

Communications Service Delivery Regulations

by ATM S.A. Joint stock company with its registered office in Warsaw (04-186) at ul. Grochowska 21 A (hereinafter ATM)

§ 1 Definitions

The following terms and abbreviations used in the Regulations or Services Delivery Agreement (hereinafter referred to as the "Agreement") shall have the meaning given below:

- *Party / Parties* shall mean ATM and the Customer, also referred to as the Subscriber, as referred to herein individually or jointly, respectively.
- *Third party* shall mean a natural person or legal person which is not a Party to the Agreement.
- *Force Majeure* shall mean an external event of an extraordinary nature which cannot be predicted and prevented despite exercising due care, such as a natural disaster, war, general strike, act of government which cannot be opposed by an individual, etc.
- *Communications infrastructure* shall mean communications devices other than termination devices, lines, ducts, poles, towers, masts, cables, wires, and accessories used to provide communications.
- *Communications device* shall mean electrical, optical or electronic devices designed to provide transmission, and used in communications (the term communications also includes IP layer services — e.g. routers and switches), also referred to as Transmission device.
- *Communications (digital) link* shall mean the set of transmission media for the transmission of (digital) signal of a fixed bitstream.
- *Backup link* shall mean a communications link whose task involves the transmission of data in the event of failure of the major lines, on the basis of which ATM provides services. Transmission switching into the backup link is performed automatically, i.e. without user interference.
- *Communications network* shall mean the communications devices and links which are set up and connected in such a manner as to enable the transfer of signals between specific network end-points using copper wires, radio waves, optic fibers, or by other means utilizing electromagnetic energy.
- *Services* shall mean all works performed by ATM pursuant to the Agreement.
- *Settlement period* shall mean the period set forth in the Agreement for which the Contractor issues invoices for the service delivery.
- *Fault* shall mean a damage to the system which results in the decrease in the functionality (including reduction of reliability) of a performed service. Transmission switching into the backup link is deemed a fault.
- *Failure* shall mean a damage to the system which disables the service delivery. Primary link downtime is not deemed a failure if the backup link is operational.
- *Incident* shall mean the occurrence of a Fault or a Failure which is the subject matter of a service report. If the duration of an Incident extends over two settlement periods, it shall be assigned to the later period.
- *Response time* shall mean the time which elapses from the moment a fault (failure) is reported to the moment ATM commences diagnostic and repair activities in order to restore the original functionality of the service.
- *Repair time* shall mean the time which elapses from the moment a fault (failure) is reported to the moment the complete original functionality of the service is restored.
- *Units – 1 Mbps* shall mean 1,000 (a thousand) kbps, that is 1,000,000 (million) bps (bits per second) – bitstream unit for digital links and IP. For services provided by means of links in ATM technology, 1 Mbps of the traffic is defined as 2 604.2 cps (shaping cisco 1104 kbps). If, due to the bandwidth, cps value is expressed by a number, fraction, it should be rounded to the whole number, in accordance with the principles of rounding numbers (0.00 – 0.49.. -> down, 0.50 – 0.99.. -> up).

§ 2 Scope of communications services provided by ATM

1. Pursuant hereto, ATM provides services for Subscribers who shall not be regarded as consumers.
2. Detailed description of services and other data referring thereto are set forth in the Agreement. These Regulations and the service price list shall constitute an integral part of the Agreement.
3. ATM enables the Subscriber to use communications services offered by other service providers with whom ATM concluded separate agreements.
4. ATM shall not interfere in the content of data transmitted by the Subscriber and his users, and it shall not be liable for any infringements of the law arising as a result of transmitting data via ATM communications network by the Customer or any third parties.

