

Web Hosting and Domain Name Terms and Conditions

Version 3.5 (August 2011)

By purchasing or using Web Hosting Services and/or Domain Name(s) from Fathom Business Solutions Limited, you (the “Customer”) agree to the following terms and conditions. This document details Fathom’s responsibilities to you and your responsibilities as a Fathom customer. These terms and conditions supersede all previous terms and conditions relating to the same services. Please print this page and keep a copy safe for your records.

Fathom Business Solutions Limited (the “Host”) is a UK-registered company having a primary business address of 14 Russell Hill Road, Purley, Surrey, CR8 2LA. Ampheon (“Ampheon”) is a trading name of the Host, and any references to Ampheon shall imply the Host.

These are the definitions that apply to this agreement:

- “Acceptable Use Policy” means the Host’s policy of regulation of the manner of use of the hosting Services.
- “Contract” means the contract to host the Web Sites as defined by this agreement.
- “Host” means the provision of space in an electronic medium to enable access to the Web Sites by Internet users from around the world.
- “Price” means all of the prices as agreed at the point of purchase or renewal of the Services.
- “Renewal Date” means the date when payment is due in order for this contract to be renewed. Unless contrary arrangements have been made, the Renewal Date is every anniversary of the date of first payment.
- “Servers” means the Host’s servers and includes the Host’s entire software and hardware installation and all plant and machinery that serve it.
- “Services” means any of the hosting and / or domain name services described on the Host’s Web Site that the Customer has purchased
- “Web site” means all of the web sites of the Host or Customer as the case may be

These are the terms of this agreement:

1 Summary of Agreement

- 1.1 For the Price and subject to the terms of this agreement and to the Customer's compliance with the Acceptable Use Policy the Host hereby agrees to provide the Services.
- 1.2 Insofar as the Services constitute the registration, holding, management or renewal of a domain name, the additional provisions set out in Schedule 2 shall apply.

2 Price and Payment

- 2.1 The Price shall include:
 - 2.1.1 The total sum payable for the Services and
 - 2.1.2 any other money due to the Host under this agreement.
- 2.2 The first payment in respect of any contract shall be made through the Web Site of the Host.
- 2.3 Payment for renewed use of the Services shall not be due until the Host has submitted an invoice for the Price by post or e-mail.
- 2.4 The Price for renewal of any service will be those published on the Web Site of the Host one month before the Renewal Date.

3 Late Payment

- 3.1 The Host reserves the right to charge the Customer interest in respect of the late payment of any sums due under this agreement (both before and after judgment) at the rate of eight per cent per annum from the due date of an invoice until receipt of payment.
- 3.2 If cleared payment is not received in the Host's bank account within 7 days after the Renewal Date, the Host may suspend the Services. (The Host will use reasonable endeavours to contact the Customer by e-mail and / or by telephone before suspending the service).
- 3.3 Following any suspension of the Services, re-instatement will be provided by the Host upon request within 15 days of cleared payment, and the Host may charge the sum of £25 for re-instatement of Services.
- 3.4 If payment has not been made within 15 days of the Renewal Date, the Host may terminate this agreement and all Services forthwith and without notice.
- 3.5 If the Host terminates this agreement because the Customer has not made a payment when due or because the Customer has failed to give notice of cancellation then there will be due to the Host:

all of the Price outstanding for Services to the Renewal Date; and
the Price for one additional month to compensate the Host for the failure of the Customer to give notice;
interest as described above;

and the Customer agrees that these terms are reasonable.

4 Bandwidth and Disk Usage:

- 4.1 The Customer agrees that bandwidth and disk usage shall not exceed those specified on the Host's Web Site for the Service bought.
- 4.2 If the Customer's usage exceeds the amount specified on the Host's Web Site for the Service bought, then the Host may in his discretion:
 - 4.2.1 increase the Price to the sum appropriate to the Customer's actual usage, or
 - 4.2.2 if in the opinion of the Host the Customer's usage puts at risk the continued service provision to other customers, the Host may terminate service to the Customer, or offer an alternative solution such as a dedicated server.
- 4.3 The Host shall give the Customer 7 days' notice before taking any of the actions specified above.

5 Duration and Termination

Unless terminated under the provisions of this paragraph, this agreement shall continue for one year from the commencement date. It may otherwise be terminated:

- 5.1 by notice in writing by the Customer, effective upon the next Renewal Date; or
- 5.2 by 30 days' notice in writing by the Host or
- 5.3 immediately by the Host if the Customer fails to pay any sum due within 15 days after the relevant Renewal date; or
- 5.4 immediately by either party if the other commits any material breach of any term of this agreement and which in the case of a breach capable of being remedied is not remedied within 30 days of a written request to remedy it; or
- 5.5 immediately by either party if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration or bankruptcy order (otherwise than for the purpose of an amalgamation or reconstruction).
- 5.6 Any termination of this agreement by this paragraph shall be without prejudice to any other rights or remedies to which a party may be entitled.

