ANNEX E

ARTIFICIAL INFLATION OF TRAFFIC

**1. DEFINITIONS**

1.1 In this Annex, a reference to a paragraph or Appendix, unless stated otherwise, is to a paragraph or Appendix of this Annex. Words and expressions have the meaning given in Annex D, except as shown below:

|  |  |
| --- | --- |
| **“A1 Retention Notice”** | written notice (using the form at Appendix E1 and served up to the 14th AIT calendar day or such other date otherwise provided for in this Annex) of a reasonable suspicion of AIT and the retention of sums otherwise due in respect of the relevant Call traffic and including (but not necessarily limited to) all of the following: (a) reasons for holding a reasonable suspicion of AIT, (having regard to the definition of AIT, paragraphs 2.2 and 2.3) and the AIT Indicators in Appendix E5; (b) estimated value of the sums to be retained;(c) estimated total duration and number of the relevant Calls; (d) start and end dates when the relevant Calls were made; and(e) full dialled telephone number(s) save where there are exceptional circumstances as referred to below;In exceptional circumstances where there is a reasonable suspicion of AIT across a number of dialled destination numbers, the Party submitting the A1 Retention Notice shall be permitted to supply incomplete dialled destination numbers providing that Party uses best endeavours to supply the best and most detailed information it can having regard to the circumstances and certifies that the information so supplied is the best and most detailed available. Exceptional circumstances may include informal or formal regulatory alerts or investigations and/or any Call traffic patterns reasonably suggesting an entity is attempting to disguise AIT activity across a number of dialled destination numbers within a block(s) of numbers. |
| **“A2 Withdrawal Notice”** **or “Withdrawal Notice”** | written notice (using the form at Appendix E2) withdrawing an A1 Retention Notice (or part thereof, in which case precisely specifying the relevant Call traffic and sums subject to the part withdrawal);  |
| **“A3 Rejection Notice”** **or “Rejection Notice”** | written notice (using the form at Appendix E3) rejecting and giving reasons and/or grounds for the rejection of an A1 Retention Notice, including reasons why the Calls and/or use of the Telecommunications Systems is a good faith usage and is an acceptable and reasonable commercial practice relating to the usage of the Telecommunications Systems;  |
| **“A4 Dispute Notice” or “Dispute Notice”**  | written notice (using the form at Appendix E4) disputing, with reasons, a Rejection Notice (or part thereof) and raising dispute in respect of the relevant Call traffic (including specifying precisely the relevant Call traffic and sums subject to the dispute); |
| **“AIT” or “Artificial Inflation of Traffic”** | any situation where Calls (subject to paragraph 1.2 below):(a) are made, generated, stimulated, and/or prolonged for the direct or indirect benefit of any entity (including a natural person) operating, hosting or otherwise connected with a telecommunication service as a result of any activity by or on behalf of such entity; and (b) result in a calling pattern which is disproportionate to the overall amount, duration and/or extent of Calls which would be expected from:-i. a good faith usage; or ii. an acceptable and reasonable commercial practice relating to the operation;of Telecommunications Systems;  |
| **“AIT calendar day”**  | the calendar day referred to in the text of this Annex, commencing from the first day of the calendar month following that in which the Call traffic occurred. Where such nominated calendar day falls on other than a Working Day, any applicable notice shall be given no later than the previous Working Day; |
| **“AIT Call Data”** | Call data records supporting a reasonable suspicion of AIT in a Retention Notice and including (but not necessarily limited to) all of the following:(a) partial CLI of the Calling Centre(s);(b) full dialled destination number(s), save where there are exceptional circumstances as referred to below;(c) start time(s) in 24 hour format hh:mm:ss ;(d) duration(s) in format hh:mm:ss; (e) date(s) in format dd/mm/yyyy; if Call data records are not in accordance with the format in (c) to (e) above (inclusive), the Party submitting the AIT Call Data must provide with such AIT Call Data a full written explanation of how the AIT Call Data is to be interpreted; and(f) detailed written explanation of why the AIT Call Data referred to in (a) – (e) above supports a reasonable suspicion of AIT (having regard to the definition of AIT and paragraph 2.2).In exceptional circumstances where there is a reasonable suspicion of AIT across a range of dialled destination numbers, the Party submitting the AIT Call Data shall be permitted to supply incomplete dialled destination numbers providing that Party uses best endeavours to supply the best and most detailed information it can having regard to the circumstances and certifies that the information so supplied is the best and most detailed available. Exceptional circumstances may include informal or formal regulatory alerts or investigations and/or any Call traffic patterns reasonably suggesting an entity is attempting to disguise AIT activity across a number of dialled destination numbers within a block(s) of numbers. The details of the exceptional circumstances must be fully explained and conveyed to the Terminating Party within the notes field of the A1 Retention Notice. |
| **“AIT Dispute”** | a dispute relating to AIT or suspected AIT between a Party serving an A1 Retention Notice and a TNO and which remains unresolved 5 Working Days after a Party has validly served a Dispute Notice and that date shall be known as the “AIT Dispute commencement date”, and for the avoidance of doubt there shall be no AIT Dispute if a Dispute Notice is not served by the relevant party in accordance with this Annex E; |
| **“AIT Indicators”** | non-exhaustive list of situations, examples and/or circumstances of AIT as set out at Appendix E5; |
| **“AIT Interest Rate”** | means the average of the previous three months’ LIBOR (London Inter-bank Offered Rate) plus four (4) percent, calculated daily; |
| **“Hosted Number”** | means a telephone number which has been allocated to a communications provider by Ofcom under the National Telephone Numbering Plan but where that first communications provider allows another communications provider to manage the conveyance of that telephone number on its behalf.  |
| **“ONO” or “Originating Network Operator”** | a network operator from whose System the Call to a telecommunication service is handed over to the System of a TNO or of the TO under the provisions of a BT Standard Interconnect Agreement; |
| **“Partial CLI”**  | if available, the telephone number of the Calling Party less the final four digits; |
| **“Phone-paid Services Authority”** | means the premium rate communication services regulator (which was previously known as ‘Phonepay Plus’) or any succeeding regulator of such services; |
| **“Ported Number”** | means a telephone number which has been allocated to a communications provider by Ofcom under the National Telephone Numbering Plan but which has been effectively re-allocated by that communications provider at the request of an end user to a new communications provider. |
| **“TNO” or “Terminating Network Operator”** | a network operator to whom a Call is handed over from an ONO or from the TO under the provisions of a BT Standard Interconnect Agreement, on which network operator’s system the telecommunication service is operating or via whose system the telecommunication service is accessed; |
| **“TO” or “Transit Operator”** | BT if either: (a) receiving Calls from the ONO in order to hand over such Calls to a TNO, or (b) handing over Calls to the TNO (which have been received from an ONO),under the provisions of a BT Standard Interconnect Agreement. For the avoidance of doubt, BT is not the TO where it hands over Calls resulting solely from non-geographic number portability pursuant to the provisions of Schedule 07 of a BT Standard Interconnect Agreement; |
| **“Transit Situation”**  | a situation where a Call is handed from an ONO to BT (as the TO) in order for BT to hand that Call to a TNO. |

