



# Terms and Conditions of the Provision of the Atman EcoSerwer service

## § 1

### General provisions

- 1.1 These terms and conditions (hereinafter: "Terms and Conditions") contain general conditions of the service consisting in a paid usage of servers dedicated to the exclusive use of the customer purchasing the service (hereinafter: the "Service").
- 1.2 The Service shall be provided by ATM joint stock company with its registered office in Warsaw at ul. Grochowska 21a, entered into the National Court Register - Register of Entrepreneurs of the District Court for the Capital City of Warsaw, 13<sup>th</sup> Commercial Division of the National Court Register under the number KRS 0000034947 (hereinafter: "ATM").
- 1.3 The Service is addressed exclusively to entrepreneurs, i.e. entities entered in registers stipulated by law and having Tax Identification Numbers (NIP) and Statistical Identification Numbers (REGON).
- 1.4 The entrepreneur using the Service (hereinafter: the "User") agrees to the content of the Terms and Conditions and agrees to comply with them.
- 1.5 The use of the Service shall be paid in accordance with the price list published on the Atman website (hereinafter: "Price List"). A change of the Price List shall not constitute an amendment to the Terms and Conditions.
- 1.6 Technical parameters of the Service are specified in the document entitled "Technical Parameters and SLA for the EcoSerwer Service" (hereinafter: "SLA") published on the Atman website. An amendment to SLA shall not constitute an amendment to the Terms and Conditions.
- 1.7 ATM guarantees top quality of the Service. The User shall be entitled to contractual penalties, specified in the "Technical Parameters and SLA for the EcoSerwer Service" document, for ATM's failure to provide the guaranteed quality of the Service.
- 1.8 The User is aware of the fact that it has no physical access to the server used by the User as part of the Service. The User only has remote access to the server and is the sole administrator of this server.

## § 2

### Conclusion and termination of the agreement

- 2.1 A condition for the use of the Service is registration, consisting in the provision of true information on the User, in particular the company name, address, Tax Identification Number (NIP), and configuration of the Service in accordance with the service purchase procedure specified in online registration forms.
- 2.2 In the case of a change in the information provided at registration, the User shall immediately update such information. All correspondence sent to the User to the last given address shall be deemed to be delivered properly.
- 2.3 ATM may request from the User documents confirming the data provided by the User at registration or subsequently updated data. The User shall send the documents indicated by ATM on the date and in the form specified in a request addressed to the User.
- 2.4 The agreement on the provision of the service is concluded for a definite or indefinite period, depending on the content of the declaration submitted by the User during the Service purchase procedure.
- 2.5 The frequency of payment of fees for the service shall be determined by the User during the Service purchase procedure, by selecting available options ("Billing Period").
- 2.6 ATM shall issue in advance for the individual billing periods a pro-forma invoice with a 14-day due date counted from the date of invoice issuance. The User shall pay amounts due by using the online payment system indicated by ATM or by a bank transfer to a bank account indicated in the pro-forma invoice. After the User makes a payment, ATM shall issue and provide to the User a VAT invoice for the purchased Service.
- 2.7 The payment date shall be the date funds are credited to the ATM account.
- 2.8 The Service shall be activated after the User makes a payment for the first billing period, on the date specified during the Service purchase procedure.
- 2.9 The agreement shall be concluded after the User submits a declaration of acceptance of the Terms and Conditions, makes a payment for the first billing period and ATM configures the Service.

