service package selected by the customer are defined:

2.1.1 By the contractual agreement extended to fairkom cloud customers.

2.1.2 By the service package selected by the customer.

2.1.3 By the service agreement chosen by the customer, which may contain the technical specification of the software that is provided as part of the service package, as well as information regarding IT-specific resources (e.g., available storage volume, number of available functions).

2.1.4 By the performance details of the server.

2.2 fairkom expressly reserves the right to change the concrete terms and conditions as well as the performance parameters of the service package selected by the customer. As regards the contractual relationship with the customer, the version that was published on the fairkom homepage at the time the agreement was signed or at the commencement of a new payment period shall be applicable. The same applies to the performance parameters of the service package selected by the customer.

2.3 The terms and conditions as well as performance parameters of contractual relationships with the customer involving free service packages are subject to change at any time during the ongoing contract term. As a general rule, changes are communicated to the most recent e-mail address provided by the customer. The latest/most

current version of the terms and conditions, as published on the fairkom homepage, shall define the contractual relationship.

3. Concluding an Agreement

3.1 An agreement between fairkom and the customer is concluded by properly completing all steps involved in purchasing the right to utilize a service. The contractual relationship is governed by the terms and conditions provided in this document.

3.2 Due to technical constraints, fairkom is not able to determine whether the customer actually is the person he or she claims to be. For this reason, fairkom cannot guarantee the actual identity of its customers. Consequently, each customer who wishes to confirm the identity of another customer or party receiving services shall do so on their own initiative.

4. Agreement Term, Agreement Termination

4.1 The permission to utilize free service packages (e.g., GroupOffice, fairchat or ownCloud basic modules) is granted for an unlimited time. Each contractual party may terminate the agreement within a notice period of one (1) month without stating reasons for the termination.

4.2 Agreements for services that come with a fee are concluded for an indefinite period of time. The payment term (e.g., monthly, quarterly, …) shall be agreed at the time an agreement is concluded. Each party may terminate the contractual relationship without stating any reasons while observing a notice period of one (1) month before the end of the agreed payment period, and the customer shall be required to make this final payment. The prices applicable when concluding the agreement can be checked on the fairkom website at www.fairkom.eu. The agreed fee shall be paid in advance for each payment period.

4.3 In addition, the contractual parties shall be entitled to terminate the agreement for good cause without any notice period.

4.4 Serious grounds that permit fairkom to terminate the agreement with immediate effect specifically exist if the customer violates key contractual duties, in particular those relating to legal provisions (e.g., the customer solicits associations or collectives – or their methods or activities – that are being monitored by security or youth protection authorities), the customer provides fairkom with false customer data or payment information, or if the customer causes damage to one or

multiple other customers. In general, the loss of trust of one contractual party in the other party in the context of this agreement, which constitutes a continuing obligation, shall also represent serious grounds for termination with good cause.

4.5 The notification of termination and dissolution of the agreement with good cause shall be addressed to fairkom by mail or e-mail in due time; in the case of fairkom terminating the agreement, the notification will be sent to the last known e-mail address of the customer. When the customer terminates the agreement, the first and last name as well as the registered e-mail address must be provided in order for the termination to be legally valid. As regards the notification of termination, the notice period shall not commence before the other contractual party has received the notification of termination.

4.6 fairkom shall notify the customer about the imminent cancellation of the agreement and the right of fairkom to delete the data of the customer stored in the fairkom cloud no later than fourteen (14) days following termination of the agreement. fairkom shall be expressly permitted to permanently (and thus non-recoverably) delete the data of the customer stored on fairkom cloud servers at the time the agreement is terminated. fairkom shall perform this deletion regardless of the quality, condition, intrinsic value and importance this data may hold for the customer or service recipient.

4.7 fairkom shall also be entitled to permanently delete data stored by the customer if the customer is in default of payment for more than thirty (30) days. The customer acknowledges that fairkom is not required to keep the data and data contents of the customer. Therefore, fairkom advises the customer to retrieve all relevant data from the system before this agreement terminates.

4.8 If the customer terminates a service package and then changes to another service package with lower performance parameters than the one subscribed to previously, the customer shall adjust the storage volume to match the lower parameters by the date the changed agreement takes effect. If the customer fails to do so, fairkom shall be entitled to delete this data in line with these terms and conditions.

5. Registered Customers and Service Recipients

5.1 The service shall only be used by customers and the service recipients invited/named by them. A customer is a natural person identified by name, who is granted a user account and access to the service due to having signed an agreement.

5.2 fairkom collects information that is required and useful to serve as a basis for signing agreements with an interested party and thus for granting customer and user status.