1.2 For the purposes of AIT and of this Annex, “Calls” shall mean Calls to number ranges governed by the National Telephone Numbering Plan but shall exclude Calls to geographic number ranges commencing with the digits 01 or 02.

**2. GENERAL**

2.1 **Purpose**: This Annex is designed, and shall be construed accordingly:

(a) to cover a variety of contractual situations in relation to a BT Standard Interconnect Agreement, in particular in relation to where:-

i. one Party to this Agreement is an ONO and the other Party is a TNO; or

ii. BT is a TO and the other Party to this Agreement is either an ONO or a TNO; and

(b) to act as a uniform code for regulating relations between an ONO and a TNO (and where relevant the TO) in relation to a BT Standard Interconnect Agreement, even though, in a Transit Situation either the ONO or the TNO will not be a Party to this Agreement. In a Transit Situation the Parties (BT and either the ONO or TNO) and the other party to the relevant Call traffic shall use their best endeavours to ensure this Annex operates as a uniform code to bind the ONO, the TNO and the TO.

2.2 **Absence of good faith usage or acceptable and reasonable commercial practice**: Without prejudice to the generality of the definition of AIT the following shall not ordinarily be regarded as either a good faith usage or an acceptable and reasonable commercial practice and usage of Telecommunications Systems:

(a) any situation where any member of the public (including partnerships companies and corporations engaged in normal commercial, academic or governmental business) is misled into making, receiving or prolonging Calls by such party or such person in connection with a telecommunication service;

(b) any breach of any relevant law or of any then current industry ruling, regulation, convention, policy guidance or statement of principle, including (but not limited to) any such ruling or determination of OFCOM, Phone-paid Services Authority or any successor or similar bodies (other than breaches of the Phone-paid Services Authority Code of Practice which would be considered “minor breaches” having regard to the Phonepaid Services Authority Code 14 Supporting Procedures or any successor similar code);

(c) any activity which has the effect, intended effect or likely effect of:

1. preventing the billing system from capturing any necessary billing information (in relation to the conveyance of a Call to a telecommunication service); or
2. causing incorrect billing by the billing system

of a Party to this Agreement, or of an associated ONO and/or TNO; or

(d) any use of Telecommunication Systems for purposes other than the genuine conveyance of Calls for the proper benefit of users of the electronic communications network.

2.3 **AIT definition not exclusive**: The definition of AIT is not intended to be limited to cases of Calls made, generated, stimulated and/or prolonged fraudulently but to any situation where there has been an absence of good faith usage or alternatively an absence of acceptable and reasonable commercial practice relating to the operation of the Telecommunication Systems and/or telecommunication service. It is expressly recognised that it is difficult to identify every potential instance of AIT in advance as new methods of artificially inflating telecommunications traffic are constantly being evolved.

2.4 **Obligations in relation to AIT**: The Parties:

(a) shall not knowingly engage in, assist or allow others to engage in AIT;

(b) shall use reasonable endeavours, including the use of reasonably appropriate measures, to detect, identify, notify and prevent AIT, both singly and co-operatively, in accordance with paragraph 16 of the main body of this Agreement and this Annex. Reasonably appropriate measures may include:

i. establishing and implementing a process of credit vetting and customer risk assessment of service providers;

ii. Phone-paid Services Authority registration checks in respect of service providers (including the inspection of Prior Permission Certificates, where such Prior Permission Certificates are required under the Phone-paid Services Authority Code of Practice for the operation of certain telecommunication services);

iii. Call data monitoring, regular and timely reporting of AIT Indicators as described in Appendix E5 and/or suspected or potential AIT activity; and

iv. comprehensive contractual terms with service providers. Such terms and conditions to include obligations equivalent to those in this Annex for the detection, identification, notification and prevention of AIT, the ability to retain reasonably suspected AIT revenues and the requirement for service providers to obtain similar contractual undertakings from their own service providers;