If not so terminated, a new contract shall come into effect for a new period commencing on the Renewal Date and the terms of that renewed agreement shall be those current on our Web Site at the date of renewal.

6 No Refund

The Customer is not entitled to a refund of any fees paid if the Host terminates this agreement because the Customer has failed to comply with the AUP, or if the Customer cancels their agreement before the Renewal Date.

7 Confidentiality

- 7.1 The parties are aware that in the course of the Contract they will each have access to and be entrusted with information in respect of the business and operation of the other

and their dealings, transactions and affairs, all of which information is or may be confidential.

- 7.2 The parties hereby undertake for themselves and every employee or sub-contractor whose services they may use both during and after completion of the Contract that they will not divulge to any person whatever or otherwise make use of (and shall use their best endeavours to prevent the publication or disclosure of) any trade secret or confidential information.
- 7.3 Both the Host and the Customer hereby undertake to the other to make all relevant employees agents and sub-contractors aware of the confidentiality of information and the provisions of this paragraph and to take all such steps as shall from time to time be necessary to ensure compliance by its employees agents and sub-contractors with these provisions.
- 7.4 Each of the Host and the Customer hereby undertakes one to the other that for the period of 12 months following completion of the Contract they will not directly or by an agent or otherwise and whether for themselves or for the benefit of any other person induce or endeavour to induce any officer or employee of the other to leave his employment.
- 7.5 The provisions of the last previous sub paragraph shall not apply to one of them if the other becomes subject to bankruptcy, receivership or liquidation proceedings.

8 Third Party Software Rights

- 8.1 The Customer undertakes to obtain all necessary licences to operate the Web Site and to indemnify the Host against all costs claims and expenses arising from any failure to do so.
- 8.2 The Host undertakes to obtain all necessary licences required to provide the Services and to indemnify the Customer against all costs claims and expenses arising from any failure to do so

9 Acceptable Use Policy (“AUP”)

- 9.1 The Customer agrees to comply with the AUP set out in Schedule 1 as modified from time to time and notified to the Customer.
- 9.2 The Host will give the Customer 3 month’s notice of any change to the AUP.
- 9.3 The Host agrees that the AUP shall not be altered in such a way as to change any fundamental provision of this agreement nor to impose on the Customer an unreasonable or unduly expensive obligation.
- 9.4 If in the absolute discretion of the Host the Host believes the Customer has violated the Host’s AUP, the Host shall notify the Customer of this by email. The Host may suspend the Services to the Customer pending further investigation.
- 9.5 If within 12 months of any violation, the Customer commits a second violation whether in a similar or different way then the Host will terminate part or all of the Services without notice.
- 9.6 In any case the Host may suspend all the Services without notice if the Host reasonably believe the circumstances justify this to protect themselves or others or to comply with any law. In making the decision to suspend the Host are not obliged to consider the cost or damage to the Customer that may be caused by suspension of the Services to

the Customer.

- 9.7 Money will not be refunded to the Customer in respect of any period during which Services are suspended.

10 System and Network Security

- 10.1 The Customer agrees that he will not, and will not allow any other person to, violate or attempt to violate any aspect of the security of the systems of the Host.
- 10.2 The Customer understands that any such violation is unlawful in many jurisdictions and that any contravention of law may result in criminal prosecution.
- 10.3 Examples of violations are:
- 10.3.1 accessing data unlawfully or without consent;
 - 10.3.2 attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures;
 - 10.3.3 attempting to interfere with service to any user, host or network, including, without limitation, via means of overloading, "flooding", "mail bombing" or "crashing";
 - 10.3.4 forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting;
 - 10.3.5 taking any action in order to obtain services to which the Customer is not entitled.
- 10.4 The Host does not warrant that the Servers shall be completely secure from hacking attempts, Denial of Service attempts, virus propagation or other situations beyond the Host's control that may result in a loss of service and loss of data, on the provision that the Host shall make all reasonable efforts to secure the Servers from such events such as but not limited to ensuring a strong firewall policy and keeping security patches up to date. Furthermore, the Host does not indemnify against such events.