5.3 Customers can also be legal persons. In this case, at the time the agreement is signed, the legal person – i.e., the customer – determines how many natural persons associated with the legal person shall be granted the right to open a user account for accessing the service.

5.4 A service recipient is a named natural person who opened their own account and obtained a service from another customer for a fee. The customer providing a service to the service recipient is a contractual partner of fairkom and a party liable to make payments to/receive bills from fairkom for utilizing a payable service consumed by the service recipient.

6. Performance Parameters

6.1 The various service types provide performance parameters as defined in the agreement. If the performance parameters defined for the customer in the agreement become exhausted (e.g., storage volume), this may result in the service being blocked from further use (e.g., data storage).

The customer may enter into a new contract with fairkom by choosing a service package that offers higher performance parameters.

6.2 The data stored on behalf of the customer shall be data of which the customer is the registered owner.

6.3 If a customer changes to a service with higher performance parameters during a payment period, and/or if the customer purchases additional services during a payment period, the proportionate fee for the remaining payment term of the original agreement shall be credited.

6.4 It is not possible to change to a service with lower performance parameters during an ongoing contract term of a payable service.

6.5 fairkom performs regular data backups. These will be used to retrieve the most recent data state in the event that technical problems occur. If files (e.g. data synchronized using ownCloud) are inadvertently deleted, the customer is generally able to restore this data autonomously within an acceptable time. If this proves technically impossible or if other data (e.g., address books) needs to be restored, the associated expenditure will be billed to the customer. There is no guarantee that data can be restored.

7. Data Security

7.1 The customer confirms and expressly accepts that fairkom shall under no circumstances be held liable for any damages to the customer that are the direct or indirect result of using third-party content, websites (including hyperlinks), products or resources (hard- and software environment) in the context of utilizing service packages. As fairkom has no control over the websites, resources and/or materials of third parties, the customer hereby expressly confirms and acknowledges that fairkom shall not be liable for direct or consequential damages suffered by the customer or for loss of customer data in connection with the use of these websites or resources of the utilized service packages. Furthermore, liability of fairkom shall be excluded in the event of any loss of data stored by the customer. The maximum liability amount for any and all potential individual warranty or compensation claims shall be equal to the last two full annual service fees.

7.2 fairkom requires access to the Internet and an adequate power supply in order to provide the services associated with the agreement. If fairkom is hindered or prevented from providing the service due to the lack of or limited access to these basic requirements, fairkom shall not be responsible for this in any manner.

7.3 fairkom ensures that the data/data contents received by fairkom shall generally not be accessed without the express written request or permission of the customer; instead, this data is merely stored in the fairkom cloud data centers. Tasks performed by system administrators to ensure ongoing operation (backups etc.) shall be excluded from the above clause. As such, fairkom cannot in any way be held responsible toward the customer or third parties as regards the contents of the data stored.

fairkom therefore also shall not be held liable under any circumstances for deletions, corrections, changes, damage, loss or the failure of the customer to save data. This express exclusion of liability shall also apply to software viruses and any other damaging computer codes, files, scripts or programs that may be contained in the stored data or are caused in the customer's end device by means of software.

7.4 The customer is solely responsible for the content of the data stored at fairkom as part of a service agreement; the customer is also generally responsible for the usage behavior himself/herself, in the same way as if he/she were storing data on his/her own hardware and software at home. Therefore, the customer must always adhere to all applicable national, international, intergovernmental and supranational

legal provisions when utilizing the contractually agreed services delivered by fairkom. Among others, the customer shall therefore in particular agree

(i) not to send spam mail or other bulk mail or unsolicited mail;

(ii) to refrain from sending or storing content that is illegal or prohibited or that is insulting, obscene, harmful to juveniles or that violates the data privacy rights of third parties;

(iii) not to create or use software viruses, worms, trojan horses or other harmful computer code, files, scripts, spy tools or programs and/or not to send or store software viruses etc. known to the customer (i.e., those the customer must be aware of);

(iv) not to perform actions that reduce or in any way interfere with the integrity or performance of fairkom or data stored by fairkom;

(v) not attempt to gain unauthorized access – in particular by assuming the identity of other users or by using false information of identification – to the data center operation of fairkom or any associated systems or networks.

Above and beyond these clauses, the customer agrees to immediately inform fairkom about any unauthorized utilization of a user account or any other known or suspected violation of data privacy/security provisions. In this event, the customer shall be obligated to take all viable measures that may help to immediately counter such data privacy/security violations.

The customer shall fully indemnify fairkom against any claims or legal action brought against fairkom by any person whomsoever, and against any claims, costs, compensation payments, direct and indirect damages, immediate and consequential damages, and consequences or future claims.