§ 3

Service delivery agreement

1. A Party which applies for entering into the agreement for the service delivery by means of devices constituting ATM property, while indicating the location in which those devices shall be installed, shall prove he/she is duly entitled to conduct the installation of such devices.
2. In the event the activation day is not the first day of a calendar month, the Agreement is regarded as concluded for the total period of the term of the Agreement and the number of days which have elapsed from the activation date to the last day of the month in which the activation has been conducted. If services provided do not cover complete months, the subscription fee for such an incomplete month is calculated as a one thirtieth part of a monthly fee for each day of the month.
3. The service delivery commences on the day of the activation of the service regarded as the technical installation of devices constituting ATM property as well as the launching of the service upon signing by both Parties the protocol confirming the installation of such devices and appropriate operation of the service, with a reservation that the installation of devices provided by ATM shall be performed should a given service provide for such installation. The activation date shall be set forth in the Agreement. In the event of an unjustified lack of participation of the Subscriber in the activation of the service or refusal to sign the protocol by the Subscriber, ATM shall be entitled to perform a unilateral activation of the service and sign the protocol. In the event the Subscriber reports in writing the justified objections towards the activation of the service and their recognition by ATM, ATM shall indicate a subsequent deadline for the activation of the service.
4. If a given service does not provide for its activation, the service shall be provided from the day set forth in the Agreement.
5. Should there exist no written statement of the Subscriber regarding the non-extension of the Agreement, submitted at least 30 days prior to the lapse of the first and each subsequent term of the Agreement concluded for the definite period of time, the Agreement shall be automatically extended, i.e. without the need to perform any actions by the Parties to the Agreement, for a subsequent term, whose length corresponds to the latest term, unless set forth otherwise in the Agreement.
6. The Customer shall arrange the inspection of installations and devices constituting ATM property for the authorized ATM representatives.
7. Each Party to the Agreement shall notify the other Party about the introduction of any changes into the data set forth in the Agreement.

§ 3a

Quality of Services, provision of Internet access services

1. In the course of provision of Internet access services, ATM treats all data transmission in the same manner, without discrimination, limitation or intervention into their contents, which does not prevent the application of appropriate means for traffic management.
2. ATM informs that the means for management of traffic in its network which it applies, in particular in situations tied to the need to maintain the integrity and safety of the network, of services provided through the network, terminal units of users, and also, in the event of need to enact a court verdict or an administrative decision, to ensure compliance with EU and national legislation, and in the event of network breakdown and network overload, may result in reduction of quality of the Internet access services, which in particular means reduction of speed, increase of delay or variance of delay and the occurrence of packages loss or inaccessibility of certain resources.
3. The means for management of traffic, applied by ATM, do not cause a breach of privacy of the end users and do not compromise their personal data.
4. Limits on data volume, reductions of speed, other service quality parameters and actions undertaken by the end users themselves can influence the Internet access services by slowing down the upload or download of data, or limiting the accessibility or quality of using applications and services. The accessibility and quality of using the content, application and services via the Internet access service depends on the technical requirements and parameters specified by suppliers of said content, applications and services, as well as on limitations of these suppliers, which in consequence may mean that certain content, applications, services or their functionalities may be inaccessible due to delays or the Internet connection speed being lower than required by the suppliers of content, applications or services.
5. The influence of data volume limit, speed and other parameters on the Internet access services, and in particular on the use of content, applications and services are specified in the Agreement.
6. With respect to the Internet access service, ATM, depending on technology and offer, declares the following parameters in the Agreement: a) minimum speed – the minimum speed which ATM undertakes to ensure under the Internet access service; b) speed usually available – speed that the Customer may expect in most cases of using the service; c) maximum speed – the maximum speed which ATM undertakes to ensure under the Internet access service; d) declared speed – speed indicated by ATM in its advertising. ATM reserves the right to declare quality parameters other than the above. The declared quality parameters are available only within the ATM network.
7. Significant deviations from the speeds indicated in section 6 may limit or hinder the fulfillment of right to obtain access to information and content, to their distribution, and also to use selected applications and services and making them available.

