

GUIDELINES FOR MINIMUM CONTENT TO BE INCLUDED IN ELECTRONIC COMMUNICATIONS CONTRACTS

I. Framework and purpose

ICP-ANACOM is the competent body to monitor fulfilment of the provisions of Law no. 5/2004 of 10 February – the Electronic Communications Law (ECL).

Pursuant to point n) of paragraph 1 of article 6 of the Statutes of ICP-ANACOM, approved by Decree Law no. 309/2001 of 7 December, this authority has the power to “oversee the application and monitoring of compliance with applicable laws, regulations and technical requirements applicable in the scope of its responsibilities (...)”.

Under points b) and d) of paragraph 4 of article 5 of the Electronic Communications Law, ICP-ANACOM is responsible for ensuring a high level of protection for consumers in their dealings with companies providing electronic communications networks and services and for promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services.

ICP-ANACOM hereby issues the present guidelines on the minimum level of detail for information which must be included in one-sided standard contracts with the aim of creating an environment in which operators may quickly and effectively fulfil the provisions of the law while simultaneously ensuring consumer protection in electronic communications contracts and improving the quality of available information.

Clear, unambiguous contractual clauses will allow subscribers and users to make the most of their contractual rights with service providers and will also ensure greater transparency in electronic communications services provision.

The present Guidelines focus on three service categories:

- Publicly available telephone service;
- Electronic communications services in general; and
- Television distribution services in particular.

ICP-ANACOM is entitled to impose rules and to promote recommendations to any of these types of services, entailing the operation of each service and aiming at consumer protection. This possibility of giving orders and establishing recommendations is provided for in point g) of article 9 of the Statutes of ICP-ANACOM.

Pursuant to point j) of paragraph 1 of article 27 of Law no. 5/2004, of 10 February, companies providing electronic communications networks and services may be subject in the pursue of their activity to consumer protection rules specific to the electronic communications sector, being incumbent upon ICP-ANACOM to define such rules, taking due account of public access to services, and of compliance with the principles of non-discrimination, proportionality and transparency.

ICP-ANACOM, within the scope of the definition of these rules, hereby establishes the present Guidelines, aiming:

- To render the contents of each point of paragraph 1 of article 48 of Law no. 5/2004, of 10 February, which state the elements that must be comprised in electronic communications contracts, explicit and concrete; and

- To specify aspects which must be included in contracts for the provision of electronic communications services other than telephone services.

Some recommendations are also included, concerning the layout of contracts and other issues that while not compulsory, may nonetheless be comprised in the contract for increased transparency purposes regarding the relationship between the service provider and the customer. This is the case as regards information on maintenance services, methods to pursue dispute settlement proceedings and conditions for billing.

II. General Considerations

Law no. 5/2004, of 10 February does not require that electronic communications contracts be made in writing, such contracts being thus subject to the principle of agreement or to freedom of form.

These contracts may thus be concluded through any form, either written or verbal. In all cases, they must include the minimum compulsory particulars and, when concluded through customer subscription to general contractual clauses pre-defined by providing companies, they must be submitted to ICP-ANACOM for approval.

Contracts must be written using concise, clear and straightforward language and be easy for non-specialized readers to understand.

Information required under other applicable laws must be included in contracts, namely the General Contractual Clauses regime approved by Decree-Law no. 446/85 of 25 October, as amended by Decree-Law no. 220/95 of 31 August, by Law 67/98 of 26 October (Personal Data Protection Act), by Law no. 41/2004 of 18 August (personal data handling and privacy protection in the electronic communications sector), by Law no. 24/96 of 31 July (applicable consumer protection regime) and by Decree-Law no. 143/2001 of 26 April (consumer protection for contracts signed remotely and at the address).

Layout

When creating the contract, particular care must be taken with regard to its overall layout so that none of its clauses are misinterpreted by a typical contractual participant, at the risk of being voided from the contract under the General Contractual Clauses regime.

Thus, in order to ensure the contract's legibility, ICP-ANACOM hereby *recommends* that:

- The font size used is equivalent to "Arial 9" with dark characters printed over a light background.

Aiming to ensure that the consumer does actually become acquainted with the contract clauses, prior to signing it, and taking into account that, under point d) of article 8 of the General Contractual Clauses regime, all contractual clauses inserted after the signature of any party are considered void, ICP-ANACOM hereby *recommends* that:

- the customer signature area appears immediately below the contract's general and specific conditions, or if this is not the case, that the customer signature is preceded by an explicit statement such as "I hereby acknowledge and fully accept the general usage conditions on the reverse side of this document, next to the signature area of this contract".

III. Minimum content to be included in contracts for publicly available telephone services (mobile or at a fixed location)

1. Particulars required under Article 48, paragraph 1, of the Electronic Communications Law

Pursuant to paragraph 1 of article 48 of Law no. 5/2004 of 10 February, companies providing connection or access services to the public telephone network must conclude a contract with their customers in which the following mandatory particulars must be included:

- Service provider identity and address;
- Services provided, levels of quality of service supplied and required time for start-up connections;
- Types of maintenance services provided;
- Pricing specifications and means of obtaining up-to-date information on all applicable pricing and maintenance fees;
- Period of validity of the contract, conditions for service and contract renewal, suspension and termination;
- Subscriber compensation or reimbursement systems for non-compliance with levels of quality provided for in the contract;
- Methods to pursue dispute settlement proceedings pursuant to article 107 of Law no. 5/2004 of 10 February;
- Conditions for the provision of a detailed billing;
- Specific subscriber requests or refusal concerning the inclusion of personal data in directories and directory enquiry services, involving transmission to third parties or otherwise, pursuant to legislation on personal data protection.

This information must also be included in contracts between consumers and companies providing electronic communications services other than those supplying connection or access to the public telephone network (paragraph 2 of the aforementioned article 48).

