
POSTAL SERVICES REGULATORY CONTRACT

**Second Regulatory Period
1 January 2011 to 31 December 2015**

Draft 18 October 2010

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Date **Draft – 18 October 2010**

Parties

1. **Post PNG Ltd** (company number 1-26888) (*Post*).
2. **The Independent Consumer and Competition Commission**, a body corporate established under the *Independent Consumer and Competition Commission Act 2002* (the *Commission*).

Recitals

- A Post has been declared by the Treasurer to be a regulated entity under section 32 of the *Independent Consumer and Competition Commission Act 2002*.
- B The Postal Services the subject of this Contract have been declared by the Treasurer to be regulated services under section 32 of the *Independent Consumer and Competition Commission Act 2002*.
- C Post is the provider, under the *Postal Services Act 1996*, of reserved postal services within Papua New Guinea and between Papua New Guinea and other countries.
- D This Contract is a regulatory contract that is binding on Post and the Commission pursuant to the provisions of the *Independent Consumer and Competition Commission Act 2002* and the *Postal Services Act 1996*.
- E This Contract regulates the prices that Post may charge for the provision of the domestic and international standard letter services and the rental of post office boxes.

It is agreed as follows.

1. General

1.1 Definitions

Approved Tax Pass Through Amount has the meaning given to it in clause 3.2(c)(ii).

Business Day means a day other than a Saturday or a Sunday or a day which is a public holiday in Port Moresby.

Commencement Date means 1 January 2011.

Commission means the Independent Consumer and Competition Commission established under the *Independent Consumer and Competition Commission Act 2002*.

Community Services Trust means the name of that body established by the *Community Services Trust Act 2002*.

Contract means this Postal Services Regulatory Contract.

Customer means a person who acquires or wishes to acquire Postal Services from Post.

First Regulatory Year means the period from the Commencement Date to 31 December 2015 (both dates inclusive).

Force Majeure Pass Through Amount has the meaning given to it in clause 3.1(a).

Force Majeure Event means:

- (a) a cyclone, storm, flood, earthquake, tidal wave or landslide;
- (b) an act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion or any violent or threatening actions;
or
- (c) any other event which the Commission and Post agree in writing to be a Force

Majeure Event for the purposes of this Contract.

which results or is likely to result in an increase in the costs incurred by Post in providing Postal Services to Customers or in complying with the provisions of any legislation, or of any codes or guidelines made or published by the Commission under the *Independent Consumer and Competition Commission Act 2002*.

Force Majeure Event Claim has the meaning given to it in clause 3.1(d).

Force Majeure Event Notice has the meaning given to it in clause 3.1(c).

Negative Tax Change Event means a Tax Change Event which results in Post incurring materially lower costs than it would have incurred but for that event in providing Postal Services to Customers.

Negative Tax Pass Through Amount has the meaning given to it in clause 3.2(e).

Permitted Force Majeure Pass Through Amount, at any time in respect of a Force Majeure Event, means the increased costs that Post has actually incurred as at that time (as calculated by Post under clause 3.1(a) or by the Commission under clause 3.1(e), as appropriate):

- (a) in providing Postal Services to Customers; and
- (b) in complying with the provisions of any legislation, or of any codes or guidelines made or published by the Commission under the *Independent Consumer and Competition Commission Act 2002*,
as a result of the occurrence of that Force Majeure Event.

Permitted Tax Pass Through Amount, in respect of a Tax Change Event, means the increase in costs that Post has incurred and is likely to incur over the term of this Contract (as calculated by Post under clause 3.2(a) or by the Commission under clause 3.2(c), as appropriate) in providing Postal Services to Customers as a result of the occurrence of the Tax Change Event.

Positive Tax Change Event means a Tax Change Event which results in Post incurring materially higher costs than it would have incurred but for that event in providing Postal Services to Customers.

Postal Services means the supply of:

- (a) a standard letter service for delivery in Papua New Guinea;
- (b) a standard letter service for delivery from Papua New Guinea to other countries; and
- (c) rental of private letter boxes and bags.

Positive Tax Pass Through Amount has the meaning given to it in clause 3.2(a).

Quarter means a period of three months from 1 January to 31 March (both dates inclusive), 1 April to 30 June (both dates inclusive), 1 July to 30 September (both dates inclusive) or 1 October to 31 December (both dates inclusive).

Regulatory Principles means the principles set out in Schedule 2.

