



Telecommunications &
Radiocommunications
Regulator

PO Box 3547
Port Vila
Vanuatu
t: +678 27621
e: enquiries@trr.vu

TELECOMMUNICATIONS CLASS EXCEPTION:

ON-PREMISES SUPPLY OF WI-FI INTERNET CONNECTIVITY BY HOTELS, CAFÉS, BARS, CLUBS RESTAURANTS & LIKE BUSINESSES

Pursuant to the powers conferred on the Telecommunications and Radiocommunications Regulator (“the Regulator”) under the Telecommunications and Radiocommunications Regulation Act No.30 of 2009 (“the Act”), including sections, 7, 12 and 14 of the Act, the Regulator hereby grants a class Exception to hotels, cafes, bars, clubs, restaurants and like businesses that are generally open to the public for business, to provide on-premises wireless (“Wi-Fi”) internet connectivity to their customers.

Made at Port Vila this ___ day of _____ 2015.

Ronald Box
Telecommunications and Radiocommunications Regulator

1. Short title and commencement

- 1.1 This exception may be cited as the “Telecommunications Class Exception for the On-Premises Supply of Wi-Fi internet connectivity by hotels, cafes, bars, clubs, restaurants, and like businesses 2015.”
- 1.2 This Exception commences on the date of its execution by the Regulator.

2. General Terms and Conditions

- 2.1 The telecommunications services that are included within this Exception are limited to the supply of wireless internet (“Wi-Fi”) connectivity on-premises by hotels, cafes, bars, clubs, restaurants and like businesses to their customers.
- 2.2 This Exception does not allow the provision of any telecommunications service to the general public other than as allowed by Section 2.1.
- 2.3 This Exception is a unilateral grant of permission by the Regulator and shall not be regarded as a contract or bilateral agreement.
- 2.4 The services under this Exception shall be supplied in accordance with the Act and any applicable law, regulation, order or rule under the laws of the Republic of Vanuatu.
- 2.5 Nothing in this Exception shall be construed to allow any person to begin or continue any activities in breach of any applicable law, regulation, order or rule under the laws of the Republic of Vanuatu.
- 2.6 This Exception is granted on a non-exclusive basis.
- 2.7 This Exception, and any rights or obligations in or arising under it, may not be ceded, transferred, assigned, pledged or otherwise disposed of without the prior written consent of the Regulator, which consent may be given subject to such terms and conditions as the Regulator may impose.

3. Term, Revocation, or Amendment of Exception

- 3.1 This Exception is granted for a minimum period of one year commencing on the day it is made, and continues unless revoked by the Regulator pursuant to the Act. Unless exigent circumstances make it impracticable, the Regulator shall give affected parties at least 30 days advance written notice and opportunity to comment on any revocation of this Exception, or any revocations of it as applied to one or more persons covered by this Exception.
- 3.2 TRR may amend this Exception, provided that:
 - (a) TRR provides in writing at least 30 days in advance of the effective date of any proposed amendment, notice to the affected persons and a summary of the reasons for the proposed amendment; and
 - (b) TRR provides affected persons, following the above notice, an opportunity to comment in writing on the proposed amendment.

4. False and misleading claims

- (1) Any person authorised by this Exception to provide Wi-Fi internet connectivity shall not make, or cause to be made, any false or misleading claim regarding:
 - (a) the availability, price or quality of such services; or
 - (b) the telecommunications services or equipment used to provide the above services, of a Licensed Operator or wholesale service provider.
- (2) For the purposes of this clause, a claim is false or misleading if, at the time it was made, the person making the claim knew, or reasonably ought to have known, that it was false or misleading in any material respect, or that it was reasonably likely to confuse or mislead the persons to whom it was published.

5. Monitoring

In addition to any other powers contained in this Exception, any Regulations, Rules, Exceptions or Orders, or under any other laws of the Republic of Vanuatu, the Regulator shall, for the purposes of exercising his or her responsibilities, functions and powers under this Exception, have the power to make orders to:

- (a) require the production of documents and information by any person providing services covered by this Exception, subject to reasonable restrictions on the making public of any such documents or information;
- (b) search the premises of a person providing services covered by this Exception, and seize documents, equipment and any other related item;
- (c) require attendance and examination of the personnel of any person providing services covered by this Exception; and
- (d) require a person providing services covered by this Exception to undertake specific actions or to cease specific actions in the event of a breach of this Exception, law, regulation, rule or order.