Under paragraph 3 of article 48 of the Electronic Communications Law, where a company amends the aforementioned contractual conditions it must notify subscribers of the proposed modification, by appropriate means and with a minimum advance notice of one month, while at the same time informing subscribers of their right to terminate the contract without penalty in the event the new terms are not accepted, within the time limit specified in the contract.

Contracts from companies specified in article 48 of Law no. 5/2004 must include information on each of the points referred to in point 1 of this measure, although such information may vary from service to service and from company to company.

Within the scope of the definition of rules for consumer protection specific to the communications sector, mentioned in point j) of paragraph 1 of article 27 of Law no. 5/2004, of 10 February, ICP-ANACOM has decided to render explicit and concrete in these Guidelines the contents of each point of article 48 of Law no. 5/2004, of 10 February.

When service providers consider the information required for a given particular to be excessively long or detailed (for example, levels of quality, maintenance services provided or pricing), the contract may make reference to another document issued by the service provider with information on the subject in lieu of presenting all this information in the contract. Such documents constitute appendices to the contract, of which they are an integral part and thus must be supplied together with the contract's clauses for purposes of complete transparency.

A) Service provider identity and address

This requirement aims to provide identification of the service provider and a postal address for correspondence.

In this context, the provisions of article 171 of the Portuguese Companies Code (*Código das Sociedades Comerciais*) *must* be complied with, pursuant to which companies must clearly specify their business name, company type, headquarters, the commercial registry office where the company is registered, the company's corresponding registration number and references to company liquidation proceedings (where appropriate) in all contracts.

For purposes of increased transparency, ICP-ANACOM *recommends* that service providers include also their telephone number (customer service), email address and website (where appropriate) in contracts.

In connection with this, it is also important to note that the contract *must* contain a clause specifying the communication and notification method(s) between the parties in cases where applicable laws and regulations do not specify special means.

It is also useful, and thus *recommended* that the contract states that, by mutual agreement between the parties, addresses shown in the contract constitute legal addresses for summons and notifications purposes, and that any changes thereto must be notified in writing.

B) Services provided, service levels of quality supplied and required time for start-up connections

a. Services provided

The contract *must* specify the services provided. The following are included in this particular:

- Scope of the publicly available telephone service, with a description of the services provided (ability to make and receive domestic and international calls and to access emergency services; additional services and service facilities subscribed at the moment the contract is signed).
- Designation of services included under the subscription cost, where appropriate.
- Conditions under which the company may provide the service – the contract must inform whether the service is available at the customer's area, or whether the provision thereof, at a given location, is subject to the prior fulfilment of technical conditions necessary to the service provision. Should such conditions be fulfilled, the contract shall inform the customer of the method for requesting reimbursement of any costs incurred and for ending the contract, in case the service may not be provided. If there are no conditions to fulfil, it is not necessary to include this information in the contract.
- Potential restrictions resulting from the service in terms of the subscriber's ability to access other services/features (for example, inability to access the Internet when engaging a given telephone service provision, inability to make preset calls for certain types of numbers, regarding the provision of the telephone service at a fixed location, in the indirect access modality).
- Information on coverage of services, even if only by reference to a location whereat the user may obtain update information on service coverage and provision. Where it is necessary to carry out connectivity tests to assess whether the service is available at the client's area, such information shall be provided in contracts.

- Conditions for accessing and using the service – way in which the service will be provided.

b. Levels of quality of service supplied

The contract *must* establish the obligation upon the service provider to provide regular and uninterrupted service.

The contract *must* clearly set the levels of quality which the service provider undertakes to uphold with its customers, i.e. the minimum (target) service levels of quality to which the customer is entitled, non-compliance with which determines the payment of compensation or reimbursement.

Given that service providers have voiced uncertainties with regard to parameters concerning which levels of quality should be set, ICP-ANACOM *suggests* some parameters in Appendix I. This does not preclude service providers from including additional indicators which they may deem relevant, nor does it rule out the possibility of ICP-ANACOM eventually instituting specific parameters of quality under the terms of article 40 of the Electronic Communications Law, for the purpose of publishing and providing end users with comparable, clear, comprehensive and up-to-date information on quality of service.

In the event that the service provider does not wish to provide or otherwise undertake to uphold any level of quality of service, this must be clearly stated in the contract.

c. Required time for start-up connection

The contract *must* specify the maximum amount of time in which the service provider will make the initial service connection.

In this regard, ICP-ANACOM *suggests* that service providers measure parameter a) in Appendix I.

C) Types of maintenance services offered

The contract *must* specify the maintenance services provided by the operator as well as the parties' obligations in this regard.

As far as maintenance services are concerned, the contract *must* include the obligation on the part of the company providing the service to ensure the repair of faults and to maintain and repair the infrastructures and equipment it owns or uses to provide the service.

In this matter, it is also *recommended* that the contract provides for:

- Obligation of the company to agree with the subscriber on the date and amount of time needed for repairs whenever access the place of installation is necessary for these repairs;
- Customer service information for reporting faults and terms of use (means of reporting faults, hours of operation and costs of communications made for reporting purposes...)
- Minimum level of quality provided in terms of fault repair time. In this regard, it is recommended that service providers measure parameter c) in Appendix I.
- Maximum period of time following which, and in case faults have not been repaired, the service provider undertakes to contact the customer to provide information thereto on the reported situation.

D) Pricing specifications and means of obtaining up-to-date information on all applicable pricing and maintenance fees

This information must provide end users with a means of determining how service fees will be billed and collected, along with orientation on how to obtain up-to-date information on applicable service rates. To this end, the contract *must* include the following information with regard to pricing:

- Type and levels of prices applicable to the service in question;
- Payment methods for services or information in bills concerning such modalities;
- Installation or reinstallation cost for the services under consideration, where appropriate;
- Minimum monthly (or other) payment, where appropriate;
- Maintenance fees, where appropriate;
- Equipment rental fees, where appropriate;
- Conditions for granting discounts and credit, where appropriate;
- Peak versus off-peak hours, where appropriate, and respective costs;
- Place and method for obtaining up-to-date pricing information;
- Service disconnection fees, where appropriate, breaking down costs for restoring pre-installation conditions.