11 The Customer Indemnifies Host

The Customer agrees to indemnify the Host against all costs claims and expenses arising directly or indirectly from:

- 11.1 the Customer's failure to comply with the law of any country;
- 11.2 the posting by the Customer of any content on the Customer's web site;
- 11.3 a breach of the intellectual property rights of any person;
- 11.4 the posting by any third party with or without the Customer's knowledge of any material on the Customer's web site;
- 11.5 any action taken or omitted by any third party in relation to the Customer's web site;
- 11.6 any use of the Customer's web site for a purpose forbidden by this agreement;
- 11.7 the actions of the Customer or any person authorised by him at the premises of the Host;

- 11.8 provided that the Host:
- 11.8.1 gives notice to the Customer of any infringement immediately he becomes aware of it;
 - 11.8.2 gives the Customer the sole conduct of the defence to any claim and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the claim except upon the express instructions of the Customer; and
 - 11.8.3 act in accordance with the reasonable instructions of the Customer and give to the Customer whatever assistance he reasonably requires in respect of the conduct of his defence.
- 11.9 The Customer shall reimburse the Host his reasonable costs incurred in complying with the above provisions and for the purpose of this paragraph the Customer agree that the cost of the Host's management and technical time is properly recoverable and can reasonably be valued at £100 per hour without further proof.

12 Customer Contact Details

The Customer undertakes to provide to the Host the Customer's current postal address, email address, fax, and telephone numbers as often as they are changed.

13 Interruption to the Service

- 13.1 If it is necessary for the Host to interrupt the Services and the Host reasonably believes the prospective duration of down-time does not justify telling the Customer in advance, then he need not do so.
- 13.2 If notice of prospective down-time is given by the Host he shall in his discretion give whatever period of notice he believes is reasonable.
- 13.3 The Customer acknowledges that the Services may also be interrupted for reasons beyond the control of the Host.
- 13.4 The Customer agrees that the Host shall not be liable to the Customer in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Customer of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill as a result of interruption to the Services.
- 13.5 The Customer understands that email is not a guaranteed medium of communication and that the Host is not liable for any loss whether foreseeable or not as a result of non-delivery of any email addressed to the Customer.

14 Privacy Policy Exception

The Customer agrees that the Host may disclose the Customer's information including assigned IP numbers, account history, account use, etc. to any judicial or proper legal authority who makes a written request without further consent or notification to the Customer.

15 Host's Disclaimer

- 15.1 The Host does not represent that the Services are suitable for the Customer's use.
- 15.2 The Customer acknowledges that in entering into this agreement he has not relied on any representation or other information not contained in this agreement.
- 15.3 The Host accepts no responsibility for:
 - 15.3.1 any firewall provision not specified in the Services;
 - 15.3.2 any malfunction in any software;
 - 15.3.3 any aspect whatever of the content or functionality of the Customer's web site.

16 Limitation of Liability

- 16.1 The following provisions set out the Host's entire liability (including any liability for the acts and omissions of its employees) to the Customer in respect of:
 - 16.1.1 any breach of its contractual obligations arising under this agreement; and
 - 16.1.2 any representation statement or tortious act or omission including negligence arising under or in connection with this agreement

and the Customer's attention is drawn to these provisions.
- 16.2 Any act or omission on the part of the Host falling within this agreement shall be known as an 'Event of Default'.
- 16.3 The Host's entire liability in respect of any Event of Default shall be limited to the lesser of: a sum equal to the total Price paid or payable by the Customer for this Contract for one year and the sum of £5,000.
- 16.4 The Host shall not be liable to the Customer in respect of any Event of Default for loss of profits, goodwill, or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Host had been advised of the possibility of the Customer incurring the same.
- 16.5 If a number of Events of Default give rise to substantially the same loss then they shall be regarded as giving rise to only one claim under this agreement.
- 16.6 The Customer hereby agrees to give the Host not less than 24 hours in which to remedy any Event of Default hereunder.
- 16.7 Nothing in this paragraph shall confer any right or remedy upon the Customer to which he would not otherwise be legally entitled.
- 16.8 The Host shall not be liable to the Customer for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of this agreement.

17 No Duty to Monitor

The Host is under no obligation to monitor or record the activity of any customer for any purpose, nor does the Host assume any responsibility through its AUP or otherwise to monitor or police Internet-related activities.

18 Force Majeure

- 18.1 Neither party shall be liable for any breach of its obligations resulting from causes beyond its reasonable control including strikes of its own employees.
- 18.2 Each of the parties agrees to give notice immediately to the other upon becoming aware of an event of force majeure such notice to contain details of the circumstances giving rise to it.
- 18.3 If a default due to force majeure shall continue for more than 6 weeks then the party not in default shall be entitled to terminate this agreement. Neither party shall have any liability to the other in respect of the termination of this agreement as a result of force majeure.