8. In the event of any constant or regularly recurrent significant discrepancies between the actual performance of the Internet access service with respect to speed or other quality parameters, and the values declared by ATM, the Customer is entitled to file a complaint pursuant to § 8 of the Regulations. In the case indicated in the preceding sentence, ATM shall be liable pursuant to § 7 of the Regulations, unless the Agreement provides otherwise.
9. Detailed information regarding the Internet access service are available at the website www.atman.pl

§ 4

Scope of maintenance services

1. ATM shall provide a 24 hour access to the Customer Service (NOC). Contact data for NOC are available at www.atman.pl
2. NOC shall provide all information concerning the maintenance services.
3. Detailed maintenance service response times regarding the removal of failures caused by ATM have been set forth in the Agreement.

§ 5

Devices

1. For the purposes of performance under the Agreement, ATM may enable the Customer to use devices constituting ATM property (property for the purposes of these Regulations shall mean any other legal claim entitling ATM to a specific scope of using the devices).
2. The Customer is charged with the costs of damage or loss of the device only if the damage or loss have arisen as a consequence of actions or omissions by the Customer.
3. ATM is entitled to conduct periodic inspections of the proper operation of the devices, with no less than 3 day's notice delivered to the Customer.
4. ATM has the right and duty to maintain and upgrade the communications network, which might be the cause of downtime of services or decrease in their quality, the times and duration of the maintenance and upgrade works being set forth in the Agreement. Technical conditions permitting, ATM shall carry out the network maintenance and upgrade works during hours of the lowest intensity of using the services. Maintenance and upgrade activities of the communications network are not regarded as a failure or a fault for the purposes of these Regulations and Agreement.
5. Upon the expiration or termination of the Agreement, the Customer shall enable the disassembly and immediate return of all devices and installations constituting ATM property in the condition not worse than the one resulting from proper operation of such devices.
6. The devices provided to the Subscriber for the purposes of service delivery shall be and remain ATM property. In the event of retaining, upon the expiration or termination of the Agreement, of devices and thus not fulfilling the duty of their immediate delivery, the Customer shall pay contractual indemnity amounting to 1% of the gross purchase value of these devices for every day of retaining or delaying the return of the devices.

§ 6

Payment for services

1. The Customer shall pay the total amount of the agreed-upon remuneration for the services delivered in the form of a subscription fee or other fees under the Agreement. The Customer is not entitled to deduct or retain any amount of this remuneration or devices to which ATM holds a legal claim.
2. The subscription fee is calculated, among others, on the basis of the following parameters and benchmarks of the provided service:
 - a) the guaranteed minimum signaling bitrate within the network;
 - b) volume of traffic generated within ATM network by the user;
 - c) fees for the delivery of the service consisting in the making of voice calls by means of processing the signals thereof;
 - d) total time of calls to the selected destinations under the service with a minutes package available within the minimum fee;
 - e) volume of physical space or type of technical devices in the case of the collocation service;
 - f) access to the defined "virtual" services specified in the offer (elements of hosting services)
3. Invoices shall be sent by post to the Customer's address set forth in the Agreement or delivered in another legally allowable manner, or in the manner agreed upon with the Customer.
4. If a service provides for the activation fee, it shall be paid along with the subscription fee for the first settlement period.
5. The invoice shall stipulate the fees for services, in accordance with prices in force in the given settlement period, for which they have been calculated, in advance of the given settlement period, unless the Agreement sets forth otherwise.
6. Along with the invoice, ATM shall deliver the list of provided services.
7. In the issued invoices, ATM is allowed to invoice fees for services delivered in the previous settlement periods, should they not be already invoiced.
8. Fees for services and other fees as well as detailed principles of their calculation have been set forth in the price list and the Agreement.

9. In individual cases, ATM may make the conclusion of the Agreement conditional upon the payment of a deposit. Terms of payment of the deposit shall in such cases be set forth in the Agreement.

