

GOVERNMENT OF THE REPUBLIC OF VANUATU

TELECOMMUNICATIONS LICENCE

**AELAN INTERNET**

(Amendment of License Section 7 and Section 12)

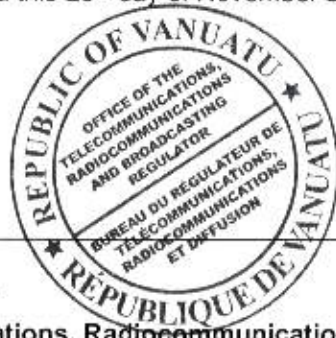
In exercise of the powers conferred on me by Section 7 and Section 12 of the Telecommunications, Radiocommunications and Broadcasting Act No 30 of 2009 as amended by Amendment 22 of 2018. I **BRIAN WINJI**, Telecommunication, Radiocommunications and Broadcasting Regulator (the **Regulator**) hereby grant, Aelan Internet, (the **Licensee**), a licence in respect of the provision of the telecommunications services referred to in clause 1 of this licence, for the period specified in clause 2 of this licence, and subject to the other terms and conditions specified in this licence.

Made at Port Vila this 23<sup>rd</sup> day of November 2020



Mr. Brian Winji,

Telecommunications, Radiocommunications & Broadcasting Regulator



## 1. Scope of the licence

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### 1.1 Licence to provide telecommunications services

- (1) This licence authorises the Licensee to:
  - (a) provide telecommunications services other than mobile telecommunications services to end users in Vanuatu (excluding mobile telecommunications services);
  - (b) provide international telecommunications services to end users in Vanuatu, and to persons outside Vanuatu; and
  - (c) provide any other telecommunications services that are supplementary to those telecommunications services.
- (2) For the purposes of this licence, **telecommunications services** does not include broadcasting services.
- (3) For the purposes of this licence **mobile telecommunications services** means telecommunications services that are provided using a mobile radio system:
  - (a) in which assigned radio spectrum can be re-used simultaneously in nearby geographic areas without interference between users; and
  - (b) that is capable of supporting hand-off, of sessions or calls, between wireless transmitters as users move between places at a speed that is suitable for continuity of voice calls throughout that hand-over.
- (4) For the purposes of this licence telecommunications services that employ the following standards shall be presumed to be **mobile telecommunications services** unless the circumstances in which the services are provided clearly indicate otherwise:
  - (a) GSM, UMTS (3GSM)/HSPA and variants, LTE, cdmaOne, cdma2000, EV-DO and variants; and
  - (b) Mobile WiMAX (IEEE 802.16e-2005 or 802.16e), including WiBro.
- (5) For the purposes of this licence telecommunications services that employ the following standards shall be presumed not to be **mobile telecommunications services** unless the circumstances in which the services are provided clearly indicate otherwise:
  - (a) Fixed WiMAX (IEEE 802.16-2004 or 802.16d); and
  - (b) Wi-Fi (IEEE 802.11, 802.11a, 802.11b, 802.11g, 802.11n and others, except 802.11r).

## 1.2 No licence to land or operate international submarine cables

This licence does not authorise the Licensee to land or operate a submarine cable that directly or indirectly connects Vanuatu with any foreign country. This clause 1.2 shall not apply to cables, the whole of which, including all terminals, lie within the jurisdiction of Vanuatu.

## 1.3 Licence to operate telecommunications facilities

- (a) This licence authorises the Licensee to construct and operate all telecommunications apparatus or facilities that are used to provide the telecommunications services referred to in clause 1.1 in accordance with this licence.
- (b) Where radio spectrum is required to construct and operate these telecommunications apparatus or facilities, then the Licensee may apply to the Regulator for the grant of the right to use that radio spectrum, which will be a separate grant from this licence.

## 1.4 Non-exclusive licence

This licence is granted to the Licensee on a non-exclusive basis.

## 1.5 Licence subject to the Laws of Vanuatu

This licence is granted subject to the Licensee complying with the laws of Vanuatu, including, without limitation the Telecommunications, Radiocommunications and Broadcasting Act 2009 (as amended), and all related regulations, rules, directions, codes and standards and orders made pursuant thereto.

# 2. Term and Date of Effect

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The term of this licence shall be 15 years from the date of this licence. This licence comes into effect on the date on which it was granted.