 (c) when undertaking a technical development in relation to telecommunication services, shall reasonably enhance the facilities for the prevention and detection of AIT;

(d) agree and understand that the reasonable endeavours that can be carried out by the TO to detect, identify, notify and prevent AIT are necessarily limited;

(e) undertake to perform their obligations under this Annex in good faith;

(f) shall ensure that they have a working e-mail facility for the receipt of notices under this Annex E and the other Party is immediately advised of any changes to the e-mail address, or to the other contact details required to be supplied under paragraph 4.1; and

 (g) agree that if the TNO invoices the appropriate party late such that a party is prevented from serving an A1 Retention Notice by the AIT calendar day set out in paragraphs 5.2 or 6.2 then:

i. the appropriate party shall be entitled to serve the A1 Retention Notice after the AIT calendar day set out in paragraphs 5.2 or 6.2, provided it is served on the TNO within 10 Working Days of receipt of the relevant invoice; and

ii. all “AIT calendar day” time-limits relating to the service of notices and/or provision of information set out in this Annex E shall be extended by an equivalent number of calendar days as those in which the invoice was issued after the 1st AIT calendar day.

2.5 **AIT notices**:

(a) Where a notice is issued or served between the parties under this Annex it shall be delivered by e-mail on a Working Day between the hours of 09.00 and 17.00. If it is delivered after 17.00 it shall be deemed to have been delivered on the succeeding Working Day. If there is evidence that the e-mail address provided by the recipient party is incorrect or out-of-date, or the e-mail address is unavailable or not working then the issuing or serving party may issue or serve a notice as applicable electronically by email to the email address supplied under paragraph 4.1, or failing that provided that it is to an email address which is reasonably believed in good faith by the party issuing or serving the notice to be operational. In the absence of contrary evidence, a notice by email shall be duly served as the time of successful receipt by the recipient (as may be evidenced by, but not limited to, the transmission of an automatic read receipt from, or a manual acknowledgement by, the recipient). Information other than notices may be delivered electronically by email;

(b) If BT, following public consultation with a range of parties to this Agreement, believes, acting reasonably in all the circumstances, all or one of the forms set out in Appendices E1 to E4 of this Annex E require amending in order for the parties to this Agreement to better be able to comply with their obligations under paragraph 16 of the main body of this Agreement then BT shall be entitled to make such amendments on three months' notice providing the amendments do not materially adversely affect the rights or obligations of a Party to this Agreement.

2.6 **Transit conveyance charge**: For the avoidance of doubt, in a Transit Situation the BT transit conveyance charge appropriate to that type of Call remains payable to BT by the relevant party for that Call, irrespective of the presence or suspected presence of AIT or any retentions that may be made.

2.7 **Interpretation**: The headings in this Annex E are for convenience only and shall not affect its interpretation.

**3. RESTRICTION ON USE OF INFORMATION**

3.1 **Data Protection**: Notwithstanding any other provisions of this Agreement in relation to information sharing, any information passed between the Parties in accordance with paragraphs 5 to 8 shall be used and in accordance with Data Protection legislation and only for the following purposes:

(a) to monitor, prevent or detect AIT;

(b) to assist the investigation of AIT and to undertake any associated criminal prosecutions;

(c) to undertake civil proceedings to effect recovery of losses resulting from AIT; and/or

(d) to resolve an AIT Dispute.

3.2 **In a Transit Situation, the TO shall ensure that information from the:**

(a) ONO, is only passed to the TNO; and

(b) TNO, is only passed to the ONO.

under provisions which are equivalent to paragraph 3.1.

**4. NOMINATED PARTIES**

4.1 **Representative**: Each Party shall nominate in writing to the other a representative and their e-mail address and contact details to deal with the service of any notices referred to in this Annex (in accordance with paragraph 2.5) and any ancillary matters under this Annex. Contact details should include email addresses. Each Party shall immediately notify the other in writing of any changes to such representative. Each Party shall be responsible for the dissemination of information internally within its organisation.

4.2 **ONO and TNO to communicate directly in Transit Situations based on contact details provided by BT:** In compliance with obligations under paragraph 14A of the main conditions of this Agreement and with paragraph 2.4(e) of this Annex E, following the issuing of an A1 Retention Notice in a Transit Situation, the ONO and TNO shall copy notices to BT but shall deal directly with the respective TNO or ONO representative as advised by BT and listed on the relevant notice(s) which BT shall copy to the respective Operators, except where:

(a) the respective TNO or ONO party has agreed with BT in writing that dealing directly with the respective TNO or ONO representative in accordance with paragraph 6.2(a) and as advised by BT would be unreasonable having regard to all the circumstances; or

(b) BT as the TO issues the A1 Retention Notice in accordance with paragraph 6.2(b) in which case BT shall deal directly with the TNO.

4.3 **TNO porting or hosting**:

For the avoidance of doubt:

(a) if a number is a Ported Number and has been ported by the TNO to another network operator (the recipient operator), the TNO (as the range holder for that number) remains responsible for dealing with all matters relating to any Retention Notice or AIT Dispute in respect of such number. The provisions of this Annex shall continue to apply to the TNO regardless of the number having been ported; and/or

(b) if there is a Hosted Number whereby the TNO is hosting a non-geographic number on behalf of the range holder for that number, and is contracting with the ONO or the TO under this Agreement for the conveyance of Calls to such number, the TNO remains responsible for dealing with all matters relating to any Retention Notice or AIT Dispute in respect of such number. The provisions of this Annex shall continue to apply to the TNO regardless of the number being hosted;

and in both (a) and (b) it shall be the TNO’s sole responsibility to deduct or recover any payment relating to AIT from such other network operator.