19 Successors to the Agreement

- 19.1 The benefit and obligations of this agreement shall be binding on any successor in title.
- 19.2 Neither party shall be entitled to assign this agreement nor all or any of their rights and obligations hereunder without the prior written consent of the other.
- 19.3 The Customer shall not permit any part of the benefit of this agreement to be used by any other person except a person to whom the Web Sites have been sold or transferred.

20 Contract is Divisible

Each sub paragraph in this agreement is independent and severable from each other paragraph and enforceable accordingly. If any restriction is unenforceable for any reason but would be enforceable if part of the wording were deleted, it will apply with such deletions as may be necessary to make it valid and enforceable.

21 Notices

Any notice to be served on either of the parties by the other shall be sent by first class post or pre paid recorded delivery or by facsimile and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile to the correct number.

22 Headings

The headings in this document are for reference only.

23 Dispute Resolution

In the event of a dispute arising out of or in connection with this Contract and which has not been resolved following discussions and negotiations between a person or persons appointed or authorised by the Customer and the Host then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.

24 Waiver

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Contract.

25 Jurisdiction

This Contract shall be interpreted according to the laws of England.

Schedule 1
The Acceptable Use Policy (AUP)

- 1 The following material may not be stored on the Host's servers:
 - 1.1 Copyright works to which the Customer does not own or have rights to use;
 - 1.2 Commercial audio, video or music files to which the Customer does not own or have rights to use;
 - 1.3 any material which violates the law of any established jurisdiction;
 - 1.4 unlicensed software;
 - 1.5 software which assists in or promotes: emulators, phreaking, hacking, password cracking, IP spoofing;
 - 1.6 links to any of the material specified in this paragraph;
 - 1.7 Pornographic material;
 - 1.8 any material promoting discrimination or animosity to any person on grounds of gender, race or colour.
- 2 The Customer may not share, let or sub-license space on the Servers without prior written Agreement from the host. (Except as an authorised re-seller).
- 3 The Customer may not:
 - 3.1 use or permit others to use the Host's network to transmit "spam" or unsolicited commercial email ("UCE")
 - 3.2 publish or permit publication of, sites or information that are advertised by UCE from other networks. If the Customer does so, the Host may terminate the Services.
- 4 The following activities are prohibited on shared server facilities without prior written permission from the Host. If the Customer wishes to be able to engage in these activities, a dedicated server must be ordered. Prohibited activities are:
 - 4.1 Sites with banners, graphics or cgi scripts running from their domain being used on other domains. (e.g., hot-linking, image-sucking, load-spreading);
 - 4.2 Sites with very large graphic archives or galleries;
 - 4.3 Sites offering download archives or large media distribution (>5MB), such as .zip, .tar, .sit, .ra, .avi, .mov, .asf and .GZ;
 - 4.4 Sites running large or busy chat rooms;
 - 4.5 Sites using more than 5% of system resources.

The Host will decide in his absolute discretion what constitutes a violation of this provision.
- 5 E-mailings of more than 2,000 sends per hour are prohibited without prior written permission from the Host. Customers are asked to send all mass mailings between 12.00 pm and 9.00 am GMT.
- 6 Customers are asked to report any abuse to: support@fathomgroup.co.uk

Schedule 2
Additional paragraphs forming part of the contract so far as the
Services include domain name management

The terms contained in this schedule apply when you instruct us to register, renew, transfer in or transfer out a domain name. You agree to be bound by them.

1 Your Undertakings

- 1.1 You acknowledge that it is your sole responsibility to supply accurate and reliable contact details and name of registrant as well as name servers. You undertake to supply such accurate, complete full records and as are required by any relevant registrar and/or registry and to ensure that such details are kept current and complete at all times.
- 1.2 You warrant that to the best of your knowledge neither the registration nor the use of the domain name infringes the legal rights of any third party and that you are authorised to apply for or renew the domain name.
- 1.3 The registration of a domain name and its continued use is subject (in addition to these terms and conditions) to your continued compliance with the terms and conditions of the relevant registrar and/or registry. You agree to be bound by such terms and conditions, including all rules and policies. Such documents are available from the relevant registrar and/or registry's Web site, or from us upon request. They include, without limitation:

Domains: .co.uk, .org.uk, .me.uk, .ltd.uk, .plc.uk, .sch.uk, .net.uk
Registry: Nominet UK
Web site: <http://www.nominet.org.uk/>