### ATM S.A.

Grochowska 21a, 04-186 Warszawa, Poland

tel: +48 22 51 56 100, fax: +48 22 51 56 600, info@Atman.eu



- 2.10 In the case of Users who use third party software provided by ATM, general terms and conditions of using such software shall constitute an appendix to the Terms and Conditions (hereinafter: "Terms of Use"), accepted by the User at the purchase of the Service. An amendment to the Terms of Use shall not constitute an amendment to these Terms and Conditions.
- 2.11 If the User fails to make a payment for the Service within the period specified in the pro-forma invoice, the Service shall be disabled. User data shall be stored in the system for 14 days after the Service is disabled in order to allow re-activation of the Service. In relation to agreements on services concluded for a definite period, the provision of § 2 clause 2.14 letter b) shall apply accordingly.
- 2.12 If the agreement is concluded for an indefinite period, the agreement shall be terminated as of the end of the current billing period if the User fails to pay a pro-forma invoice covering the amount due for the provision of the service for the next billing period.
- 2.13 After the expiry of the agreement concluded for a definite period, the agreement shall be automatically extended for another period of time specified by the User at the time of the purchase of the Service, unless the party intending to make changes related to the term of the agreement, or to terminate it, informs the other party (by e-mail) of this fact 14 days before the expiry of the term of the agreement concluded for a definite period.
- 2.14 The agreement concluded for a definite period may be terminated, subject to clauses 2.15 and 2.16:
  - a) upon mutual agreement of the parties, or
  - b) in the case of a payment by the party requesting its termination to the other party of damages in the amount of total remuneration in respect of fees that would have been payable until the end of the agreement concluded for a definite period, if the agreement had not been terminated early.
- 2.15 ATM shall have the right to terminate the agreement without notice if:
  - a) the User fails to pay fees owed to ATM for the provision of the Service, within the period specified in the pro-forma invoice;
  - b) the User violates the provisions of these Terms and Conditions.
- 2.16 The User shall have the right to terminate the agreement without notice if:
  - a) the Service is not activated within a specified period, despite the fact that the User fulfilled all obligations under the Terms and Conditions related to the service activation procedure,
  - b) ATM violates the provisions of the Terms and Conditions,
  - c) there is a continuous break in the provision of the Service lasting more than 5 days due to the fault of ATM.
- 2.17 VAT invoices shall be delivered to the User solely in an electronic form by sending to the e-mail address indicated by the User the information on the availability of an invoice in the portal made available by ATM to the Service customers. By accepting these Terms and Conditions, the User agrees to being delivered invoices electronically.
- 2.18 Statements of agreement termination with notice, agreement termination without notice or a lack of will to continue the agreement may be submitted in writing or by electronic mail to the e-mail address specified by ATM. The User may withdraw from the Service also by submitting a statement to the EcoSerwer Customer Service Office.

### § 3 Liability

- 3.1 The User shall be fully responsible for the Content which shall be understood as all content, information, files or applications published by the User on the server made available to it as part of the Service (hereinafter: "Content") and for the manner of using the server made available to it as part of the Service as well for the truthfulness of declarations submitted in accordance with clause 3.3. below.
- 3.2 The User undertakes to exercise due diligence in order for third parties using functionalities and services offered by the User with the use of the server made available as part of the Service to comply with the provisions of the Terms and Conditions contained in clause 3.3. below, concerning the User.
- 3.3 The User represents that the Content published by the User on the server:
  - a) does not infringe third parties' rights, including copyrights, rights to trademarks, trade secret or moral rights;
  - b) does not violate applicable laws and generally accepted social norms;
  - c) will not be offensive and will not contain threats directed at third parties;
  - d) will not contain racist content, incentives to join a sect or content of a pornographic nature;
  - e) does not contain viruses or other computer software aimed at causing harm, capturing data, hacking or causing destabilization of computer systems or networks;
  - f) will not contain any tools facilitating or enabling file sharing (peer to peer);