Regulatory Year means the First Regulatory Year or a period of 12 months commencing on 1 January of a year during the term of this Contract.

Relevant Tax means any Tax payable by Post other than:

- (a) income tax or any tax on fringe benefits or capital gains;
- (b) any tax on payroll;
- (c) land tax or any other tax on the ownership or occupancy of premises;
- (d) customs and import duties;
- (e) municipal rates, taxes and other charges imposed by the National Capital District Commission or any Provincial or Local-Level Government or any other local authorities;
- (f) stamp duty, withholding tax or similar taxes and duties;
- (g) any licence fees payable by Post under section 19K(5) of the *Telecommunications Act 1996*, the *National Information and Communications Technology Act 2009*, or any legislation relating to the Information and Communications Technology (ICT) sector, as agreed by the Commission;
- (h) penalties, fines, interest, charges, fees or other amounts for late payments relating to any Tax; or
- (i) any Tax that replaces any of the Taxes referred to in paragraph (a) to (g).

Required Tax Pass Through Amount, in respect of a Tax Change Event, means the costs that Post has saved and is likely to save over the term of this Contract (as calculated by the Commission under clause 3.2(e)) in providing Postal Services or Postal Services to Customers as a result of the occurrence of the Tax Change Event.

Standard letter means a letter weighing no more than 50 grams.

Subsequent Regulatory Year means any Regulatory Year after the First Regulatory Year.

Tax means any tax, levy, impost, deduction, charge, rate, duty or withholding which is levied or imposed by the National Government, a Provincial or Local-level Government or any agency, department, instrumentality or other authority of the National Government or of a Provincial or Local-level Government.

Tax Change Event means:

- (a) a change in (or change in application or official interpretation of) a Relevant Tax or the way in which a Relevant Tax is calculated;
 - (b) the removal of a Relevant Tax; or
 - (c) the imposition of a Relevant Tax,
- which results in Post incurring materially higher or lower costs than it would have incurred but for that event in providing Postal Services to Customers.

Zone 1 means Australia, New Zealand and the Western Pacific (except Guam and Hawaii).

Zone 2 means Singapore, Hong Kong, the Philippines and Japan.

Zone 3 means other countries.

1.2 Principles of interpretation

- (a) Unless the contrary intention appears, the following principles of interpretation apply to this Contract:
 - (i) words denoting persons include corporations, unincorporated associations, firms, governments and governmental agencies;
 - (ii) a reference to a person includes a person's agents, successors and permitted assigns, persons who have control over any assets of a person and receivers, managers, trustees, administrators and liquidators and similar persons appointed over:
 - (A) a person; or
 - (B) any assets of a person;
 - (iii) headings are only included for convenience and do not affect the interpretation of this Contract;
 - (iv) a reference to a clause or Schedule is to a clause of, or Schedule to, this Contract;
 - (v) a reference to an agreement, document or regulatory instrument (including this Contract) is a reference to that agreement, document or

- regulatory instrument as varied, novated or replaced from time to time (whether or not the parties thereto remain the same);
- (vi) a reference to legislation is a reference to legislation in force in Papua New Guinea; and
 - (vii) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (b) All calculations made under or for the purposes of this Contract are to be rounded to four significant digits.
 - (c) When a calculation is required under this Contract:
 - (i) Regulatory Year "t", Subsequent Regulatory Year "t" or calendar year "t" is the Regulatory Year, Subsequent Regulatory Year or calendar year (as the case may be) in respect of which the calculation is being made;
 - (ii) Regulatory Year "t-1", Subsequent Regulatory Year "t-1" or calendar year "t-1" is the Regulatory Year, Subsequent Regulatory Year or calendar year (as the case may be) immediately preceding Regulatory Year "t", Subsequent Regulatory Year "t" or calendar year "t"; and
 - (iii) Regulatory Year "t-2", Subsequent Regulatory Year "t-2" or calendar year "t-2" is the Regulatory Year, Subsequent Regulatory Year or calendar year (as the case may be) immediately preceding Regulatory Year "t-1", Subsequent Regulatory Year "t-1" or calendar year "t-1".
- 1.3 Revoking or altering decisions**
- (a) If the Commission has made a decision under this Contract and later concludes that the decision was made on the basis of information provided to the Commission that was false or misleading in a material particular, then, subject to clause 1.3(b), the Commission may revoke the decision and make a new decision in substitution for the revoked decision.
 - (b) Before the Commission revokes and substitutes a decision pursuant to clause 1.3(a), the Commission agrees that it will first:

- (i) notify Post of the proposed revocation and of the proposed new decision (including the proposed date of effect of the revocation and new decision), and allow Post a reasonable opportunity to make submissions to the Commission regarding the proposed revocation and the proposed new decision (including submissions as to whether the original decision was based on information that was false or misleading in a material particular); and
 - (ii) take into account any matters contained in a submission made by Post pursuant to paragraph (i).
- (c) A new decision made under clause 1.3(a) applies:
- (i) if notice of the new decision is required to be published under clause 1.4(a)(ii) – the later of the date on which that notice is so published and any date specified by the Commission in that notice as the date from which the new decision is to apply; and
 - (ii) if notice of the new decision is not required to be published under clause 1.4(a)(ii) – the later of the date the new decision is made and any date specified by the Commission in making that new decision as the date from which the new decision is to apply.
- (d) A new decision made under clause 1.3(a) must only differ from the revoked decision to the extent necessary to correct for:
- (i) the false or misleading information on which the revoked decision was based; and
 - (ii) the application of the revoked decision during the period in respect of which that decision was in effect.

1.4 Notices

- (a) The Commission must ensure that a notice of each decision made by the Commission under this Contract (other than a decision made pursuant to clause 1.5 or clause 4.3) is:
- (i) sent to the Ministers responsible for the *Postal Services Act 1996* and the *Independent Consumer and Competition Commission Act 2002*;

- (ii) published in the National Gazette and a newspaper circulating nationally;
and
- (iii) sent to Post.
- (b) The Commission must ensure that a copy of each decision made by the Commission under this Contract (other than a decision made pursuant to clause 4.3), together with a copy of its reasons for that decision, is:
 - (i) sent to the Ministers responsible for the *Postal Services Act 1996* and the *Independent Consumer and Competition Commission Act 2002*;
 - (ii) sent to Post; and
 - (iii) made available for inspection and purchase by members of the public.

1.5 Modification of time periods

The Commission, either of its own motion or on application by Post, may extend, by written notice to Post:

- (a) the time by which a thing required to be done by Post must be done; or
- (b) the period within which a thing required to be done by Post must be done, as requested in writing by Post.

1.6 Term

The term of this Contract commences on the 1 January 2011 and ends on 31 December 2015 (both dates inclusive).

2. Charges for Regulated Services

2.1 Maximum prices for final year of the previous regulatory contract

The maximum prices (exclusive of any value added tax which may apply) that Post applied in the final year of the previous regulatory contract were:

- (a) for the standard letter service within Papua New Guinea, K1.00;
- (b) for the standard letter service from Papua New Guinea to other countries:
 - (i) for Zone One, K4.65;
 - (ii) for Zone Two, K4.65;

- (iii) for Zone Three, K6.30;
- (c) for the annual rental of a private letter box:
 - (i) for a small box, K85.00;
 - (ii) for a medium box, K216.00;
 - (iii) for a large box, K569.00.

2.2 Changes to prices for postage in First Regulatory Year

Post PNG must set prices for domestic and international mail for year t such that the weighted average price cap complies with the following formula:

$$\text{Average prices in year } t = 1/11 * \text{average price of international mail} + 10/11 * \text{average price of domestic mail}$$

Where

$$\text{Average prices in year } t = (1 + (CPI_t + X_t)) * \text{Average price in year } t-1$$

$$\text{Average prices in year 2010} = 1/11 * \text{K5.20} + 10/11 * \text{K1.00}$$

$$\text{Average prices in year 2010} = \text{K1.38}$$

2.3 Annual variation of prices for Subsequent Regulatory Years

By the second Friday in July of each Regulatory Year, including the First Regulatory Year, Post shall give to the Commission a statement that sets out:

- (a) its proposed price for the standard letter service within Papua New Guinea for the Subsequent Regulatory Year;
- (b) its proposed prices for the standard letter service from Papua New Guinea to other countries for each of the three international zones, for the Subsequent Regulatory Year and the average of those three prices (being the sum of the three prices divided by three); and
- (c) its proposed annual price for renting a private letter box in respect of each of small, medium and large sized boxes for that Subsequent Regulatory Year.

2.4 Price calculations

- (a) The prices for the supply of Postal Services that are set out in a statement for a Subsequent Regulatory Year that is given by Post to the Commission pursuant to clause 2.3 must be calculated in accordance with Schedule 1.
- (b) Post shall provide a statement to the Commission at the time it provides the Commission with its proposed prices for the Subsequent Regulatory Year that demonstrates compliance of the proposed prices with Schedule 1.