§ 7

ATM liability and terms of payment of contractual indemnities

1. ATM shall be liable for non-performance or inadequate performance of services, unless this shall be the result of Customer's actions, non-observance by the Customer of the provisions of the law, provisions of the Regulations or Agreement, or causing non-performance or inadequate performance of services cannot be attributable to ATM.
2. ATM shall not be liable for non-performance or inadequate performance of services in the case when the service provision during the execution by the Customer of calls in communications networks of other service providers referred to in Section 2, subsection 3 is not possible.
3. Contractual indemnities set forth in the Agreement constituting the partial return of the subscription fee shall apply, if the downtime occurred by ATM fault and the Customer has lodged a complaint regarding the service downtime.
4. Payment of contractual indemnities shall be carried out by their appropriation to the future ATM fees for services provided to the Subscriber, unless the Subscriber submits a letter requesting ATM to transfer the money to his bank account indicated by the Subscriber.
5. ATM is not liable for the benefits lost by the Subscriber.
6. In accordance with the principles set forth in the Agreement, the Parties may regulate the scope of liability resulting from non-performance or inadequate performance of communications services on separate terms.

§ 8

Complaint procedure

1. The Subscriber may file a complaint regarding the non-performance or improper performance of the Agreement, not providing the speed for data download or upload indicated in the Agreement and not observing other parameters of the Internet access service, not meeting, due to ATM's fault the designated date for conclusion of the Agreement, the date for commencement of service provision or incorrect calculation of receivables for the provision of telecommunication services. Such complaint should be sent in writing to ATM's offices or to e-mail address stated at the ATM's website or in the Agreement; or should be made verbally for the record, in writing or by telephone, or with the use of other means for long-distance communication indicated by ATM, provided technical possibilities do not hamper this.
2. The complaint may be lodged within 12 months from the last day of the settlement period during which the interruption in the communications service provisioning ended, or from the day on which the service was inadequately performed or was to be performed, or from the day of delivery of the invoice containing improper calculation of fees for telecommunication services. A complaint lodged after that deadline shall be left without investigation, of which ATM shall notify the subscriber immediately. The date of lodging the complaint is defined as the day on which ATM receives the information containing the complaint.
3. A complaint shall include:
 - a) full name and address of residence or the registered office of the Subscriber (the Complaining Party);
 - b) specification of the subject matter of the complaint and the period complained about;
 - c) presentation of circumstances that justify the complaint;
 - d) Agreement number assigned to the Complaining Party to which the complaint applies, the Subscriber's record number or the network end-point address;
 - e) date of entering into the agreement and the time of the communications service provisioning set forth therein – in the case of a complaint regarding the failure to meet the time of the service provisioning by ATM fault;
 - f) amount of compensation or any other liabilities resulting from the Agreement or from provisions of the law – should the Complaining Party demand their payment;
 - g) bank account number or address appropriate for the payment of compensation or any other liability, or the request for their set off against future payments;
 - h) signature of the Complaining Party – should the complaint be lodged in writing.
4. If the complaint is lodged in person by the Subscriber, in writing or verbally for the record, the authorized person is obliged to immediately confirm its receipt. If the complaint is lodged in writing by a letter, by telephone or in electronic form using remote communication means, ATM confirms its receipt within 14 days from the date of its lodging, unless it replies to the complaint before the lapse of that deadline. Confirmation of complaint receipt states the date of its lodging and the name, address and the correct telephone number of the ATM unit.
5. If the complaint lodged verbally or in writing to ATM does not meet the conditions set forth in section 3 above, the authorized person representing ATM who receives the complaint shall be obliged – if he/she deems this necessary for proper investigation of the complaint – to immediately inform the subscriber of the need to supplement it. A non-supplemented complaint shall be left without examination.
6. In the case where the complaint lodged in a manner other than indicated in section 5 above does not meet the conditions set forth in section 3 above, ATM, if it deems this necessary for proper investigation of the complaint, immediately calls the Subscriber to supplement it, stating a deadline not shorter than 7 days and the scope of that supplement, and informs that if the complaint is not supplemented within the set time, it shall be left without examination. Upon ineffective lapse of the designated date, the complaint shall be left without examination.