- g) will not be used for sending spam;
  - h) will not contain applications used for attacking or hacking other servers, using such techniques as: port scanning, sniffing, spoofing;
  - i) will not contain direct or indirect links or any redirects to the Content:
    - which is not permitted under the Terms and Conditions;
    - in respect of which the User has no right to post links or redirects.
- 3.4 ATM reserves the right to remove or block the Content that violates the Terms and Conditions, with the use of any necessary technical means, not excluding the disconnection of the entire server.
- 3.5 ATM reserves the right to use tools that will secure against violation of the provisions of the Terms and Conditions.
- 3.6 ATM shall not be responsible for technical problems or technical limitations occurring in the computer software installed on the server used by the User (firewalls – blockades, incorrect configuration, antivirus software and other) which prevent the User from using the Service.
- 3.7 ATM shall not be liable for:
- a) damage caused by improper use by the User of the Service or a use that is inconsistent with the provisions of the Terms and Conditions;
  - b) any problems in the functioning of the Service, if they occurred as a result of events that ATM could not predict or prevent while exercising due diligence, in particular in the case of problems in the functioning of the Service related to the quality of services provided by telecommunications operators, a loss of passwords assigned to the User and random force majeure events;
  - c) the Content published by Users or third parties on servers made available as part of the Service;
  - d) loss of data due to a failure of the hardware, system or other circumstances beyond the control of ATM.
  - e) changes made by the User in the IPMI console and consequences of such changes
  - f) damage created as a result of the User making available a remote IPMI console, server access passwords or user portal to third parties
  - g) any problems resulting from the installation of hardware virtualization systems which was not performed by ATM
  - h) consequences of changes made by the User in the BIOS or FIRMWARE configuration of devices made available to the User.
- 3.8 Contractual penalties available to the User from ATM for a failure in the provision of services are set forth in the "Technical Parameters and SLA for the EcoServer Service" document and they will be deducted from fees for the Service payable by the User for the next billing period, and in the event of agreement termination – they will be paid on the basis of a debit note.
- 3.9 Contractual penalties specified in the "Technical Parameters and SLA for the EcoServer Service" document represent the total extent of ATM liability for non-performance or improper performance of the Service. ATM liability for loss of profit and consequential damages is contractually excluded.
- 3.10 The Parties shall not be liable for non-performance or improper performance of the Service due to force majeure.

#### § 4

##### User's obligations

- 4.1 The User undertakes to inform ATM within 24 hours of a possible loss of passwords assigned to the User in order to use the Service.
- 4.2 If a third party brings against ATM any claims related to the operation of the server by the User, the User shall take all steps necessary to indemnify ATM against such claims. In particular, the User undertakes to promptly provide explanations to the person making the claim, provide legal assistance to ATM, join the proceedings together with or in place of ATM and release ATM of all claims as well as reimburse ATM for incurred legal fees and other expenses related to the dispute.

#### § 5

##### ATM obligations

- 5.1 ATM undertakes to provide to the User tools and documentation for the Service via websites dedicated to the Service, in particular:
  - a) documentation;
  - b) tools and interfaces that describe the current status of the server infrastructure belonging to ATM;
  - c) tools allowing remote monitoring and management of the server, in particular a restart thereof;



- d) contact details of the technical department, contact details concerning additionally paid services and interventions.
  - e) information concerning capped services used, in particular data transfer cap.
- 5.2 If ATM discovers that the server made available to the User was hacked, the User will receive an e-mail stating that a reinstallation procedure should be launched in order to maintain the integrity of the server and the entire platform. The User may perform the above procedure after all its data are saved. ATM reserves the right to terminate the connection between the server and the Internet in anticipation of a reinstallation of the server. ATM shall not deal with the transfer of data from the hacked system to a new system. Such an operation must be performed by the User. ATM undertakes to install a new system and its intervention shall be limited to this action. ATM shall not be responsible for making backup copies of data from the hacked system into a new system.
- 5.3 ATM shall remove faults and respond to technical issues reported by the User as per the SLA terms and conditions relevant for a specific service.
- 5.4 Failures and technical issues shall be reported to the Atman EcoServer Customer Service Centre. Contact details and the procedure for failure reporting are provided on [eco.atman.pl](http://eco.atman.pl).
- 5.5 For services provided via networks of other operators ATM has measurement and network traffic management procedures that involve cooperation with infrastructure providers and internal procedures, in particular this is data transmission and infrastructure management as well as the management of equipment necessary for the provision of services, including specifically Internet access services, which prevent link saturation that would prevent the Customer from fully utilizing the declared link capacity. In case of link saturation that prevents the Customer from fully utilizing the declared link capacity, a link failure may occur.
- 5.6 ATM shall not introduce any restrictions with respect to access or use of services or applications delivered under this Agreement, subject to actions, which ATM is entitled to undertake in response to network security and integrity violations.
- 5.7 When a network or service security or integrity violation is identified, ATM in consultation with the Customer shall immediately undertake any measures necessary to minimize potential damage and restore the correct operation of services, in particular activities specified in the Telecommunications Act dated the 16th of July 2004 (Journal of Laws No. 171 item 1800, as amended - hereinafter the "Act"). ATM shall notify the Customer by e-mail on any network or service security measures that are taking place as well as on any threats related to services provided. If the measures provided for by the Act have been undertaken, ATM shall not be liable for non-provision or improper provision of telecommunications services to the extent resulting from such measures.
- 5.8 Services provided hereunder do not have properties of voice services and as such they do not provide emergency call functionality, in particular 112 calls, and ATM does not gather any terminal location data.
- 5.9 If due to provision of the Services, ATM provides to the Customer any equipment necessary for proper provision of the Services, such equipment shall remain the property of ATM through the entire term of the Agreement and shall be uninstalled by ATM, at ATM's cost, upon termination or expiry of the Agreement."

