

plan. In such circumstances, the Principal ROC shall serve a notice on the Service Operator as soon as it becomes aware of the likelihood of such a change.

- 8.5** The Service Operator and Telecom will bear their own costs which arise directly or indirectly from any change in an Access Code under Clauses 8.2 or 8.4, or any change in the form into which an Access Code is translated under Clause 8.3.
- 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 Telecom Group has introduced its intelligent network system, has received reasonable notice from the Service Operator to make available the non-code access feature of that system, and the feature has been made available to any comparable Network Operator. 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) and Clause 9.10, under no circumstances will 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 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 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 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 payable under 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 is a direct consequence of the sole negligence of that Telecom ROC or Telecom Group or their officers, employees, contractors or agents; or