4.4 Notwithstanding the provisions of clause 4.3 above, the TNO may, only with the prior written agreement of all parties, but shall be under no obligation to, request the assignment of any rights to payment from the ONO and/or TO to the recipient operator (under 4.3 (a)) or the range holder (under 4.3 (b)) for the sum in dispute and Call traffic in dispute in order that all issues as to retention of monies may be settled between such other parties to the dispute. Any such assignment agreement shall expressly include provision for acceptance by the recipient operator or range holder that it:

1. agrees to be bound by the terms of this Annex;

(b) will pursue any claim for any monies withheld directly against the ONO and/or TO; and

(c) hold the TNO free from any further responsibility to make payment to the recipient operator or range holder.

**5. NON-TRANSIT WITHHOLDING OF PAYMENT FOR AIT**

5.1 This paragraph 5 applies to non-Transit Situations.

5.2 **A1 Retention Notice**: If an ONO has a reasonable suspicion of AIT in respect of Calls conveyed by the ONO to a TNO, it shall serve an A1 Retention Notice to the TNO by the 14th AIT calendar day. The ONO may then withhold payment from the TNO subject to the provisions of this Annex.

5.3 **AIT Call Data**: The ONO shall supply the associated AIT Call Data to the TNO by the 26th AIT calendar day by e-mail (or exceptionally by special delivery or recorded delivery post if the data is too large to send by e-mail) and confirm by e-mail the despatch of the associated AIT Call Data.

5.4 **Withdrawal Notice**: If the AIT Call Data has not been supplied by 17.00 on the 26th AIT calendar day, the ONO shall be obliged to serve (and if the ONO fails to serve shall be deemed to have served) a Withdrawal Notice on the TNO by the 30th AIT calendar day in respect of all the Calls referred to in the A1 Retention Notice and paragraph 5.8 shall apply.

5.5 **Rejection Notice**: If the TNO disputes there are reasonable grounds for an A1 Retention Notice, the TNO shall serve a Rejection Notice on the ONO by the 34th AIT calendar day (unless and to the extent that a Withdrawal Notice has been served or deemed served).

5.6 **No Rejection Notice**: If the TNO fails to serve a Rejection Notice by the 34th AIT calendar day, the:

(a) ONO shall retain permanentlythe sum stated in the A1 Retention Notice from the TNO;

(b) TNO shall issue a credit note to the ONO by the 41st AIT calendar day for the sum stated in the A1 Retention Notice; and

(c) ONO will be entitled, in default of the issue of any such credit note by the 41st AIT calendar day, to issue a debit note to the TNO for the sum stated in the A1 Retention Notice.

5.7 **Dispute Notice and/or Withdrawal Notice**: After service of a Rejection Notice the ONO may serve on the TNO by the 49th AIT calendar day a:

(a) Dispute Notice for the full sum withheld under the A1 Retention Notice; or

(b) Dispute Notice for part of the sum, and a Withdrawal Notice for the balance of the sum, withheld under the A1 Retention Notice, clearly identifying the precise Call traffic to which the Dispute Notice and the Withdrawal Notice relate; or

(c) Withdrawal Notice for the full sum withheld under the A1 Retention Notice,

and if the ONO fails to serve a Withdrawal Notice in accordance with:

i. sub-paragraph (b) above for the balance of the sum; or

ii. sub-paragraph (c) above for the full sum

the ONO shall be deemed to have served such a Withdrawal Notice for the applicable sum.

5.8 **Payment and Interest**: If a Withdrawal Notice is served (or deemed served), the ONO shall immediately make payment to the TNO of:

(a) all of the sum specified in the A1 Retention Notice, or in the event of a Dispute Notice also being served under paragraph 5.7 the sum specified (or deemed specified) in the Withdrawal Notice which is no longer the subject of any retention claim; and

(b) interest on the sum specified (or deemed specified) in the Withdrawal Notice calculated in accordance with paragraph 8.1.

5.9 **AIT Dispute**: The Parties agree that if there is an AIT Dispute they have a good faith obligation to resolve it in accordance with the provisions of paragraph 7.

5.10 **Number Portability between BT and the Operator**: Notwithstanding paragraph 4.3, in non-Transit Situations in respect of Calls to a ported non-geographic number when BT or the Operator as the range holder of a non-geographic number has ported that number to the other Party as the recipient system under Schedule 07 to this Agreement, in which case any reference to the ONO and TNO, shall be deemed to refer to the range holder and the recipient operator respectively, subject that in paragraphs 5.2 to 5.9 an additional two (2) Working Days shall be allowed in respect of the time provided for the service of such notices and the provision of AIT Call Data and the prescribed time periods in those paragraphs shall be extended accordingly.