2.5 Additional information

The Commission may request Post to provide further information that verifies or supports the calculations referred to in clause 2.4 and Post agrees to provide that information within the time specified by the Commission in its request.

2.6 Maximum Prices for the Subsequent Regulatory Years

- (a) By the last Friday in July in the Regulatory Year immediately preceding the Subsequent Regulatory Year the Commission must:
 - (i) if the prices proposed by Post are calculated in accordance with Schedule 1, approve the proposed prices;
 - (ii) if the prices proposed by Post are not calculated in accordance with Schedule 1, not approve the proposed prices and specify in a notice to Post prices that are calculated in accordance with Schedule 1.
- (b) If by the last Friday in July in the Regulatory Year immediately preceding the Subsequent Regulatory Year the Commission has not notified Post of the Commission's decision under clause 2.6(a), the Commission is deemed to have approved the prices proposed by Post with effect from that day.
- (c) If Post does not provide a statement to the Commission as required by clause 2.3, then the Commission must by the last Friday in July in the Regulatory Year immediately preceding the Subsequent Regulatory Year specify in a notice to Post prices that are calculated in accordance with Schedule 1.
- (d) The maximum prices that Post may charge for Postal Services during a Subsequent Regulatory Year are the prices that are approved, deemed to be

approved or specified by the Commission (as the case may be) pursuant to this clause 2.6 for that Subsequent Regulatory Year.

3. Regulated Pass Through

3.1 Force Majeure Event Pass Through

- (a) If a Force Majeure Event occurs, Post may propose to the Commission that it increase prices by an amount (***Force Majeure Pass Through Amount***) that is not greater than the Permitted Force Majeure Pass Through Amount (as calculated by Post) in respect of that Force Majeure Event as at the date of the Force Majeure Event Claim (if any) given to the Commission pursuant to clause 3.1(d) in respect of that Force Majeure Event.
- (b) In order to seek the Commission's agreement to pass through a Force Majeure Pass Through Amount under clause 3.1(d), Post must give the Commission:
 - (i) a Force Majeure Event Notice pursuant to clause 3.1(c) within 3 months of the Force Majeure Event occurring; and
 - (ii) a Force Majeure Event Claim pursuant to clause 3.1(d) within 12 months of the Force Majeure Event occurring.
- (c) A Force Majeure Event Notice must specify:
 - (i) details of the Force Majeure Event concerned; and
 - (ii) the date the Force Majeure Event occurred.
- (d) A Force Majeure Event Claim must specify:
 - (i) details of the Force Majeure Event concerned;
 - (ii) the date the Force Majeure Event occurred;
 - (iii) the increase in costs that Post has actually incurred as at the date of the Force Majeure Event Claim:
 - (A) in providing Postal Services to Customers; and
 - (B) in complying with the provisions of any legislation, or of any codes or guidelines made or published by the Commission under the *Independent Consumer and Competition Commission Act*

2002, which must be complied with in relation to the provision of Postal Services to Customers,

as a result of the occurrence of the Force Majeure Event;

(iv) the extent (if any) to which Post has the benefit of any insurance against the consequences of the Force Majeure Event;

(v) the Force Majeure Pass Through Amount Post proposes in relation to the Force Majeure Event;

(vi) the basis on which Post proposes to apply the Force Majeure Pass Through Amount to Customers; and

(vii) the date from, and period over, which Post proposes to apply the Force Majeure Pass Through Amount to Customers,

and must be accompanied by evidence of the increase in costs referred to in paragraph (iii).

(e) If the Commission receives a Force Majeure Event Claim under clause 3.1(d) in relation to a Force Majeure Event, the Commission must decide whether it agrees that the Force Majeure Event has occurred and, if the Commission agrees that the Force Majeure Event has occurred, the Commission must decide:

(i) the Permitted Force Majeure Pass Through Amount in respect of the Force Majeure Event;

(ii) the basis on which the Force Majeure Pass Through Amount proposed by Post in relation to the Force Majeure Event or the Permitted Force Majeure Pass Through Amount in respect of the Force Majeure Event as determined by the Commission (whichever is the lesser) (the **Approved Force Majeure Pass Through Amount**) may be applied to Customers; and

(iii) the date from, and period over, which the Approved Force Majeure Pass Through Amount in respect of the Force Majeure Event may be applied to Customers,

and notify Post in writing of the Commission's decision and the reasons for the Commission's decision.

