

Access Code does not affect the Service Operator's End User's use of the Access Code to prefix Calls intended for delivery to the Service Operator's Network.

- 8.4 The Service Operator acknowledges that Telecom may change an Access Code without the prior written consent of the Service Operator where Telecom is required to do so to comply with a change in the CCITT numbering plan.
- 8.5 Neither TCNZ nor any Telecom ROC shall be liable for any costs of the Service Operator which arise directly or indirectly from any change in, deletion or addition of an Access Code.
- 8.6 Subject to agreement on the charges to be made to the Service Operator for the feature, each Telecom ROC will provide to the Service Operator non-code access when:
- 8.6.1 Telecom Group has introduced its intelligent network system and has received reasonable notice from the Service Operator to make available the non-code access feature of that system; or
- 8.6.2 any one service operator providing services similar to the Service Operator's Network Service (other than any member of Telecom Group) has achieved 9 percent national toll market share or all service operators providing services similar to the Service Operator's Network Service (other than any member of Telecom Group) have achieved an aggregate 13 percent national toll market share and the Principal ROC has received reasonable notice from the Service Operator to introduce non-code access.
- National toll market share will be calculated by reference to an agreed formula. The parties will thereafter make such amendments to this Agreement as are necessary to reflect the changes in access procedures.
- 8.7 Any notice from the Service Operator under Clauses 8.6.1 or 8.6.2 may request that non-code access be made available on a Point of Interconnection by Point of Interconnection basis, or at all Points of Interconnection at one time.

9. TELECOM ROC LIABILITY

- 9.1 Except as provided in Clauses 9.2 to 9.4 (inclusive), under no circumstances will TCNZ, a Telecom ROC or Telecom Group, or their officers, employees, contractors or agents, be liable in contract, tort, or otherwise to compensate the Service Operator for any loss, injury, or damage arising directly or indirectly from:
- 9.1.1 any act, omission, error, default or delay of TCNZ, that Telecom ROC or Telecom Group or their officers, employees, contractors or agents; or
- 9.1.2 any act, omission, error, default or delay in respect of the provision, use or termination of that Telecom ROC's Network Service or any Other ROC's Network Service; or
- 9.1.3 the failure by TCNZ, that Telecom ROC or Telecom Group or their officers, employees, contractors or agents to Connect that Telecom ROC's Network or any Other ROC's Network to the Service Operator's Network or to make available or provide that Telecom ROC's Network Service or any Other ROC's Network Service; or
- 9.1.4 any failure of that Telecom ROC's Network Service or any Other ROC's Network Service; or
- 9.1.5 any failure of anything provided as part of, or in association with that Telecom ROC's Network Service or any Other ROC's Network Service; or
- 9.1.6 any interception, distortion or interruption of any communication or attempted communication (including but not limited to any Chargeable Call or Call) using Telecom ROC's Network Service or any Other ROC's Network Service; or
- 9.1.7 any act or omission of any customer of TCNZ, that Telecom ROC or Telecom Group and any other third party for whom TCNZ, that Telecom ROC or Telecom Group is not responsible; whether the loss, injury or damage is the direct or indirect result of negligence or otherwise.
- 9.2 [Penalty for delayed commissioning—policy to be finalised.]
- 9.3 Notwithstanding Clause 9.1, but subject to all other provisions in Clause 9, a Telecom ROC does not by this Agreement exclude liability for physical damage to the property of the Service Operator occurring in the course of the provision, operation, servicing or termination of that Telecom ROC's Network Service that is a direct consequence of the sole negligence of that Telecom ROC or Telecom Group or their officers, employees, contractors or agents.
- 9.4 Notwithstanding Clause 9.1, but subject to all other provisions of this Clause 9 where there is a total failure of a Telecom ROC's Network Service for any reason for more than 24 consecutive hours after notice by the Service Operator of the failure to that Telecom ROC, and the failure or continuation of the failure is not in any way directly or indirectly caused by the Service Operator or any person for whom the Service Operator is responsible, that Telecom ROC will, on request by the Service Operator made within 30 days after remedy of the failure, or within 30 days of termination of this Agreement or within 30 days of Partial Termination of this Agreement insofar as it relates to that Telecom ROC, (whichever is the sooner), refund to the Service Operator an amount (calculated by the formula set out below) for each period of 24 hours (or part of such period) by which the failure continues after 24 consecutive hours after the time of the Service Operator's notice mentioned above:

$$\frac{1}{360} \times a$$

where a is the annual Interconnect Link Charges (applicable at the time of the commencement of such failure) payable by the Service Operator to that Telecom ROC.

- 9.5 Under no circumstances will a Telecom ROC be liable under Clause 9.4 where the total failure of that Telecom ROC's Network Service arose because of:
- 9.5.1 the making of changes to that Telecom ROC's Network in accordance with Clause 16;
- 9.5.2 scheduled testing, repair or maintenance of that Telecom ROC's Network of which that Telecom ROC has given the Service Operator reasonable notice;
- 9.5.3 unscheduled testing, repair or maintenance of that Telecom ROC's Network, where the necessity for testing, repair or maintenance arises as a result of the act or omission of any person other than the Service Operator or Telecom Group;