**6. TRANSIT WITHHOLDING OF PAYMENT FOR AIT**

6.1 This paragraph 6 applies to Transit Situations.

6.2 **A1 Retention Notice**:

(a) **Initiated by ONO**: If the ONO has a reasonable suspicion of AIT in respect of Calls conveyed (via the TO) to a TNO, it shall issue an A1 Retention Notice to the TO by the 14th AIT calendar day. The ONO may then withhold payment from the TO, subject to the provisions of this Annex. The TO in receipt of that A1 Retention Notice shall re-issue the appropriate A1 Retention Notice(s) (including the identity of the ONO) on the relevant TNO(s) by 5pm on the Working Day immediately following the 14th AIT calendar day and the TO may then withhold payment from the TNO(s) subject to the provisions of this Annex. The TO shall make no alterations to the content of the A1 notice as provided by the ONO without their express consent, but may choose to provide additional information. The A1 Retention Notice(s) so re-issued by the TO to the TNO shall be deemed to have been served by the ONO on the relevant TNO(s) on the date of re-issue by the TO. The TO shall forward a copy of the re-issued A1 Retention Notice to the ONO at the same time and in the same manner, or include the ONO in copy if the A1 notice is re-issued by email to the TNO.

 (b) **Initiated by the TO**: As an exceptional alternative to the ONO serving an A1 Retention Notice under paragraph 6.2(a), if the TO has a reasonable suspicion of AIT in respect of Calls conveyed by it on behalf of the ONO to a TNO, it may, in its sole discretion, serve an A1 Retention Notice (which shall indicate the identity of the ONO) on the TNO by the 14th AIT calendar day and if so shall forward a copy of that A1 Retention Notice (and any other notices under this Annex) to the ONO at the same time and in the same manner and theTO may withhold payment from the TNO subject to the provisions of this Annex. The ONO may (provided that it has notified the TO of its intentions by the 15th AIT calendar day) withhold payment from the TO (only up to the value which the TO has billed the ONO).

For the sake of clarity, in a Transit Situation the ONO shall have the primary responsibility for serving an A1 Retention Notice where there is a reasonable suspicion of AIT, however the Parties agree there may be circumstances where the TO becomes independently aware of and forms the initial reasonable suspicion of AIT, in which case the TO may serve an A1 Retention Notice on the TNO and shall liaise, and share AIT Call Data and related notices with the ONO.

6.3 **AIT Call Data**: The Party serving the A1 Retention Notice shall:

(a) supply the associated AIT Call Data to the TNO; and

(b) copy that AIT Call Data to either the:

i. TO (where paragraph 6.2(a) applies); or

ii. ONO (where paragraph 6.2(b) applies)

by the 26th AIT calendar day by e-mail, or exceptionally by special delivery or recorded delivery post if the data is too large to send by e-mail. The Party supplying that AIT Call Data shall confirm by e-mail the despatch of the associated AIT Call Data to the TNO and either the TO or the ONO.

6.4 **Withdrawal Notice**: If the Party which served the A1 Retention Notice has not supplied the relevant AIT Call Data in accordance with paragraph 6.3 by the 26th AIT calendar day, that Party shall be obliged to serve (or shall be deemed to have served) a Withdrawal Notice on the TNO (and, where paragraph 6.2(a) applies, provide a copy of same to the TO) by the 30th AIT calendar day and paragraph 6.8 will apply.

6.5 **Rejection Notice**: If the TNO disputes there are reasonable grounds for an A1 Retention Notice, the TNO shall:

(a) serve a Rejection Notice on the party which served or is deemed to have served the A1 Retention Notice; and

 (b) copy that Rejection Notice to the TO (where paragraph 6.2(a) applies)

by the 34th AIT calendar day (unless and to the extent that a Withdrawal Notice has been served).

6.6 **No Rejection Notice**:

(a) **Where the A1 Retention Notice was initiated by ONO**: Where paragraph 6.2(a) applies, if the TNO fails to serve a Rejection Notice by the 34th AIT calendar day, subject to paragraph 2.6, the:

i. ONO shall retain permanently the sum stated in the A1 Retention Notice from the TO;

ii. TO shall be entitled to retain permanently a like sum from the TNO;

iii. TNO shall issue a credit note to the TO by the 41st AIT calendar day for the sum stated in the A1 Retention Notice and, upon receipt thereof, the TO will issue a credit note for a sum equal to that notified in the Retention Notice to the ONO 7 calendar days thereafter; and

iv. ONO will be entitled, in default of the issue of any such credit note within such period, to issue a debit note to the TO for the sum stated in the A1 Retention Notice and the TO will in turn be entitled to issue a debit note to the TNO for a like sum.

 (b) **Where the A1 Retention Notice was initiated by TO**: Where paragraph 6.2(b) applies, if the TNO fails to serve a Rejection Notice by the 34th AIT calendar day, subject to paragraph 2.6, the:

i. TO shall be entitled to retain permanently from the TNO the sum stated in the A1 Retention Notice;

ii. TNO shall issue a credit note to the TO by the 41st AIT calendar day for the sum stated in the A1 Retention Notice and, upon receipt thereof, the TO will (if relevant) issue a credit note to the ONO 7 calendar days thereafter for a sum equal to that identified and withheld by the ONO; and

iii. TO shall be entitled, in default by the TNO of the issue of any such credit note under paragraph 6.6(b) ii to issue a debit note to the TNO for the sum stated in the A1 Retention Notice and the ONO will be entitled in default of the issue of any such credit note within such period to issue a debit note to the TO for a sum equal to that identified and withheld by the ONO.

