

is a direct consequence of the sole negligence of that Telecom ROC or Telecom Group or their officers, employees, contractors or agents; or

9.3.2 to indemnify the Service Operator under Clause 22.7.

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 the Service Operator serves notice of the failure on the Principal ROC in accordance with Clause 19.3, 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 pro rata for part of such period) by which the failure continues after 24 consecutive hours after the time of service of the Service Operator's notice mentioned above:

$$\frac{1}{365} \times a$$

where  $a$  is the total annual charges calculated in accordance with Item 1(a) of Schedule J (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 that Telecom ROC's Network Service was suspended in accordance with the provisions of Clause 4.2.

9.6 In any event, under no circumstances will 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 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 or exclude the Service Operator's entitlement to a refund of charges under Clauses 9.2 and 9.4 in circumstances where such a refund is applicable.

9.7 If for any reason 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 (including negligence) or otherwise, the combined maximum liability of that Telecom ROC and Telecom Group and their officers, employees, contractors and agents to the Service Operator shall be \$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 \$100,000, irrespective of the number of events, PROVIDED THAT nothing in this Clause 9.7 shall apply to Telecom's liability under the Agreement to pay any amount under Clauses 6.6.3, 6.10 or 6.15.

9.8 Nothing in this Agreement shall be construed to increase the contractual liability of a Telecom ROC in respect of any event beyond that which it otherwise would have had, had 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 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.