6. Enforcement By Way Of Fines

- a) Without limiting any other right or remedy available to the Regulator under the Act or otherwise at law, if a person providing services covered by this Exception is in breach of any of its material obligations under this Exception, the person shall be subject to a maximum fine payable to the Regulator in an amount not to exceed five (5) million vatu (which will be

increased at the end of each calendar year by the rate of inflation) in respect of each such compliance failure.

- b) The amount of any fine imposed pursuant to this clause shall be, among other things:
- i. proportionate to the breach; and
 - ii. determined with reference to the severity, frequency and, if applicable, any intention of the non-compliance and any cooperation the person provided to the Regulator in relation to the non-compliance.

7. Interest

Without limiting any other right or remedy available to the Regulator at law, if a person fails to make payment of any amount of fee, fine or penalty to the Regulator pursuant to this Exception, interest shall accrue and be payable monthly in arrears on the outstanding amount, including any accrued interest, at the rate of 12% per annum.

8. Rights of appeal or review

Nothing in this Exception is intended to limit in any way rights of appeal or review available to it under the laws of the Republic of Vanuatu.

9. Force Majeure

9.1 Effect of Force Majeure

Subject to the other provisions of this clause, if a person supplying services covered by this Exception fails to observe or perform any of its obligations under this Exception (other than an obligation to make payment), and such failure shall have been caused by reason of Force Majeure, such failure shall be deemed not to be a breach of such obligation.

9.2 Meaning of Force Majeure

In this Exception, **Force Majeure** means any:

- (a) act of God;
- (b) confiscation or expropriation;
- (c) embargo;
- (d) public mains electricity supply failure;
- (e) fire;
- (f) explosion or nuclear accident;

- (g) sabotage, revolution, riot, terrorism, act of war (whether declared or not) or warlike operations;
- (h) requirement or restriction of governmental authorities (but, for the avoidance of doubt, not including any determination of the Regulator);
- (i) by which, or as a result of which, it is illegal for a party to observe or perform an obligation under this Exception; or
 - (ii) which frustrates the observance or performance of that obligation;
- (i) natural disaster such as earthquake, land slide, storm, flood or volcanic eruption;
- (j) epidemic or quarantine restriction;
- (k) strike, lockout, work stoppage or other labour hindrance,

in each case, beyond the reasonable control of the Wholesale service provider.

9.3 Circumstances where cannot claim benefit of Force Majeure

A person providing services covered by this Exception shall not be entitled to the benefit of the provisions of this Force Majeure clause under any or all of the following circumstances:

- (a) to the extent that the failure was caused by, or reasonably could have been prevented if it were not for, the contributory negligence of the person;
- (b) to the extent that the failure was caused by, or reasonably could have been prevented if it were not for, a failure or omission of the person, and the person has failed to mitigate or remedy the event relied upon, and to resume the observance or performance of the particular obligation, with reasonable dispatch;
- (c) the person has failed to mitigate or remedy the event relied upon, and to resume the observance or performance of the particular obligation, with reasonable dispatch;
- (d) if the failure was caused by, or reasonably could have been prevented if it were not for, lack of funds of the person or its group;
- (e) unless, as soon as possible after the happening of the event relied upon or as soon as possible after determining that the event was in the nature of Force Majeure and would affect the ability of the person to observe or perform the particular obligation, the Wholesale Service Provider shall have served on the Regulator notice to the effect that it is unable by reason of Force Majeure (the nature of which shall be specified in the notice) to observe or perform the particular obligation (the nature of which shall also be specified in the notice); or
- (f) if, and to the extent that, the particular obligation may be observed or performed notwithstanding the Force Majeure event.

9.4 Remedy of the Force Majeure event

Any person supplying services covered by this Exception shall:

- (a) Immediately use all reasonable endeavours to remedy the Force Majeure event;
- (b) serve notice on the Regulator of the Force Majeure event and the likely effect of the event as soon as reasonably practicable after it becomes aware of the event; and
- (c) serve notice on the Regulator, as soon as possible after the Force Majeure event shall have been remedied, to the effect that the event has been remedied and the person has resumed, or is then in a position to resume, the observance or performance of the particular obligation.

10. Governing Law

This Exception shall be governed in all respects by and construed in accordance with the laws of the Republic of Vanuatu.

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