6.7 **Dispute Notice and/or Withdrawal Notice**: After service of a Rejection Notice under paragraph 6.5, the Party which served the A1 Retention Notice shall serve on the TNO (and copy same to the TO where paragraph 6.2(a) applies) by the 49th AIT calendar day a:

(a) Dispute Notice for the full sum withheld under the A1 Retention Notice; or

(b) Dispute Notice for part of the sum withheld under the A1 Retention Notice and a Withdrawal Notice for the balance of the sum withheld under the A1 Retention Notice, clearly identifying the precise Call traffic to which the Dispute Notice and the Withdrawal Notice relate; or

(c) Withdrawal Notice for the full sum withheld under the A1 Retention Notice,

and if the Party which served the A1 Retention Notice fails to serve a Withdrawal Notice in accordance with:

i. sub-paragraph (b) above for the balance of the sum; or

ii. sub-paragraph (c) above for the full sum

that Party shall be deemed to have served such a Withdrawal Notice for the applicable sum.

6.8 **Payment and Interest**: If a Withdrawal Notice is served (or deemed served):

(a) the Party serving the Withdrawal Notice shall immediately make payment to the Party upon which it served the A1 Retention Notice of:-

i. all of the sum specified (or deemed specified) in the A1 Retention Notice, or, in the event of an Dispute Notice also being served under paragraph 6.5, the sum specified in the Withdrawal Notice which is no longer the subject of any retention claim; and

ii. interest on the sum specified (or deemed specified) in the Withdrawal Notice calculated in accordance with paragraph 8.1; or

(b) where paragraph 6.2(a) applies, the TO shall pass the sum which it receives from the ONO under paragraph 6.7(a) to the TNO within 7 calendar days of receipt of payment from the ONO.

6.9 **AIT Dispute**: The Parties agree that if there is an AIT Dispute, the Party to that AIT Dispute (along with the other party to that AIT Dispute) has a good faith obligation to resolve it in accordance with the provisions of paragraph 7.

6.10 **Information Sharing**: Although in a Transit Situation where the A1 Retention Notice has been initiated by the ONO under paragraph 6.2(a) the TNO and the ONO are not direct contractual parties, in order to comply with paragraph 16.1 of the main body of this Agreement and this Annex it shall be their individual responsibilities to serve notices, supply AIT Call Data and/or correspondence directly upon the other (other than the initial A1 Retention Notice) and copying the same to the TO and both ONO and TNO shall be obliged to receive any notice served directly upon it by the other which service shall be considered to be effective contractual service under this Agreement for all purposes connected with this Annex.

**7. AIT DISPUTES AND DISPUTE RESOLUTION**

7.1 **Obligation to Resolve AIT Disputes**: The parties to an AIT Dispute agree they have an obligation to expediently and appropriately resolve AIT Disputes in good faith and in a timely and co-operative manner, irrespective of whether or not they have a direct contract with the other party to that AIT Dispute.

7.2 **Standard of Proof for AIT Dispute Resolution**: In relation to the resolution of an AIT Dispute the standard of proof shall be that of a “strong and convincing suspicion” that AIT has occurred in respect of the Call traffic referred to in the A1 Retention Notice in order to permanently retain those sums.

7.3 **Formal Resolution of AIT Dispute**: Without prejudice to paragraph 29 of the main body of the Agreement the following sub-paragraphs set out the different forms of dispute resolution which may be open to the parties to an AIT Dispute depending on the circumstances of the AIT Dispute, however this paragraph 7.3 does not prescribe any particular dispute resolutions process nor is it intended to do so:

 (a) **Non-Transit Situation between ONO and TNO**: Where an AIT Dispute in a non-Transit Situation exists between the Parties to this Agreement, they may resolve that AIT Dispute using:

i any form of dispute resolution they both agree upon; or

ii. court proceedings;

(b) **Two party Transit Situation significantly between ONO and TNO (not necessarily involving TO)**: Where an AIT Dispute in a Transit Situation exists between the Operator and another non-BT party in a situation where the two non-BT parties and the TO have agreed that the TO does not need to be involved in the resolution of that AIT Dispute, the two non-BT parties may resolve that AIT Dispute using:

i any form of dispute resolution they and the TO agree upon (although the TO may choose not to participate in that dispute resolution); or

ii. court proceedings;

(c) **Two party Transit Situation between TO and TNO (not involving ONO)**: Where an AIT Dispute in a Transit Situation exists between the TNO and the TO (where the TO initiated the A1 Retention Notice under paragraph 6.2(b)) in a situation where the two non-BT parties and the TO have agreed that the ONO does not need to be involved in the resolution of that AIT Dispute, the TNO and the TO may resolve that AIT Dispute using:

i any form of dispute resolution the TNO, ONO and TO agree upon (although the ONO may choose not to participate in that dispute resolution); or

ii. court proceedings;

(d) **Three party Transit Situation between ONO, TO and TNO**: Where an AIT Dispute in a Transit Situation exists between the TO, the Operator and the non-BT party to a separate BT Standard Interconnect Agreement, they may resolve that AIT Dispute using:

i any form of dispute resolution they all agree upon and participate in; or

ii. court proceedings.

7.4 **Assignment of rights in an AIT Dispute between ONO and TNO in a Transit Situation**: Without prejudice to paragraph 2.6, where an AIT Dispute exists between an ONO and a TNO in a Transit Situation, the TO may (only with the prior written agreement of authorised signatories of both the ONO and the TNO, but shall be under no obligation to) assign to the TNO any rights to payment from the ONO for the sum in dispute and Call traffic in dispute in order that all issues as to retention of monies may be settled between the TNO and the ONO. Any such assignment agreement shall expressly include provision for acceptance by the TNO that it:

(a) agrees to be bound by the terms of this Annex;

(b) will pursue any claim for any monies withheld directly against the ONO; and

(c) hold the TO free from any further responsibility to make payment to the TNO.

