

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 Communications Service 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.

§ 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 signalling 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. ATM shall investigate the service complaint in writing.
2. In the event the complaint is not investigated within 30 days from the moment of its correct reporting, it is deemed accepted.
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;
 - 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 – 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 appropriation for future payments;
 - h) signature of the Complaining Party – should the complaint be lodged in writing.
4. The detailed complaint procedure has been set forth by the appropriate Minister of Communications, among others available at www.atman.pl.

§ 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

4. 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.
5. 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.
6. 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 July 1, 2007.