

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 that Telecom ROC or Telecom Group and any other third party for whom 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 Notwithstanding Clause 9.1, but subject to all of the other provisions in Clause 9, where a Telecom ROC:

9.2.1 delays carrying out its obligations of providing, installing and Pre-testing an Interconnect Link resulting in a Delayed Installation Date; or

9.2.2 fails to make personnel available for joint testing within the 2 Working Day period specified in Clause 2.7; that Telecom ROC shall refund to the Service Operator as liquidated damages (and not as a penalty) an amount calculated in accordance with the following formula:

$$(a - (b + c + d)) \times e$$

where

a is the aggregate of the number of days from and including the Installation Date to and including the Delayed Installation Date, and the number of complete days after the expiry of the 2 Working Day period specified in Clause 2.7 during which the Telecom ROC has failed to make available personnel for joint testing;

b is the number of days where the delay or failure was caused by Force Majeure;

c is the number of days where the delay or failure arose directly or indirectly from the failure of a supplier to supply that Telecom ROC's Equipment;

d is the number of days of delay by the Service Operator in complying with its obligations under Clauses 14.1 and 14.5;

e is the charge per day for that Interconnect Link calculated in accordance with Item 1(a) of Schedule J and (if applicable) the pro rated monthly transmission charge set out in Item 1(b) of Schedule J;

PROVIDED THAT:

9.2.3 no refund shall be made in respect of the first Interconnect Link provided, tested and installed at a Point of Interconnection; and

9.2.4 where  $(a - (b + c + d))$  exceeds 60, the refund shall be calculated in accordance with the following formula:

$$e \times 60.$$

Subject to Clause 9.10, a refund under this Clause 9.2 represents the sole remedy for the Service Operator against Telecom Group in the event that a Telecom ROC delays in the provision, installation, testing or commissioning of an Interconnect Link.

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:

9.3.1 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