 7.5 **Deemed Resolution of AIT Dispute**: If in relation to an AIT Dispute:

(a) a form of binding dispute resolution;

(b) a written settlement agreement; or

(c) court proceedings

as referred to in paragraph 7.3 has not been reached (in relation to (a) or (b) above) or instituted (in relation (c) above) by the relevant parties within ten (10) months of the AIT Dispute commencement date then the AIT Dispute will be deemed to have been resolved in favour of the party which served the A1 Retention Notice.

7.6 Nothing in this Annex shall prevent either Party from exercising any other rights and remedies that may be available in respect of any breach of the provisions of this Agreement.

**8. INTEREST**

* 1. Any interest that is specified to be paid under the provisions of this Annex shall be calculated from the date when it was contractually otherwise due to be paid but for the service of a relevant notice to the date when payment was finally made at the AIT Interest Rate.

**APPENDICES:**

|  |  |
| --- | --- |
| E1 | A1 Retention Notice form  |
| E2 | A2 Withdrawal Notice form  |
| E3 | A3 Rejection Notice form |
| E4 | A4 Dispute Notice form  |
| E5 | AIT Indicators  |

**APPENDIX E1: A1 Retention Notice**

|  |
| --- |
| **A1 Retention Notice** |
| **TO**(transit operator OR terminating network operator) | **COMPANY**  | **Transit Operator** | **Terminating Network Operator** |
|  |  |
| **NAME / TITLE** |  |  |
| **TELEPHONE** |  |  |
| **E-MAIL** |  |  |
| **FROM**(originating network operator OR transit operator) | **COMPANY**  | **Originating Network Operator** | **Transit Operator *[BT use only]*** |
|  |  |
| **NAME / TITLE** |  |  |
| **TELEPHONE** |  |  |
| **E-MAIL** |  |  |
| I hereby give formal notice of an intention to withhold payment for the calls detailed below on grounds of suspicion of AIT in line with the appropriate provisions of the Standard Interconnect Agreement. |
| **Terminating number range(s) and Operator** | **Dates** | **Estimated total calls / minutes** | **Estimated NET value/ interconnect revenue (£)** **(excl VAT)** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| **Total Interconnect Revenue (£) (excl VAT)** |  |
| **Details of the “reasonable suspicion” of AIT** |  |
| I confirm that I am authorised to issue this notice on behalf of the above noted operator, and that numbers and revenues stated represent traffic profiles consistent with AIT indicators described in Annex E of the Standard Interconnect Agreement.  **Signature: ………………………………… Date: …………………………** |

In regard to associated CDR Data, please ensure that:

• All times are quoted in 24 hour clock format hh:mm:ss.

• All dates are quoted in format dd/mm/yyyy.

**ADDITIONAL INFORMATION (use additional pages if necessary):**

To include explanation of Dialled Digit information if exceptional circumstances exist: **APPENDIX E2: Withdrawal Notice**

|  |
| --- |
| **Withdrawal Notice** |
| **TO**(terminating network operator) | **COMPANY**  |  |
| **NAME / TITLE** |  |
| **TELEPHONE** |  |
| **E-MAIL** |  |
| **FROM**(originating network operator OR transit operator) | **COMPANY**  | **Originating Network Operator** | **Transit Operator *[BT use only]*** |
|  |  |
| **NAME / TITLE** |  |  |
| **TELEPHONE** |  |  |
| **E-MAIL** |  |  |
| I hereby give formal notice that we withdraw the retention detailed below. |
| **Terminating number range(s) and Operator** | **Dates** | **Estimated total call minutes** | **Estimated NET value/ interconnect revenue (£)** **(excl VAT)** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| **Total Interconnect Revenue (£) (excl VAT)** |  |
| I confirm that I am authorised to issue this notice on behalf of the above noted operator. **Signature: ………………………………… Date: …………………………** |

**ADDITIONAL INFORMATION (use additional pages if necessary):**

 **APPENDIX E3: Rejection Notice**

|  |
| --- |
| **Rejection Notice** |
| **TO**(originating network operator OR transit operator) | **COMPANY** |  | **If Transit, also COPY** **to ONO** **or TO**  |
| **NAME / TITLE** |  |
| **TELEPHONE** |  |
| **E-MAIL** |  |
| **FROM**(terminating network operator) | **COMPANY**  |  |
| **NAME / TITLE** |  |
| **TELEPHONE** |  |
| **E-MAIL** |  |
| I hereby give formal notice that we reject this retention. Summary reasons for this rejection are given below, and full details are given in the statement accompanying this notice. |
| **Terminating number range(s) and Operator** | **Dates** | **Estimated total call minutes** | **Estimated NET value/ interconnect revenue (£)** **(excl VAT)** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| **Total Interconnect Revenue (£) (excl VAT)** |  |
| **Summary of basis for rejection of the A1 Retention Notice** |  |
| I confirm that I am authorised to issue this notice on behalf of the above noted operator. **Signature: ………………………………… Date: …………………………** |