The tariff applicable to the subscribed service, in force on the date the contract is signed, *must* be annexed to the list of clauses.

E) Period of validity of the contract, conditions for service and contract renewal, suspension and termination

The contract *must* specify conditions for its period of validity, renewal and termination, such as:

- Period of validity of the contract;
- Minimum advance notice for contract termination or rescission by either party;
- Grounds for termination of the contract by the parties;
- Terms and conditions for renewal of contract;
- Terms and conditions for contract suspension and termination, including the company's obligation to restore the conditions previously existent at the customer's premises, where appropriate.
- Stipulation that the service provision shall not be suspended without an appropriate advance notice, except for unforeseeable circumstances or force majeure.

It is also *recommended* that the contract states that clauses on contract alteration and termination are without prejudice to the application of special rules for cases of contract alteration and termination by reasons of portability, pre-selection and local loop unbundling.

In order to ensure to customers, in the event of termination of the contract, that engaged services are effectively disconnected/deactivated, ICP-ANACOM *suggests* that service providers measure parameter d) in Appendix I.

As regards the situation of service suspension due to non-payment, the contract *must* provide for a written notice to the subscriber, ten days ahead of the date on which the suspension is to

take place, providing information on the reason for suspension and available courses of action to avoid suspension and to restore the service, being incumbent upon the service provider to prove that this notice was sent. The contract must state the means used to convey this notice to the customer.

The ten-day notice requirement does not apply to prepaid telephone services. In this case the contract *must* establish a method to make the customer aware with sufficient lead-time that his/her account balance is approaching "0" and that its corresponding service will soon be disconnected if credit is not added to the account.

The applicable regime for contractual changes *must* also be included in the contract, specifying the following information:

- The subscriber shall be notified of contractual changes at least one month ahead of date they take effect;
- Method for notification;
- Right of the subscriber to cancel the contract without penalty in case the contractual change is not accepted, including the time limit and method for communicating this termination to the service provider.

If the contract in question involves remote services and uses remote communication methods (contracts signed remotely), or if it is proposed and completed at the subscriber's residence without a specific prior order from the subscriber (contracts signed at the address), the contract *must* specify the subscriber's right to cancel the contract within a fourteen-day time limit from the date the contract was signed, pursuant to Decree-Law no. 143/2001 of 26 April, and moreover shall it state that this right is exercised by means of a registered letter with acknowledgment of receipt within this time limit communicating to the service provider the subscriber's will to cancel the contract.

Contracts providing for a loyalty period shall include the following elements:

- a) Justification for the loyalty period, concerning the granting of quid pro quo or of benefits to the customer, namely for equipment subsidizing, costs of acquiring customers or activating the service, or discounts engaged under contract;
- b) The duration of the loyalty period;
- c) In case the quid pro quo consists of a blocked equipment, indication of the cost for unblocking;
- d) Indication of simple and swift means available to the customer to know the date of expiry of the loyalty period and the amount due for early termination of the contract;
- e) Indication of the means to calculate the amount due by the customer in case of early termination of the contract; and
- f) A clause that specifies that in case the customer chooses to pay the value of benefits initially granted, at the end of the loyalty period or in case of early termination of the contract, he/she is entitled to have the equipment unblocked for the amount indicated initially on the contract, and no additional amount may be required therefrom.

F) Subscriber compensation or reimbursement systems for non-compliance with levels of quality provided for in the contract

Contracts *must* provide for the payment of customer compensation or reimbursement in case of non-compliance with levels of quality set in the contract, without prejudice to the right of subscribers to claim for damages.

In the event of service interruption/suspension, ICP-ANACOM *suggests* that customer reimbursement be specified in the amount calculated based on the subscription cost and proportional to the percentage of monthly hours of service interruption/suspension, without prejudice to additional compensation which may apply. As regards non-subscription services, the reimbursement amount may be calculated using the average consumption of the last 3 months.

G) Method to pursue the dispute settlement proceedings pursuant to article 107 of Law no. 5/2004 of 10 February

The contract *must* clearly define the method by which end users may pursue the dispute settlement proceedings.

With regard to this matter, it is *recommended* that the contract comprises the following information:

- The claim must be submitted to the company providing the service;
- Available channels for submitting claims;
- Time limit for submitting claims;
- Maximum time limit for replying to claims; in this regard, it is suggested that service providers measure parameter e) in Appendix I;
- Maximum period of time following which, and in the absence of a decision on the claim, the service provider undertakes to contact the customer to provide information thereto on the claimed situation;
- Subscriber option to submit disputes arising from the interpretation or application of the contract to legal arbitration or mediation mechanisms, where appropriate.

H) Conditions for billing

Contracts *must* provide information on the right of subscribers to receive non-detailed bills and to receive detailed bills, where requested.

Contracts must stipulate that bills *must* be sent on a monthly basis.

With reference to this issue, it is *recommended* that the following information be also provided:

- Provision of broken down particulars comprised in the detailed bills to subscribers who request them;
- Method of issuing bills (paper or electronic billing);
- Period of time between the date bills are sent to the customer and the deadline for payment;
- Cost (if any) of certain types of bills;
- Customer options on the type of bills, where appropriate;
- Consequences of late payment of bills.

1) Specific subscriber requests concerning the inclusion of personal data in directories and directory enquiry services, involving transmission to third parties or otherwise, pursuant to legislation on personal data protection

The contract *must* allow subscribers to specifically assert their consent concerning the inclusion of the respective personal data in directories and directory enquiry services, involving transmission to third parties or otherwise, including the option not to grant such consent.