7. ATM is obliged to investigate the complaint within 30 days from the date it is lodged. The investigation of complaint is defined as a reply to the complaint sent by ATM to the Subscriber before the lapse of that deadline. In the event the complaint is not investigated within 30 days from the date of its lodging, it is deemed accepted.
8. Reply to the complaint shall include:
 - a) name of the ATM unit investigating the complaint,
 - b) information on the date of lodging the complaint,
 - c) decision on the acknowledgement or refusal to acknowledge the complaint,
 - d) if compensation or refund of other liability is awarded – specification of the amount and the date for its payment or refund, or indication that the amount of compensation or other liability shall be set off against future payments,
 - e) information on the exhaustion of the complaint procedure and on the right to pursue claims under court proceedings,
 - f) data identifying the authorized employee of ATM, including first name, family name and position held.
9. If the acknowledgement of the complaint is refused in whole or in part, the reply to the complaint should also include factual and legal justification and should be delivered to the Subscriber by registered letter – in case where the reply is given in writing.
10. ATM confirms the receipt of complaint and replies to it in writing.
11. Upon the approval of the Subscriber, given in the complaint, in the Communications Service Delivery Agreement or in a separate statement, ATM confirms the receipt of complaint and replies to it in electronic form, to the given address of electronic mail or using another means for electronic communication, indicated by the Subscriber.
12. If the complaint is lodged in electronic form, using electronic communication means, ATM confirms the receipt of complaint and replies to it in electronic form, to the given address of electronic mail or using another means for electronic communication, indicated by the Subscriber. If the Subscriber does not indicate an electronic mail address or another means for electronic communication, ATM confirms the receipt of complaint and replies to it to the address of electronic mail from which the complaint was sent, or using the means for electronic communication which was used by the Subscriber to lodge the complaint.
13. If the reply to the complaint sent by ATM was not delivered to the Subscriber, upon the Subscriber's demand ATM shall immediately re-send that reply, its duplicate or copy. The Subscriber, in agreement with the Operator, determines the manner, form and shape in which the reply to the complaint, its duplicate or copy is to be delivered. At the request of the Subscriber, in the event of refusal to acknowledge the complaint in whole or in part, ATM re-sends the reply to the complaint, its duplicate or copy by registered mail, regardless of the form in which the original reply to the complaint had been sent. ATM shall not be obliged to re-send the reply to the complaint, its duplicate or copy to the Subscriber, if the circumstances of the case clearly indicate that the response to the complaint had been delivered to the Subscriber.

§ 9

Service delivery limitation

1. ATM is allowed to stop, suspend or limit the service delivery to the Customer in the cases indicated in the Agreement, as well as in relation to dissemination of viruses, non-ordered information, taking actions aimed at gaining unauthorized access to computer systems, data or software, or introduction of changes, deleting or adding records to data belonging to any third parties without their consent; invasion of privacy or infringement on the personal goods of another person using the service; using services for illegal purposes or contrary to good customs; provision of access in the illegal manner, e.g. to defamatory, racist, pornographic content etc.; using the service by means of communications not compliant with requirements stipulated in the legislation in force.
2. During the period within which the service delivery is stopped, suspended or limited by ATM, the service fee shall be calculated and due by the Subscriber in full amount, in accordance with the Agreement and the price list.
3. ATM is entitled to charge the Customer for the subsequent start of the service delivery with a separate fee amounting to the subscription fee.