# 3. Licence Fees and Interest

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The Licensee shall, within 20 Working Days following the end of each calendar quarter after the date of this licence, pay to the Regulator an amount of 2.25% of Net Revenues in relation to that calendar quarter. This amount is known in this licence as the **Licence Fee**.

For the purposes of this clause, **Net Revenues** means, in respect of any relevant period:

- (a) the gross revenue (including all interconnection revenue) received by the Licensee from the provision of telecommunications services under this licence during that period; less
- (b) the sum of:
  - (i) the interconnection charges paid by the Licensee to another Licensed Operator during that period;



- (ii) the out payments made by the Licensee, on an arm's length basis, to any person outside Vanuatu for the carriage and termination of telecommunications traffic that originates in Vanuatu to destinations outside Vanuatu during that period; and
- (iii) any general business licence fees (not including the Licence Fee or any UAP Fund Levy) paid by the Licensee to the Government or the Regulator during that period.

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

## **4. Interconnection**

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Should the Licensee intend to interconnect with the network of any other licensed operator within Vanuatu, the Licensee will, before concluding any such interconnection agreement, provide to the Regulator for approval, the terms and conditions of a proposed reference interconnection offer (the **RIO**) for interconnection with the Licensee's network, and the interconnection agreement that the Licensee proposes to enter with any other licensee.

## **5. Radio spectrum**

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### **5.1 Application for the use of radio spectrum**

The Licensee must apply to the Regulator for the use of radio spectrum, and the grant of any licence for the use of radio spectrum shall be separate from this Telecommunications licence and the services to be provided therein.

### **5.2 Approvals for radio station sites, etc.**

The Licensee shall obtain approvals from the Regulator in respect of each of its radio station sites used to provide the telecommunications services provided under this licence and/or used for radio transmission links in advance of site construction.

### **5.3 Environmental issues**

- (a) The radiation limits of the radio emission of the Licensee's radiocommunications and other equipment in its network must comply with:
  - (i) existing Vanuatu radiation safety standards, if any; or
  - (ii) one or more applicable radiation safety standards, as approved by an internationally recognised health and safety standards body, determined by the Regulator.
- (b) The Licensee shall install, manage and operate the radiocommunications and other equipment in its network based on:

- (i) the technical radiation limits as identified by existing Vanuatu health and safety standards bodies; or
- (ii) the limits identified by one or more internationally recognised health and safety standards bodies, as determined by the Regulator.

## **6. Essential services**

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### **6.1 Provision of essential services**

The Licensee shall provide the following services (the **essential services**), twenty-four (24) hours a day, seven (7) days a week, at a reasonable level of quality (as determined by the Regulator), without discrimination:

- (a) emergency service with priority routing, enabling any member of the public to make contact with, in particular, the police, the fire brigade and the ambulance service;
- (b) operator assistance service, enabling any subscriber to obtain assistance regarding, amongst other things, accessing services, setting up calls and remedying faults; and
- (c) such other services as may be reasonably determined by the Minister, after consultation with the Regulator, from time to time and published in the Gazette.

### **6.2 Provision of emergency and other services free-of-charge**

The following essential services shall be provided free-of-charge by the Licensee:

- (a) emergency service; and
- (b) operator assistance for remedying faults.

This clause 6.2 applies to the extent that the essential services are not provided by one or more Licensed Operators pursuant to a policy of the Government.

## **7. Transfer of control**

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### **7.1 Prior approval of the Regulator**

No transfer of control of the Licensee shall be effect without the prior approval of the Regulator (such approval not to be unreasonably withheld) if:

- (a) a dominant service provider, or an affiliate of a dominant service provider, is:
  - (i) the person ultimately acquiring control of the Licensee; or
  - (ii) the person whose control is being transferred, provided that:

- (A) a transfer of control between persons that are shareholders of the Licensee at the date of this licence; or
- (B) any reorganisation of the group structures of any shareholders of the Licensee at the date of this licence that does not result in any change of control of the ultimate holding company,

shall not require the approval of the Regulator; or

(b) as a result of the transfer:

- (i) a person, alone or with its affiliates, would control Licensed Operators whose gross revenues in a telecommunications market in Vanuatu (including services provided using an international gateway) constitute forty per cent (40%) or more of the total gross revenues of all Licensed Operators in that market; or
- (ii) a person, alone or with its affiliates, would be in a position of economic strength affording it the power to behave to an appreciable extent independently of competitors or customers in a telecommunications market in Vanuatu.