The contract *must* also state that failure to fill in the field reserved for the subscriber's request concerning the inclusion of personal information in directories and directory enquiry services corresponds to a request to be excluded from directories and directory enquiry services.

The obligation to guarantee subscribers the right to be included in the comprehensive public directory made available by universal service providers, to which the content of the preceding paragraphs also applies, *must* also be comprised in contracts.

2. Other information to be included in contracts concerning conditions for access and use of the service

Pursuant to point b) of paragraph 1 of article 39 of the Electronic Communications Law, users of publicly available networks and services have the right to be provided with written information on conditions for access and use of the service, in a timely manner and previously to the conclusion of contracts.

Thus, in order to ensure better and more complete information on conditions for access and use of the service, and for the purpose of consumer protection, contracts for publicly available telephone services *must* also include the following information:

- Obligation to ensure personal data and privacy protection in the specific domain of electronic communications under applicable legislation on personal data and privacy protection.

Aiming to guarantee compliance with this obligation, contracts shall indicate the following aspects:

- Identity of entity responsible for data handling, or representative thereof;
- Purpose of data handling and data recipients;
- If data handling is intended for purposes other than those described in Article 6 of Law no. 67/98 of 26 October, space must be reserved in the contract (standard form) for the explicit and unmistakable consent of the data subject, who shall have the option not to grant such consent;
- Existence of, and conditions for exercising the right to access and correct data pursuant to Law no. 67/98 of 26 October;
- Consequences of failing to provide mandatory data, with clear indications of mandatory versus optional data;
- Space for subscribers to indicate data to be included in public directories pursuant to paragraph 2 of article 13 of Law no. 41/2004 of 18 August;
- Space for the explicit consent of subscribers for any use of public directories other than the search for details of persons on the basis of their names and, if necessary, a few other identifying particulars;
- Information on types of traffic data handled pursuant to paragraphs 2 and 4 of article 6 of Law no. 41/2004 of 18 August, on the duration and purpose of this handling, and

information on its potential provision to third parties for the purpose of providing added value services as defined in point f) of paragraph 1 of article 2, of the aforementioned law; data handling for the purposes specified in paragraph 4 requires consent from the subscriber or user concerned;

- If location data are processed, information on the types of data handled pursuant to paragraph 4 of article 7 of Law no. 41/2004, on the duration and purpose of this handling, and on information on its potential provision to third parties for the purpose of providing added value services as defined in point f) of paragraph 1 of article 2, of the aforementioned law; handling of these types of data requires consent;
- Statement that calling line identification will be revealed and that the subscriber's or user's location data will be recorded in order to relay this information for emergency response purposes to organizations legally authorized to receive such calls.
- Indication that subscriber data may be recorded in the database specified in article 46 of the Electronic Communications Law, where appropriate;
- Indication of period of notice in case of offer termination and means to notify the user.
- Indication that ICP-ANACOM has approved the contract.
- Reference to conditions for accessing audiotext services, where appropriate.
- Guarantee of uninterrupted free access to the single European emergency call number, "112".
- Stipulation that the service provision may only be suspended due to failure to pay any other service, even if included in the same bill, where these services are functionally indissociable;
- Right of subscribers to pay and be discharged partially, whereby the suspension of the service must be limited solely to services corresponding to amounts due, except where these services are functionally indissociable.
- Obligation to guarantee to subscribers the access to calls having no associated charges between the time of service suspension and service termination namely to the single European emergency call number.
- Where the service requires the provision of a guarantee – this is possible only for contracts with clients that are not consumers or in situations of restoration of service, following an interruption resulting from breach of contract attributable to the customer, insofar as the customer does not opt for a bank transfer as means of payment -, the contract must include the applicable regime, defined according to Decree Law no. 195/99 of 8 June.

IV. Minimum content to be included in Contracts for Electronic Communications Services

Within the scope of the definition of rules for consumer protection specific to the communications sector, mentioned in point j) of paragraph 1 of article 27 of Law no. 5/2004, of 10 February, ICP-ANACOM next specifies the aspects to be included in contracts concerning electronic communications services other than publicly available telephone services.

When service providers consider the information required for a given particular to be excessively long or detailed (for example, levels of quality, maintenance services provided or pricing), the contract may make reference to another document issued by the service provider

with information on the subject in lieu of presenting all this information in the contract. Such documents constitute appendices to the contract, of which they are an integral part and thus must be supplied together with the contract's clauses for purposes of complete transparency.

A) Service provider identity and address

This requirement aims to provide identification of the service provider and a postal address for correspondence.

In this context, the provisions of article 171 of the Portuguese Companies Code (*Código das Sociedades Comerciais*) must be complied with, pursuant to which companies must clearly specify their business name, company type, headquarters, the commercial registry office where the company is registered, the company's corresponding registration number and references to company liquidation proceedings (where appropriate) in all contracts.

For purposes of increased transparency, ICP-ANACOM *recommends* that service providers include also their telephone number (customer service), email address and website (where appropriate) in contracts.

In connection with this, it is also important to note that the contract *must* contain a clause specifying the communication and notification method(s) between the parties in cases where applicable laws and regulations do not specify a special means.

It is also useful, and thus *recommended* that the contract states that, by mutual agreement between the parties, the addresses shown in the contract constitute legal addresses for summons and notification purposes, and that any changes thereto must be notified in writing.