**ADDITIONAL INFORMATION (use additional pages if necessary):**

**APPENDIX E4: Dispute Notice**

|  |
| --- |
| **Dispute Notice** |
| **TO**(terminating network operator) | **COMPANY** |  | **If Transit, also COPY** **to ONO** **or TO**  |
| **NAME / TITLE** |  |
| **TELEPHONE** |  |
| **E-MAIL** |  |
| **FROM**(originating network operator OR transit operator) | **COMPANY**  |  |
| **NAME / TITLE** |  |
| **TELEPHONE** |  |
| **E-MAIL** |  |
| I hereby give formal notice that we dispute the rejection notice raised in respect of the case detailed below. Summary reasons for this dispute are given below and full details are given in the statement accompanying this notice. |
| **Terminating number range(s) and Operator** | **Dates** | **Estimated total call minutes** | **Estimated NET value/ interconnect revenue (£)****(excl VAT)** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| **Total Interconnect Revenue (£) (excl VAT)** |  |
| **Summary of basis for disputing the Rejection Notice** |  |
| I confirm that I am authorised to issue this notice on behalf of the above noted operator. **Signature: ………………………………… Date: …………………………** |

**ADDITIONAL INFORMATION (use additional pages if necessary):**

**APPENDIX E5**

**AIT INDICATORS**

In relation to Calls potentially covered by the definition of "AIT" AND having regard to the nature of the telecommunication service, the following situations and/or circumstances may be considered "AIT Indicators" for the purpose of this Annex:

Having regard to the telecommunication service:

**1.** **Excessive Calls**: For each of the first 3 months after commencement of the telecommunications service the number of Calls delivered to that telecommunication service exceed by 25% (or such other percentage as the Parties may agree in writing) or more the average number of Calls to a similar telecommunication service ascertained after the first month and monthly thereafter.

**2.** **Excessive Growth**:After the first 3 months the number of Calls delivered to any telecommunication service increases at a rate of 25% or more from any one month to the next.

**3.** **Small Number Calling Centres**: A high proportion and/or volume of Calls delivered to any telecommunication service originate or are generated at a small number of Calling Centres whether or not limited in geographical location.

 **4.** **Call Duration**: The average duration of Calls delivered to any telecommunication service differs significantly from that of Calls to a similar telecommunication service or there are repeated Calls of similar duration.

**5.** **No Promotion**: Calls delivered to any telecommunication service appear to originate without promotion of the telecommunication service.

**6.** **Payphone Origination**: A significant proportion of Calls delivered to any telecommunication service originate at payphones or use payment systems other than a standard telephone bill.

**7.** **Self Generated Calls**: Calls made by or on behalf of the telecommunication service to itself excessively.

**8.** **Breach of Law**: Operating a telecommunication service in breach of the law, where such breach can reasonably be regarded as causing AIT.

**9.** **Phone-paid Services Authority Code**: Operating a telecommunication service in breach of the Phone-paid Services Authority Code of Practice (including any equivalent or applicable replacement, future or additional enforceable code(s), guideline(s) and/or practice notes), where such breach is of a financial nature, is not one which would be considered minor having regard to the Phone-paid Services Authority Code 14 Supporting Procedure (including any equivalent or applicable replacement, future or additional guide(s)) and/or can reasonably be regarded as causing or being AIT.

**10.** **Missed Calls**: Calls made to a telecommunication service in response to a “missed call” (that is a Call of a very short duration and which is unanswered or unanswerable), where it is likely that the initial “missed call” was not genuinely a call which the Calling Party had made in order to contact the called party, but rather the “missed call” was of a very short duration and made with the primarily purpose of getting the called party to make a return Call to the number displayed on their mobile or fixed-line handset as missed, particularly where:

(a) the initial called party did not personally know the missed Calling Party or have a legitimate commercial reason for receiving a missed call from that Calling Party;

(b) the Call to the missed call number is to a:

i. per call drop rate of any value;

ii. a per minute call rate of 10ppm or more; and/or

iii. combination of per call drop rate and per minute call rate, both of any value; and/or

(c) upon returning the missed call, the caller is encouraged to remain on the Call as long as possible and/or the service on the Call does not appear to be genuine.

**11.** **Impinges Billing Technology**: Calls are made to a telecommunication service in a manner reasonably suggesting that billing technology and/or data had been or had attempted to be impinged upon.

**12.** **Fraudulent Calls**: Calls made fraudulently (whether there is a direct or indirect relationship between the Calling Party and the particular telecommunications service) but specifically excluding Calls made on individual lost or stolen mobile handsets/SIM cards.

**13**. **Self Generated or Related Calls**: Calls made at a charge to the Calling Party which is less than the out-payment to the telecommunication service in circumstances which reasonably indicate that the telecommunication service was involved in those Calls.

**14**. **Excessive Durations**: Calls which last for an excessive duration or result in lockups.

**15**. **Overseas**: For Calls to PRS, Calls originating overseas.

**16**. **Tromboning**: Where there are a high proportion of Calls are to a UK originating number and where those Calls are purposefully routed to an operator or network outside of the UK for the sole purpose of enabling the TNO (and/or its reseller) to route the Call back through BT as transit in order to enable the TNO (and/or its reseller) to benefit from the price differentials between the two Call types, particularly where there appears to be a commercial relationship between the Calling Party and the TNO (and/or its reseller).

**17**. **CLI Manipulation**: Where there are a high proportion of Calls where the actual CLIs which are ordinarily visible to operators have been intentionally hidden, modified or replaced by fake or masking CLIs, including but not limited to situations where AIT Indicator 10 applies.