## § 6

### Complaints

- 6.1 The User may lodge a complaint regarding the non-performance or inadequate performance of the Agreement, the failure to meet, by ATM fault, the date for entering into the agreement or the start date of the communications service provisioning, or regarding the improper calculation of fees for telecommunication services, by sending it in written form to the ATM office or by e-mail to [eco-sales@atman.pl](mailto:eco-sales@atman.pl), or by lodging it verbally for the record, in writing or by telephone or using other remote communication means indicated by ATM, provided that there are no technical obstacles.
- 6.2 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 User immediately. The date of lodging the complaint is defined as the day on which ATM receives the information containing the complaint.
- 6.3 A complaint shall include:
- a) full name and address of residence or the registered office of the User (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 User'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.
- 6.4 If the complaint is lodged in person by the User, 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.
- 6.5 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 User of the need to supplement it. A non-supplemented complaint shall be left without examination.
- 6.6 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 User 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.
- 6.7 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 User 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.
- 6.8 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
- 6.9 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 User by registered letter – in case where the reply is given in writing.
- 6.10 ATM confirms the receipt of complaint and replies to it in writing.
- 6.11 Upon the approval of the User, 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 User.
- 6.12 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 User. If the User 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 User to lodge the complaint.
- 6.13 If the reply to the complaint sent by ATM was not delivered to the User, upon the User's demand ATM shall immediately re-send that reply, its duplicate or copy. The User, 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 User, 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 User, if the circumstances of the case clearly indicate that the response to the complaint had been delivered to the User.

## § 7

### Final provisions

- 7.1 ATM reserves the right to amend the Terms and Conditions to the extent permitted by applicable laws. Amendments shall enter into force 14 days after they are published on the website.
- 7.2 If the Terms and Conditions are amended for reasons other than those arising from the obligations imposed by law, the User shall have the right not to accept the amendments made, and in such a case the User shall notify the same to ATM in writing. In such a case the agreement shall be terminated at the end of the billing period in which ATM received from the User the information on a lack of acceptance of amendments to the Terms and Conditions.
- 7.3 The law applicable to all legal relations arising from these Terms and Conditions shall be the Polish law. All disputes shall be settled by the court having jurisdiction over the registered office of ATM.
- 7.4 The User may not transfer to third parties the rights and obligations under the agreement without the consent of ATM.
- 7.5 ATM shall have the right to disclose the User's name in advertising and marketing materials and in reference lists of ATM.
- 7.6 Any matters not regulated by the Terms and Conditions shall be governed by relevant provisions of the law.
- 7.7 The present document is a translation of the Polish version of the Terms and Conditions, which constitutes the only binding version of the agreement. In the event of any discrepancies, the Polish version shall prevail.

version 4.3.