B) Services provided, service levels of quality supplied and required time for start-up connections

a. Services provided

The contract *must* specify the services provided. The following are included in this particular:

- Description of the services provided, as well as additional services, service facilities and associated features.
- Conditions under which the company may provide the service – the contract must inform whether the service is available at the customer's area, or whether the provision thereof, at a given location, is subject to the prior fulfilment of technical conditions necessary to the service provision. Should such conditions be fulfilled, the contract shall inform the customer of the method for requesting reimbursement of any costs incurred and for ending the contract, in case the service may not be provided. If there are no conditions to fulfil, it is not necessary to include this information in the contract.
- Potential restrictions resulting from the service in terms of the subscriber's ability to access other services/features (for example, inability to access the Internet when engaging a given telephone service provision).
- Information on coverage of services, even if only by reference to a location whereat the user may obtain update information on service coverage and provision. Where it is necessary to carry out connectivity tests to assess whether the service is available at the client's area, such information shall be provided in contracts.
- Conditions for accessing and using the service – way in which the service will be provided.

b. Levels of quality of service supplied

The contract *must* establish the obligation upon the service provider's to provide regular and uninterrupted service.

The contract *must* clearly set the levels of quality which the service provider undertakes to uphold with its customers, i.e. the minimum (target) service levels of quality which the customer is entitled to, non-compliance with which determines the payment of compensation or reimbursement.

Given that service providers have voiced uncertainties with regard to parameters concerning which levels of quality should be set, ICP-ANACOM *suggests* some parameters in Appendix I. This does not preclude service providers from including additional indicators which they may deem relevant, nor does it rule out the possibility of ICP-ANACOM eventually instituting specific parameters of quality under the terms of article 40 of the Electronic Communications Law, for the purpose of publishing and providing end users with comparable, clear, comprehensive and up-to-date information on quality of service.

In the event that the service provider does not wish to provide or otherwise undertake to uphold any level of quality of service, this must be clearly stated in the contract.

c. Required time for start-up connection

The contract *must* specify the maximum amount of time in which the service provider will make the initial service connection.

In this regard, ICP-ANACOM *suggests* that service providers measure parameter a) in Appendix I.

C) Types of maintenance services offered

The contract *must* specify the maintenance services provided by the operator as well as the parties' obligations in this regard.

As far as maintenance services are concerned, the contract *must* include the obligation on the part of the company providing the service to ensure the repair of faults and to maintain and repair the infrastructures and equipment it owns or uses to provide the service.

In this matter, it is also *recommended* that the contract provides for:

- Obligation of the company to agree with the subscriber on the date and amount of time needed for repairs whenever access the place of installation is necessary for these repairs;
- Customer service information for reporting faults and terms of use (means of reporting faults, hours of operation and costs of communications made for reporting purposes...);
- Minimum level of quality provided in terms of fault repair time. In this regard, it is recommended that service providers measure parameter c) in Appendix I.
- Maximum period of time following which, and in case faults have not been repaired, the service provider undertakes to contact the customer to provide information thereto on the reported situation.

D) Pricing specifications and means of obtaining up-to-date information on all applicable pricing and maintenance fees

This information must provide end users with a means of determining how service fees will be billed and collected, along with orientation on how to obtain up-to-date information on applicable service rates. To this end, the contract *must* include the following information with regard to pricing:

- Type and levels of prices applicable to the service in question;
- Payment methods for services or information in bills concerning such modalities;
- Installation or reinstallation cost for the services under consideration, where appropriate;
- Minimum monthly (or other) payment, where appropriate;
- Maintenance fees, where appropriate;
- Equipment rental fees, where appropriate;
- Conditions for granting discounts and credit, where appropriate;
- Peak versus off-peak hours, where appropriate, and respective costs;
- Place and method for obtaining up-to-date pricing information;
- Service disconnection fees, where appropriate, breaking down costs for restoring pre-installation conditions.

The tariff applicable to the subscribed service, in force on the date the contract is signed, *must* be annexed to the list of clauses.

E) Period of validity of the contract, conditions for service and contract renewal, suspension and termination

The contract *must* specify conditions for its period of validity, renewal and termination, such as:

- Period of validity of the contract;
- Minimum advance notice for contract termination or rescission by either party;
- Grounds for termination of the contract by the parties;
- Terms and conditions for renewal of the contract;
- Terms and conditions for contract suspension and termination, including the company's obligation to restore the conditions previously existent at the customer's premises, where appropriate;
- Stipulation that the service provision shall not be suspended without an appropriate advance notice, except for unforeseeable circumstances or force majeure.

In order to ensure to customers, in the event of termination of the contract, that engaged services are effectively disconnected/deactivated, ICP-ANACOM *suggests* that service providers measure parameter d) in Appendix I.

As regards the situation of service suspension due to non-payment, the contract *must* provide for a written notice to the subscriber, ten days ahead of the date on which the suspension is to take place, providing information on the reason for suspension and available courses of action to avoid suspension and to restore the service, being incumbent upon the service provider to prove that this notice was sent. The contract must state the means used to convey this notice to the customer.

The ten-day notice requirement does not apply to prepaid telephone services. In this case the contract *must* establish a method to make the customer aware with sufficient lead-time that his/her account balance is approaching “0” and that its corresponding service will soon be disconnected if credit is not added to the account.

The applicable regime for contractual changes *must* also be included in the contract, specifying the following information:

- The subscriber shall be notified of contractual changes at least one month ahead of date they take effect;
- Method for notification;
- Right of the subscriber to cancel the contract without penalty in case the contractual change is not accepted, including the time limit and method for communicating this termination to the service provider.

If the contract in question involves remote services and uses remote communication methods (contracts signed remotely), or if it is proposed and completed at the subscriber’s residence without a specific prior order from the subscriber (contracts signed at the address), the contract *must* specify the subscriber’s right to cancel the contract within a fourteen-day time limit from the date the contract was signed, pursuant to Decree-Law no. 143/2001 of 26 April, and moreover shall it state that this right is exercised by means of a registered letter with acknowledgment of receipt within this time limit communicating to the service provider the subscriber’s will to cancel the contract.