§ 10

Personal data protection

1. The Parties hereby agree that for duties resulting from the essence of the provided services listed in the Agreement, all actions carried out by ATM to the benefit of the Customer shall not comprise processing of personal data as defined in Article 7 item 2 of the Act of August 29, 1997 on the protection of personal data, and therefore the entity solely entitled and liable as regards the scope resulting from the regulation of this Act shall be the Customer who shall solely decide about the purposes and means of personal data processing.
2. The Customer shall place the devices constituting the subject matter of the Agreement in the location and in the manner compliant with security requirements related to the personal data processing set forth by the Act of August 29, 1997 on the protection of personal data and ordinances of the Minister of Internal Affairs and Administration of April 29, 2004 on documentation of the personal data processing as well as technical and organizational requirements to be met by computer equipment and systems used for personal data processing (Journal of Laws, No. 100, item 1024), whereas the Customer being the personal data administrator who decides about the purposes and means of personal data processing as defined in this Act shall observe the security requirements in force in ATM without reservation.
3. The Parties agree that the Customer, for the purposes of provided services, has not entrusted ATM with personal data processing.

§ 11
Special instances of agreement termination

1. The Agreement concluded for the definite period of time may be terminated, except for other instances stipulated in the Regulations, Agreement or the price list, only:
 - a) by agreement of the Parties executed in writing,
 - b) if the Party demanding the premature termination of the Agreement concluded for the definite period of time pays the other Party an indemnity amounting to the total amount of remuneration to be paid until the lapse of the term of the Agreement concluded for the definite period of time, should the Agreement don't be prematurely terminated.
 - c) in instances set forth during the promotional campaigns.
2. ATM is allowed to immediately terminate the Agreement with the Customer if:
 - a) authority or requirements for the service delivery by ATM shall be revoked, limited, shall expire or change by way of the administrative decision or the change of legislation,
 - b) the change of requirements for the service delivery not attributable to ATM shall permanently disable the service delivery for technical reasons,
 - c) the Customer shall not pay at maturity the fees due to ATM for the services delivered,
 - d) the Customer shall use communications devices and network constituting ATM property in the manner contrary to the Agreement, threatening the relevant interests of the third parties or ATM,
 - e) the Customer shall use without ATM permission the devices provided to him by ATM for the delivery of communications services,
 - f) the Customer violates the provisions of the Agreement or Regulations and shall not cure such violation within 7 days from the date of the request,
 - g) the Customer provides untrue data in the Agreement,
3. In instances set forth in subsection 2, letters c-g, the Customer shall pay ATM indemnity in the amount calculated in line with the procedure and in accordance with subsection 1 item b. In the case the Agreement is concluded for the indefinite period of time, the indemnity shall comprise the total amount of subscription fees for the three months prior to the termination of the Agreement (or other fees for those three months, should payment for a given service be made in the form of such fees and not the subscription fee).
4. The Customer is allowed to immediately terminate the Agreement with ATM if:
 - a) ATM shall grossly and culpably violate the Agreement and not cure the violation irrespective of the request thereto,
 - b) there shall occur a downtime in the service delivery lasting at least 3 days, for reasons attributable to ATM.
5. Statement about the termination of the Agreement shall be made in writing, whereas such a statement shall be sent by a registered letter to the address indicated in the Agreement by the other Party, unless this address has been changed and the Parties have been notified about this fact. Statement about Agreement termination has to include the factual and official grounds (reason) for the termination.
6. Upon the date of termination or expiration of the Agreement, ATM shall stop the service delivery to the Subscriber, disconnect the devices used by the Subscriber under the Agreement, and is entitled to disassemble and remove them at any time.

§ 12
Assignment

The Customer, without a written consent of ATM, is not entitled to assign his rights and obligations under the Agreement to any third party.

§ 13
Final Provisions

1. Without prejudice to the provisions of the law related to the reporting of complaints regarding communications services, any amendments to the Agreement as well as any notices and reports referred to in the Agreement or in the Regulations shall be made in writing, or are null and void.
2. In case of any conflicts between the provisions of the Agreement and the Regulations, provisions of the Agreement shall prevail.
3. These Regulations shall become effective on January 21, 2017.