Domains: .com, .org, .net, .info, .biz
Registrar: Tucows Inc.
Web site: <http://www.opensrs.org/>

Domains: .gb.com, .gb.net, .uk.com, .uk.net, eu.com
Registry: CentralNic Ltd.
Web site: <http://www.centralnic.com/>

Domains: .eu
Registry: The European Registry of Internet Domain Names
Web site: <http://www.eurid.eu/>

2 Domain Name Disputes

- 2.1 You acknowledge that:
 - 2.1.1 The registration or use of a domain name does not necessarily entitle the registrant to use that name in a particular context.
 - 2.1.2 Your agreement with a relevant registrar and/or registry may provide that the registrar and/or registry may take action which might include:

the suspension or revocation of your application for a domain name or
the registration of a domain name allocated to you to a third party

2.1.3 We will have no responsibility or involvement in relation to any dispute.

2.2 You now therefore agree to indemnify us against all costs, claims and expenses, including the reasonable cost of management time, in respect of any event, act or omission we may be required to take by any third party with jurisdiction, including a domain name registrar and/or registry.

3 Action on Your Default

We may in our discretion cancel, take ownership, dispose of and/or refuse to register, release or renew any domain name:

if our fees in respect of that domain name are overdue
if we are required to do so by regulation or competent authority or
if it is otherwise permitted under these terms and conditions

4 Domain Name Registration

4.1 We will attempt to register a domain name on your instruction and to notify you of the outcome.

4.2 We do not warrant or guarantee that any domain name will be registered or is capable of registration.

4.3 We are not liable to you in the event that you act upon an anticipated registration before you have received confirmation from us that the name has been registered to you.

4.4 Immediately you receive from us notice of registration, you should check the registration particulars and, the event of error, inform us immediately.

5 Domain Name Renewal

5.1 When your domain name is due for renewal, we will:

5.1.1 notify you by the most recently provided e-mail address of any renewal notice received by us and seek payment from you;

5.1.2 use our reasonable endeavours to renew domain names for which you have paid by the renewal date.

5.2 We will not renew a domain name (so you are solely responsible for renewing) for which we do not receive a renewal notice. Without limitation, we may not receive a renewal notice:

5.2.1 because we are not named as the billing contact;

5.2.2 because the relevant registrar and/or registry sends the renewal invoices direct to you;

5.2.3 if the domain name has been transferred by you to another Internet Service Provider.

5.3 For the avoidance of doubt, you acknowledge that:

5.3.1 you are ultimately responsible for the renewing of a domain name and

- 5.3.2 that we will not renew domain names if you have not paid us and
- 5.3.3 that we can not be held liable for your failure to renew a domain name, whether or not you received our notification.

6 Domain Name Transfer In

- 6.1 If we have to transfer your domain name from another Internet Service Provider to ourselves, you understand that:
 - 6.1.1 we will charge for this service and
 - 6.1.2 the transfer may take from 5 to 60 days
- 6.2 You warrant that you have the full and complete authority of the legal owner of the domain name and you agree to indemnify us against all costs, awards and damages resulting from the transfer that may be brought about by a third party.

7 Domain Name Transfer Out

If we receive a request from you or the registrant to transfer a domain name from ourselves to another Internet Service Provider or to change the name servers listed for the domain name:

- 7.1 we will effect the transfer or name server change; and
- 7.2 (if the request originates from the registrant) we will provide you (in our sole discretion where possible) with 48 hours notice by e-mail before commencing the transfer or name server change. But you acknowledge that the registrant is able to effect a transfer direct with the relevant registrar and/or registry in certain circumstances and that we may not be able to provide you notice of the transfer.
- 7.3 in the case of a transfer, we will remove ourselves as the billing, technical or other contact;
- 7.4 any Web sites at the domain name may become inaccessible and
- 7.5 e-mail and Web forwarding services will be cancelled and e-mail may be lost;
- 7.6 all other services you have purchased from us for use with the domain name will be cancelled;
- 7.7 you will not be entitled to any refund for any used period of any service and

You now agree that we shall be released from all obligations, claims, liabilities or demands arising out of or in relation to that domain name.

8 Liability

- 8.1 We are not liable for the actions of any registrar and/or registry.
- 8.2 In no circumstances will we be liable to you for any costs, claims, loss of profit or loss of business suffered by you on account of a failure to obtain, renew or transfer in a domain name, or loss of a domain name.

9 Indemnity

You agree to indemnify us and the relevant registrar and/or registry against all claims, damages,

and costs (including reasonable legal fees) directly or indirectly related to your registration or use of any domain name.