(f) If the Commission does not give a notice to Post under clause 3.1(e) within 20 Business Days of receiving:

- (i) a Force Majeure Event Claim from Post under clause 3.1(d); and
- (ii) such evidence of the increase in costs referred to in clause 3.1(d)(iii) as may be requested by the Commission,

then, on the 21st Business Day after receiving that Force Majeure Event Claim and that evidence, the Commission is deemed to have notified Post of its decision that:

- (iii) the Force Majeure Pass Through Amount proposed by Post in relation to the relevant Force Majeure Event in the Force Majeure Event Claim be the Approved Force Majeure Pass Through Amount in respect of that Force Majeure Event; and

- (iv) the basis on, date from and period over which that Approved Force Majeure Pass Through Amount may be applied to Customers are as specified in the Force Majeure Event Claim.

(g) In making a decision under clause 3.1(e), the Commission must take into account:

- (i) the matters and proposals set out in the Force Majeure Event Claim;
- (ii) the extent to which it would have been reasonable for Post to have procured insurance against the consequences of the Force Majeure Event; and
- (iii) any amount recoverable by Post under Insurances against the consequences of the Force Majeure Event and of which Post has the benefit;

and, subject to the requirement that Post is not to be compensated for losses against which it would have been reasonable for Post to have been insured, or for losses to the extent they are able to be compensated for by claiming under Insurances of which Post has the benefit, the Commission must ensure that Post

is fully (but not over) compensated for the increase in costs referred to in clause 3.1(d)(iii) to the extent that it was reasonable for Post to incur those costs, taking into account:

- (iv) the relative volumes of Postal Services provided by Post to Customers;
 - (v) the time cost of money for the period over which the Approved Force Majeure Pass Through Amount is to be applied;
 - (vi) the need to provide an adequate return on any capital expenditure included in the Approved Force Majeure Pass Through Amount;
 - (vii) the basis on and period over which the Approved Force Majeure Pass Through Amount is to be applied;
 - (viii) any previous application of this clause 3.1 which has resulted in Post recovering an amount either more or less than the amount required to fully (but not over) compensate it in respect of a previous Force Majeure Event in accordance with this clause 3.1; and
 - (ix) any other factors the Commission considers relevant.
- (h) Post may, after:
- (i) receipt or deemed receipt of a notice under clause 3.1(e) or (f) allowing Post to pass through an Approved Force Majeure Pass Through Amount; and
 - (ii) publishing a notice in a daily newspaper circulating nationally that sets out:
 - (A) the Approved Force Majeure Pass Through Amount which the Commission has approved or is deemed to have approved;
 - (B) the circumstances giving rise to the Approved Force Majeure Pass Through Amount; and
 - (C) the basis on, date from and period over which Post will apply the Approved Force Majeure Pass Through Amount to Customers,apply the Approved Force Majeure Pass Through Amount on the basis, from the date and over the period specified or deemed to be specified in the notice from the Commission.

3.2 Tax Pass Through

- (a) If a Positive Tax Change Event occurs, Post may propose to the Commission that it charge Customers an amount (*Positive Tax Pass Through Amount*) that is not greater than the Permitted Tax Pass Through Amount (as calculated by Post) in respect of that Tax Change Event.
- (b) In order to seek the Commission's agreement to pass through a Positive Tax Pass Through Amount under clause 3.2(a), Post must give the Commission a statement within 3 months of the Tax Change Event occurring, specifying:
 - (i) details of the Tax Change Event concerned;
 - (ii) the date the Tax Change Event took effect;
 - (iii) the increase in costs that Post has incurred and is likely to incur over the term of this Contract in providing Postal Services to Customers as a result of the occurrence of the Tax Change Event;
 - (iv) the Positive Tax Pass Through Amount Post proposes in relation to the Tax Change Event;
 - (v) the basis on which Post proposes to apply the Positive Tax Pass Through Amount to Customers; and
 - (vi) the date from, and period over, which Post proposes to apply the Positive Tax Pass Through Amount to Customers, and accompanied by evidence of the actual and likely increase in costs referred to in paragraph (iii).
- (c) If the Commission receives a statement under clause 3.2(b) in relation to a Positive Tax Change Event, the Commission must decide whether it agrees that the Tax Change Event has occurred and, if the Commission agrees that the Tax Change Event has occurred, the Commission must decide:
 - (i) the Permitted Tax Pass Through Amount in respect of that Tax Change Event;
 - (ii) the basis on which the Positive Tax Pass Through Amount proposed by Post in relation to that Tax Change Event or the Permitted Tax Pass Through Amount in respect of that Tax Change Event as determined by

