

- 9.5.4 testing, repair or maintenance of the Service Operator's Network;
- 9.5.5 the distortion of normal traffic patterns in that Telecom ROC's Network;
- 9.5.6 Force Majeure.
- 9.6 In any event, under no circumstances will TCNZ, a Telecom ROC or Telecom Group or their officers, employees, contractors or agents be liable to the Service Operator in contract, tort (including negligence) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or consequential loss whatever notwithstanding that TCNZ, that Telecom ROC or Telecom Group or their officers, employees, contractors or agents have been advised of the likelihood of such losses PROVIDED THAT nothing in this clause shall limit the Service Operator's entitlement to a refund of charges under Clause 9.4 in circumstances where such a refund is applicable.
- 9.7 If for any reason TCNZ, a Telecom ROC and/or Telecom Group and/or their officers, employees, contractors and/or agents are liable to the Service Operator in contract, tort, or otherwise, the combined maximum liability of TCNZ, that Telecom ROC and Telecom Group and their officers, employees, contractors and agents to the Service Operator shall be NZ\$50,000 in respect of any one event or related series of events, with a maximum liability to the Service Operator in any 12 month period of NZ\$100,000, irrespective of the number of events.
- 9.8 Nothing in this Agreement shall be construed to increase the contractual liability of TCNZ or a Telecom ROC in respect of any event beyond that which it otherwise would have had, had TCNZ and each Telecom ROC entered into a separate contract with the Service Operator. Without limiting the foregoing provisions of this Clause 9.8, nothing in this Agreement shall be construed to increase the contractual liability of the Principal ROC in respect of any event beyond that which it otherwise would have had, had it not taken on the role of acting for and on behalf of the Other ROCs as Principal ROC under this Agreement.
- 9.9 Each limitation or exclusion of this Clause 9 and each protection given to TCNZ, a Telecom ROC or Telecom Group or their officers, employees, contractors or agents by any provision of this Clause 9 is to be construed as a separate limitation or exclusion applying and surviving even if for any reason any of the provisions is held inapplicable in any circumstances.
- 9.10 Nothing in this Clause 9 shall limit the right of the Service Operator to enforce this Agreement by seeking an order for specific performance in any Court of competent jurisdiction.
- 9.11 Where any person (including but not limited to any Other ROC or, where applicable, TCNZ or any other member of the Telecom Group) performs from time to time in whole or in part, as agent or contractor of a Telecom ROC or TCNZ, any of the obligations of that Telecom ROC or TCNZ under this Agreement (any such other person in this Clause 9.11 called the "Other Person"), the following provisions shall apply:
- 9.11.1 the performance of any of that Telecom ROC's Network Service or any service incidental to or in connection with any of that Telecom ROC's Network Service by that Other Person shall be consideration for the agreement of the Service Operator that that Other Person shall have the benefit of the rights, exemptions, limitations, defences and immunities of whatsoever nature contained in this Agreement which are applicable to that Telecom ROC or TCNZ (as the case may be) under this Agreement;
- 9.11.2 that Telecom ROC or TCNZ (as the case may be) is or shall be deemed to be contracting for the benefit of the rights, exemptions, liabilities, defences and immunities referred to in Clause 9.11.1 for that Other Person as agent for that Other Person;
- 9.11.3 that Other Person shall be entitled to all benefits, advantages, immunities, limitations or rights enjoyed by that Telecom ROC or TCNZ (as the case may be) under this Agreement and the Service Operator acknowledges that this promise is intended to create an obligation enforceable at the suit of that Other Person, whether by way of defence or otherwise.
- 9.12 The Service Operator shall ensure that each Service Operator's Customer shall, as a condition of obtaining the Service Operator's Network Service, sign an acknowledgment of the limitations of the liability of Telecom Group and its officers, employees, contractors and agents in the form annexed to this Agreement as Schedule G or in such other form as may be from time to time agreed between the Service Operator and the Principal ROC.

10. INDEMNITY BY SERVICE OPERATOR

- 10.1 The Service Operator shall indemnify and save harmless TCNZ, each respective Telecom ROC and Telecom Group from loss, damage, liability, costs or expense which may be suffered or incurred by TCNZ, that Telecom ROC or Telecom Group or their officers, employees, contractors or agents arising from or in connection with any actions, proceedings, claims and demands brought by the Service Operator's End Users which relate directly or indirectly to that Telecom ROC's Network Service or any Other ROC's Network Service.
- 10.2 The Service Operator shall indemnify and save harmless TCNZ, each respective Telecom ROC or Telecom Group and their officers, employees, contractors and agents from loss, damage, liability, costs or expense which may be suffered or incurred by TCNZ, that Telecom ROC or Telecom Group or their officers, employees, contractors or agents arising from or in connection with:
- 10.2.1 the use or attempted use or misuse (whether intentional or not) of the Service Operator's Network Service by any person (including the Service Operator); or
- 10.2.2 any breach of this Agreement by the Service Operator.
- 10.3 The Service Operator shall indemnify and save harmless TCNZ, each respective Telecom ROC and Telecom Group for any loss, damage, liability, costs or expense whatsoever suffered or incurred by TCNZ, that Telecom ROC and Telecom Group or their officers, employees, contractors or agents arising from or in connection with:
- 10.3.1 anything on the Service Operator's Premises; or
- 10.3.2 the Connection of anything to that Telecom ROC's Network by the Service Operator, its officers, employees, contractors or agents, which Connection does not comply with the provisions of Clause 13;