Contracts providing for a loyalty period shall include the following elements:

- a) Justification for the loyalty period, concerning the granting of quid pro quo or of benefits to the customer, namely for equipment subsidizing, costs of acquiring customers or activating the service, or discounts engaged under contract;
- b) The duration of the loyalty period;
- c) In case the quid pro quo consists of a blocked equipment, indication of the cost for unblocking;
- d) Indication of simple and swift means available to the customer to know the date of expiry of the loyalty period and the amount due for early termination of the contract;
- e) Indication of the means to calculate the amount due by the customer in case of early termination of the contract; and
- f) A clause that specifies that in case the customer chooses to pay the value of benefits initially granted, at the end of the loyalty period or in case of early termination of the contract, he/she is entitled to have the equipment unblocked for the amount indicated initially on the contract, and no additional amount may be required therefrom.

F) Subscriber compensation or reimbursement systems for non-compliance with levels of quality provided for in the contract

Contracts *must* provide for the payment of customer compensation or reimbursement in case of non-compliance with levels of quality set in the contract.

In the event of service interruption/suspension, ICP-ANACOM *suggests* that customer reimbursement be specified in the amount calculated based on the subscription cost and proportional to the percentage of monthly hours of service interruption/suspension, without prejudice to additional compensation which may apply. As regards non-subscription services,

the reimbursement amount may be calculated using the average consumption of the last 3 months.

G) Method to pursue the dispute settlement proceedings pursuant to article 107 of Law no. 5/2004 of 10 February

The contract *must* clearly define the method by which end users may pursue the dispute settlement proceedings.

With regard to this matter, it is *recommended* that the contract comprises the following information:

- The claim must be submitted to the company providing the service;
- Available channels for submitting claims;
- Time limit for submitting claims;
- Maximum time limit for replying to claims; in this regard, it is suggested that service providers measure parameter e) in Appendix I.
- Maximum period of time following which, and in the absence of a decision on the claim, the service provider undertakes to contact the customer to provide information thereto on the claimed situation;
- Subscriber option to submit disputes arising from the interpretation or application of the contract to legal arbitration or mediation mechanisms, where appropriate.

H) Conditions for billing

Contracts must provide information on the right of subscribers to receive non-detailed bills and to receive detailed bills, where requested.

Contracts must stipulate that bills *must* be sent on a monthly basis.

With reference to this issue, it is *recommended* that the following information be also provided:

- Provision of broken down particulars comprised in the detailed bills to subscribers who request them;
- Method of issuing bills (paper or electronic billing);
- Period of time between the date bills are sent to the customer and the deadline for payment;
- Cost (if any) of certain types of bills;
- Customer options on the type of bills, where appropriate;
- Consequences of late payment of bills.

I) Specific subscriber requests concerning the inclusion of personal data in directories and directory enquiry services, involving transmission to third parties or otherwise, pursuant to legislation on personal data protection

The contract *must* allow subscribers to specifically assert their consent concerning the inclusion of the respective personal data in directories and directory enquiry services, involving transmission to third parties or otherwise, including the option not to grant such consent.

The contract *must* also state that failure to fill in the field reserved for the subscriber's request concerning the inclusion of personal information in directories and directory enquiry services corresponds to a request to be excluded from directories and directory enquiry services.

J) Obligation to ensure personal data and privacy protection in the specific domain of electronic communications under applicable legislation on personal data and privacy protection

Aiming to guarantee compliance with this obligation, contracts shall indicate the following aspects:

- Identity of entity responsible for data handling, or representative thereof;
- Purpose of data handling and data recipients;
- If data handling is intended for purposes other than those described in Article 6 of Law no. 67/98 of 26 October, space must be reserved in the contract (standard form) for the explicit and unmistakable consent of the data subject, who shall have the option not to grant such consent;
- Existence of, and conditions for, exercising the right to access and correct data under the terms of Law no. 67/98 of 26 October;
- Consequences of failing to provide mandatory data, with clear indications of mandatory versus optional data;
- Space for subscribers to indicate data to be included in public directories pursuant to paragraph 2 of article 13 of Law no. 41/2004 of 18 August;
- Space for the explicit consent of subscribers for any use of public directories other than the search for details of persons on the basis of their names and, if necessary, a few other identifying particulars;
- Information on types of traffic data handled pursuant to paragraphs 2 and 4 of article 6 of Law no. 41/2004 of 18 August, on the duration and purpose of this handling, and information on its potential provision to third parties for the purpose of providing added value services as defined in point f) of paragraph 1 of article 2, of the aforementioned law; data handling for the purposes specified in paragraph 4 requires consent from the subscriber or user concerned.
- If location data are processed, information on the types of data handled pursuant to paragraph 4 of article 7 of Law no. 41/2004, on the duration and purpose of this handling, and on information on its potential provision to third parties for the purpose of providing added value services as defined in point f) of paragraph 1 of article 2, of the aforementioned law; handling of these types of data requires consent.

K) Indication that subscriber data may be recorded in the database specified in Article 46 of the Electronic Communications Law, where appropriate.

L) Indication of period of notice in case of offer termination and means to notify the user.

M) Indication that ICP-ANACOM has approved the contract.

N) Stipulation that the service provision may only be suspended due to failure to pay any other service, even if included in the same bill, where these services are functionally indissociable.

O) Right of subscribers to pay and be discharged partially, whereby the suspension of the service must be limited solely to services corresponding to amounts due, except where these services are functionally indissociable.

P) Where the service requires the provision of a guarantee – this is possible only for contracts with clients that are not consumers or in situations of restoration of service, following an interruption resulting from breach of contract attributable to the customer, insofar as the customer does not opt for a bank transfer as means of payment -, the contract must include the applicable regime, defined according to Decree Law no. 195/99 of 8 June.

V. Minimum content to be included in contracts for Television Distribution Services

Within the scope of the definition of rules for consumer protection specific to the communications sector, mentioned in point j) of paragraph 1 of article 27 of Law no. 5/2004, of 10 February, ICP-ANACOM next specifies the aspects to be included in contracts for television distribution services.

