

INTERNATIONAL INTERCONNECTION FORUM FOR SERVICES OVER IP

i3 FORUM
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Contract Fraud Clauses for Carrier Service Agreements **Release 5.0 – December 2017**

FOREWORD

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1 Management Summary

The following documentation provides guidance and may be the basis for contract fraud clauses to be included in the Carrier Service Agreements.

These model clauses were drafted to deal with fraud disputes uniquely between the Service Receiving Party and the Service Providing Party independent of any other standard dispute clauses currently in existence (for rate/volume disputes).

It is anticipated that some changes to this model language may be required to include with the other contractual dispute language.

It indicates the minimum key elements:

- 1. failure to collect from the end user is not a reason to not pay the Service Providing Party;
- 2. evidence needs to be provided to support a fraud dispute;
- 3. if the Service Providing Party cannot obtain a credit note from its supplier then the amounts are considered due and the Service Receiving Party needs to pay.

In case of a fraud dispute situation, the burden of the proof and allegedly fraudulent traffic analysis is the responsibility of the Service Receiving Party.

The Service Receiving Party is ultimately responsible for all traffic sent.

2 Contract clauses

2.1 Definition

“Fraudulent traffic includes, but is not limited to, traffic that the Carrier reasonably determines as: (i) calls terminated to repeating interactive voice responses (IVRs) or recordings platforms; (ii) not routed for termination in the country of destination and/or to the owner of the number range; (iii) involving numbers that are unallocated or unassigned at time of traffic; (iv) machine generated, sequential, or simultaneous in nature.”

2.2 Liability & Payment rules

“Each Party is responsible for and pay all expenses associated with all billing, collection, and provision of customer service activities in connection with calls originated by its customers. No payments due hereunder are contingent on payment due to either Party from its own customers. Neither Party is obliged to obtain a credit note for the supply of a Carrier Service for which the other Party could not collect the corresponding amount with its end user (e.g. in the event of insolvency or fraud)..”

2.3 Right to suspend service

“The Service Providing Party may suspend terminating traffic to certain dial codes / numbers in the event that it suspects or has likely evidence of fraudulent use of such traffic.”

2.4 If fraudulent traffic is detected

This part of the fraud clause clarifies that despite the liabilities defined in point 2.2, it remains possible to open fraud disputes under certain conditions.

*“If fraudulent / suspected fraudulent use of traffic occurs, each the Service Receiving Party shall **notify** the Service Providing Party of such traffic before the invoice for such traffic period is received. The CDRs for the alleged fraudulent traffic needs to be provided together with the fraud traffic notification.*

*The related fraud traffic **dispute** shall be officially opened by the Service Receiving Party against the invoice received from the Service Providing Party.*

*Notwithstanding anything to the contrary in the [contract dispute resolution clauses], the following **information must be provided** by the Service Receiving Party (disputing Party) before the due date of the invoice relating to the alleged fraudulent traffic: i., a case description (in English) of the Fraudulent Traffic and ii. a criminal complaint or report from a public authority or a document issued by a public authority confirming that (criminal) investigations have been initiated by the respective authority in the country of traffic origination.”*

2.5 Credit note handling principles

“In case of fraudulent traffic disputes, the Service Providing Party will use commercially reasonable efforts to obtain a credit note from its suppliers regarding the fraudulent traffic. The Service Receiving Party must pay for amounts referring to fraudulent traffic for which a credit note cannot be obtained from the Service Providing Party’s suppliers.”