## **7.2 Requirement for written approval**

No transfer of control that requires approval under clause 7.1 shall be completed or have any legal force or effect unless the person applying for approval of the transfer has received written approval for the transfer from the Regulator in accordance with this licence.

## **8. Employment of Vanuatu nationals**

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The Licensee shall employ Vanuatu nationals in the business of the company and in all ancillary and related activities, except where the employment on secondment to the Licensee of non-Vanuatu nationals is necessary for the proper running and management of the business of the company.

## **9. Access to property**

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### **9.1 Access to Government land and facilities**

Where the Licensee cannot, on commercially reasonable terms:

- (a) obtain the consent of the Government authority having jurisdiction over Government land or a Government facility to construct, maintain or operate telecommunications facilities on that Government land or facility; or
- (b) gain access to the pole, duct, tower or other supporting structure of a telecommunications, electrical power, or other utility transmission system constructed on Government land or a Government facility, that is owned or controlled by a Government authority,



the Licensee may apply to the Regulator for assistance. Upon receipt of an application for assistance in accordance with this clause 18.1, the Regulator shall consult with the relevant Government department or organisation and attempt to find a solution acceptable to both the Licensee and the Government department or organisation.

## **9.2 Access to private land and facilities**

Where the Licensee:

- (a) requires access to private land or private facilities to provide telecommunications services; and
- (b) cannot, on commercially reasonable terms, reach an agreement with the lessee of the private land or private facility,

the Licensee may apply to the Regulator for assistance either in reaching an agreement with the lessee of the private land or private facility or for the exercise of other powers to obtain the desired access. Upon receipt of an application for assistance in accordance with this clause 9.2, the Regulator shall take the steps it deems necessary to assist the concerned parties to reach agreement.

## **9.3 Access to customary land and facilities**

Where the Licensee:

- (a) requires access to customary land or facilities located on customary land to provide telecommunications services; and
- (b) cannot, on commercially reasonable terms, reach an agreement with the owner of the customary land or facilities,

the Licensee may apply to the Regulator for assistance either in reaching an agreement with the owner of the customary land or facilities or for the exercise of other powers to obtain the desired access. Upon receipt of an application for assistance in accordance with this clause 9.3, the Regulator shall take the steps it deems necessary to assist the concerned parties to reach agreement.

# **10. Disputes**

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## **10.1 Licensed Operator disputes**

Where the Licensee and other Licensed Operators have been unable to agree on the resolution of a matter governed by this licence or the laws of Vanuatu, then, following reasonable efforts to reach an amicable settlement, the Licensee or one or more of the other Licensed Operators may apply to the Regulator for assistance in resolving the dispute, including arbitrating the matters in dispute.

## **10.2 Customer disputes**

Where a customer of the Licensee has a dispute with the Licensee that the parties have been unable to resolve among themselves, by means of the Licensee's customer complaint process or otherwise, either party may refer the dispute to the Regulator for assistance, including arbitrating the matters in dispute.

## 11. Rights of appeal or review

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Nothing in this licence is intended to limit in any way any rights of appeal or review which the Licensee may have available to it under the laws of Vanuatu.

## 12. Force majeure

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### 12.1 Force Majeure event

Subject to the other provisions of this clause 21, if the Licensee fails to observe or perform any of its obligations under this licence (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.

### 12.2 Meaning of Force Majeure

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

- (a) act of God;
- (b) confiscation or expropriation;
- (c) embargo;
- (d) public mains electrical supply failure;
- (e) fire, flood or storm;
- (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 licence; or
  - (ii) which frustrates the observance or performance of that obligation;



- (i) earthquake, land slide 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 Licensee.

### **12.3 Circumstances where cannot claim benefit of Force Majeure**

The Licensee shall not be entitled to the benefit of the provisions of clause 12.1 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 Licensee;
- (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 Licensee, and the Licensee 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 Licensee 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 Licensee 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 Licensee to observe or perform the particular obligation, the Licensee 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.

### **12.4 Remedy of the Force Majeure event**

The Licensee 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 Licensee has

resumed, or is then in a position to resume, the observance or performance of the particular obligation.

### 13. **Governing law**

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