When service providers consider the information required for a given particular to be excessively long or detailed (for example, levels of quality, maintenance services provided or pricing), the contract may make reference to another document issued by the service provider with information on the subject in lieu of presenting all this information in the contract. Such documents constitute appendices to the contract, of which they are an integral part and thus must be supplied together with the contract's clauses for purposes of complete transparency.

A) Service provider identity and address

This requirement aims to provide identification of the service provider and a postal address for correspondence.

In this context, the provisions of article 171 of the Portuguese Companies Code (*Código das Sociedades Comerciais*) must be complied with, pursuant to which companies must clearly specify their business name, company type, headquarters, the commercial registry office where the company is registered, the company's corresponding registration number and references to company liquidation proceedings (where appropriate) in all contracts.

For purposes of increased transparency, ICP-ANACOM *recommends* that service providers include also their telephone number (customer service), email address and website (where appropriate) in contracts.

In connection with this, it is also important to note that the contract *must* contain a clause specifying the communication and notification method(s) between the parties in cases where applicable laws and regulations do not specify a special means.

It is also useful, and thus *recommended* that the contract states that, by mutual agreement between the parties, the addresses shown in the contract constitute legal addresses for summons and notification purposes, and that any changes thereto must be notified in writing.

B) Services provided, service levels of quality supplied and required time for start-up connections

a. Services provided

The contract *must* specify the services provided. The following are included in this particular:

- Description of the services offered, as well as additional services, service facilities and associated features.
- Conditions under which the company may provide the service – the contract must inform whether the service is available at the customer's area, or whether the provision thereof, at a given location, is subject to the prior fulfilment of technical conditions necessary to the service provision. Should such conditions be fulfilled, the contract shall inform the customer of the method for requesting reimbursement of any costs incurred and for ending the contract, in case the service may not be provided. If there are no conditions to fulfil, it is not necessary to include this information in the contract.
- Information on coverage of services, even if only by reference to a location whereat the user may obtain update information on service coverage and provision. Where it is necessary to carry out connectivity tests to assess whether the service is available at the client's area, such information shall be provided in contracts.
- Conditions for accessing and using the service – way in which the service will be provided.

b. Levels of quality of service supplied

The contract *must* establish the obligation upon the service provider's to provide regular and uninterrupted service.

The contract *must* clearly set the levels of quality which the service provider undertakes to uphold with its customers, i.e. the minimum (target) service levels of quality which the customer is entitled to, non-compliance with which determines the payment of compensation or reimbursement.

Given that service providers have voiced uncertainties with regard to parameters concerning which levels of quality should be set, ICP-ANACOM *suggests* some parameters in Appendix I. This does not preclude service providers from including additional indicators which they may deem relevant, nor does it rule out the possibility of ICP-ANACOM eventually instituting specific parameters of quality under the terms of article 40 of the Electronic Communications Law, for the purpose of publishing and providing end users with comparable, clear, comprehensive and up-to-date information on quality of service.

In the event that the service provider does not wish to provide or otherwise undertake to uphold any level of quality of service, this must be clearly stated in the contract.

c. Required time for start-up connection

The contract *must* specify the maximum amount of time in which the service provider will make the initial service connection.

In this regard, ICP-ANACOM *suggests* that service providers measure parameter a) in Appendix I.

C) Types of maintenance services offered

The contract *must* specify the maintenance services provided by the operator as well as the parties' obligations in this regard.

As far as maintenance services are concerned, the contract *must* include the obligation on the part of the company providing the service to ensure the repair of faults and to maintain and repair the infrastructures and equipment it owns or uses to provide the service.

In this matter, it is also *recommended* that the contract provides for:

- Obligation of the company to agree with the subscriber on the date and amount of time needed for repairs whenever access to the place of installation is necessary for these repairs;
- Customer service information for reporting faults and terms of use (means of reporting faults, hours of operation and costs of communications made for reporting purposes...);
- Minimum level of quality provided in terms of fault repair time. In this regard, it is recommended that service providers measure parameter c) in Appendix I.
- Maximum period of time following which, and in case faults have not been repaired, the service provider undertakes to contact the customer to provide information thereto on the reported situation.

D) Pricing specifications and means of obtaining up-to-date information on all applicable pricing and maintenance fees

This information must provide end users with a means of determining how service fees will be billed and collected, along with orientation on how to obtain up-to-date information on applicable service rates. To this end, the contract must include the following information with regard to pricing:

- Type and levels of prices applicable to the service in question;
- Payment methods for services or information in bills concerning such modalities;
- Installation or reinstallation cost for the services under consideration, where appropriate;
- Minimum monthly (or other) payment, where appropriate;
- Maintenance fees, where appropriate;
- Equipment rental fees, where appropriate;
- Conditions for granting discounts and credit, where appropriate;
- Peak versus off-peak hours, where appropriate, and respective costs;
- Place and method for obtaining up-to-date pricing information;
- Service disconnection fees, where appropriate, breaking down costs for restoring pre-installation conditions;

The tariff applicable to the subscribed service, in force on the date the contract is signed, *must* be annexed to the list of clauses.

E) Period of validity of the contract, conditions for service and contract renewal, suspension and termination

The contract *must* specify conditions for its period of validity, renewal and termination, such as:

- Period of validity of the contract;
- Minimum advance notice for contract termination or rescission by either party;
- Grounds for termination of the contract by the parties;
- Terms and conditions for renewal of the contract;
- Terms and conditions for contract suspension and termination, including the company's obligation to restore the conditions previously existent at the customer's premises, where appropriate;
- Stipulation that the service provision shall not be suspended without an appropriate advance notice, except for unforeseeable circumstances or force majeure.

In order to ensure to customers, in the event of termination of the contract, that engaged services are effectively disconnected/deactivated, ICP-ANACOM *suggests* that service providers measure parameter d) in Appendix I.

As regards the situation of service suspension due to non-payment, the contract *must* provide for a written notice to the subscriber, ten days ahead of the date on which the suspension is to take place, providing information on the reason for suspension and available courses of action to avoid suspension and to restore the service, being incumbent upon the service provider to prove that this notice was sent. The contract must state the means used to convey this notice to the customer.

The ten-day notice requirement does not apply to prepaid telephone services. In this case the contract *must* establish a method to make the customer aware with sufficient lead-time that his/her account balance is approaching "0" and that its corresponding service will soon be disconnected if credit is not added to the account.

The applicable regime for contractual changes *must* also be included in the contract, specifying the following information:

- The subscriber shall be notified of contractual changes at least one month ahead of date they take effect;
- Method for notification;
- Right of the subscriber to cancel the contract without penalty in case the contractual change is not accepted, including the time limit and method for communicating this termination to the service provider.

If the contract in question involves remote services and uses remote communication methods (contracts signed remotely), or if it is proposed and completed at the subscriber's residence without a specific prior order from the subscriber (contracts signed at the address), the contract *must* specify the subscriber's right to cancel the contract within a fourteen-day time limit from the date the contract was signed, pursuant to Decree-Law no. 143/2001 of 26 April, and moreover shall it state that this right is exercised by means of a registered letter with acknowledgment of receipt within this time limit communicating to the service provider the subscriber's will to cancel the contract.

Contracts providing for a loyalty period shall include the following elements:

- a) Justification for the loyalty period, concerning the granting of quid pro quo or of benefits to the customer, namely for equipment subsidizing, costs of acquiring customers or activating the service, or discounts engaged under contract;
- b) The duration of the loyalty period;
- c) In case the quid pro quo consists of a blocked equipment, indication of the cost for unblocking;
- d) Indication of simple and swift means available to the customer to know the date of expiry of the loyalty period and the amount due for early termination of the contract;
- e) Indication of the means to calculate the amount due by the customer in case of early termination of the contract; and
- f) A clause that specifies that in case the customer chooses to pay the value of benefits initially granted, at the end of the loyalty period or in case of early termination of the contract, he/she is entitled to have the equipment unblocked for the amount indicated initially on the contract, and no additional amount may be required therefrom.

F) Subscriber compensation or reimbursement systems for non-compliance with levels of quality provided for in the contract

Contracts *must* provide for the payment of customer compensation or reimbursement in case of non-compliance with levels of quality set in the contract.

In the event of service interruption/suspension, ICP-ANACOM *suggests* that customer reimbursement be specified in the amount calculated based on the subscription cost and proportional to the percentage of monthly hours of service interruption/suspension, without prejudice to additional compensation which may apply. As regards non-subscription services, the reimbursement amount may be calculated using the average consumption of the last 3 months.

G) Method to pursue the dispute settlement proceedings pursuant to article 107 of Law no. 5/2004 of 10 February

The contract *must* clearly define the method by which end users may pursue the dispute settlement proceedings.

With regard to this matter, it is *recommended* that the contract comprises the following information:

- The claim must be submitted to the company providing the service;
- Available channels for submitting claims;
- Time limit for submitting claims;
- Maximum time limit for replying to claims; in this regard, it is suggested that service providers measure parameter e) in Appendix I;
- Maximum period of time following which, and in the absence of a decision on the claim, the service provider undertakes to contact the customer to provide information thereto on the claimed situation;
- Subscriber option to submit disputes arising from the interpretation or application of the contract to legal arbitration or mediation mechanisms, where appropriate.

H) Conditions for billing

Contracts must provide information on the right of subscribers to receive non-detailed bills and to receive detailed bills, where requested.

Contracts must stipulate that bills *must* be sent on a monthly basis

With reference to this issue, it is *recommended* that the following information be also provided:

- Provision of broken down particulars comprised in the detailed bills to subscribers who request them;
- Method of issuing bills (paper or electronic billing);
- Period of time between the date bills are sent to the customer and the deadline for payment;
- Cost (if any) of certain types of bills;
- Customer options on the type of bills, where appropriate;
- Consequences of late payment of bills.

I) Obligation to guarantee personal data and privacy protection in the specific domain of electronic communications in accordance with applicable legislation on personal data and privacy protection

In order to ensure fulfilment of this obligation, contracts must indicate the following:

- Identity of entity responsible for data handling, or its representative;
- Purpose of data handling and data recipients;
- If data handling is intended for purposes other than those described in Article 6 of Law no. 67/98 of 26 October, space must be reserved in the contract (form) allowing the data owner to specifically and unmistakably grant consent and have the option to prohibit data handling
- Existence of, and conditions for, exercising the right to access and correct data under the terms of Law no. 67/98 of 26 October
- Consequences of failing to provide mandatory data, with clear indications of mandatory versus optional data.

J) Indication that subscriber data may be recorded in the database specified in Article 46 of the Electronic Communications Law, where appropriate.

K) Indication of period of notice in case of offer termination and means to notify the user.

L) Indication that ICP-ANACOM has approved the contract.

M) Stipulation that the service provision may only be suspended due to failure to pay any other service, even if included in the same bill, where these services are functionally indissociable.

N) Right of subscribers to pay and be discharged partially, whereby the suspension of the service must be limited solely to services corresponding to amounts due, except where these services are functionally indissociable.

O) Where the service requires the provision of a guarantee – this is possible only for contracts with clients that are not consumers or in situations of restoration of service, following an interruption resulting from breach of contract attributable to the customer, insofar as the customer does not opt for a bank transfer as means of payment -, the contract must include the applicable regime, defined according to Decree Law no. 195/99 of 8 June.

Overview Table

The table below (Annex II) details systematically the issues to be met in various one-sided standard contracts.

Adjustment of Contracts

All companies providing electronic communications services must adjust their contracts to comply with applicable legislation, in accordance with guidelines contained herein, within 90 days from notification hereof.