- the Commission (whichever is the lesser) (the **Approved Tax Pass Through Amount**) may be applied to Customers; and
- (iii) the date from, and period over, which the Approved Tax Pass Through Amount in respect of that Tax Change Event may be applied to Customers,
- and notify Post in writing of the Commission's decision and the reasons for the Commission's decision.
- (d) If the Commission does not give a notice to Post under clause 3.2(c) within 20 Business Days of receiving:
 - (i) a statement from Post under clause 3.2(b); and
 - (ii) such evidence of the actual and likely increase in costs referred to in clause 3.2(b)(iii) as may be requested by the Commission,then, on the 21st Business Day after receiving Post's statement and that evidence, the Commission is deemed to have notified Post of its decision that:
 - (iii) the Positive Tax Pass Through Amount proposed by Post in relation to the relevant Tax Change Event in Post's statement be the Approved Tax Pass Through Amount in respect of that Tax Change Event; and
 - (iv) the basis on, date from and period over which that Approved Tax Pass Through Amount may be applied to Customers are as specified in Post's statement.
 - (e) If a Negative Tax Change Event occurs, the Commission may require Post to pass through to Customers an aggregate amount (**Negative Tax Pass Through Amount**) that is not greater than the Required Tax Pass Through Amount (as determined by the Commission) in respect of that Tax Change Event. In such a case, the Commission must decide:
 - (i) the Negative Tax Pass Through Amount in respect of that Tax Change Event;
 - (ii) the basis on which that Negative Tax Pass Through Amount must be applied to Customers; and

- (iii) the date from, and period over, which the Negative Tax Pass Through Amount in respect of that Tax Change Event must be applied to Customers,
and notify Post in writing of the Commission's decision and the reasons for the Commission's decision.
- (f) Post agrees to provide the Commission with such information as the Commission may request for the purpose of making a decision under clause 3.2(e) within the time specified by the Commission.
- (g) In making a decision under clause 3.2(c) or 3.2(e), the Commission must (in the case of a decision under clause 3.3(c)) take into account the matters and proposals set out in Post's statement and:
 - (i) in the case of a decision under clause 3.2(c) - the Commission must ensure that Post is fully (but not over) compensated for the actual and likely increase in costs referred to in clause 3.2(b)(iii); and
 - (ii) in the case of a decision under clause 3.2(e) – the Commission must ensure that the aggregate amount that Post is required to pass through to Customers is an amount that is equivalent to (but not more than) the costs that Post has saved and is likely to save over the term of this Contract in providing Postal Services to Customers as a result of the occurrence of the Negative Tax Change Event,
taking into account:
 - (iii) the relative volumes of Postal Services and Postal Services provided by Post to Customers;
 - (iv) the time cost of money for the period over which the Approved Tax Pass Through Amount or the Negative Tax Pass Through Amount (as the case may be) is to be applied;
 - (v) the basis on and period over which the Approved Tax Pass Through Amount or the Negative Tax Pass Through Amount (as the case may be) is to be applied;

- (vi) any previous application of this clause 3.2 which has resulted in an Approved Tax Pass Through Amount or a Negative Tax Pass Through Amount in respect of a previous Tax Change Event being more or less than the amount which it should have been for the purposes of this clause 3.2;
 - (vii) any change in the way or rate at which another Tax is calculated, or the removal or imposition of another Tax, which, in the Commission's opinion, is complementary to the Tax Change Event concerned;
 - (viii) the effect of any other previous Tax Change Event that has occurred since the later of the Commencement Date and the last decision made under this clause 3.2 in relation to a Tax Change Event; and
 - (ix) any other factors the Commission considers relevant.
- (h) Post may, after:
- (i) receipt or deemed receipt of a notice under clause 3.2(e) or (d) allowing Post to pass through an Approved Tax Pass Through Amount; and
 - (ii) publishing a notice in a daily newspaper circulating nationally that sets out:
 - (A) the Approved Tax Pass Through Amount which the Commission has approved or is deemed to have approved;
 - (B) the circumstances giving rise to the Approved Tax Pass Through Amount; and
 - (C) the basis on, date from and period over Post will apply the Approved Tax Pass Through Amount to Customers,
- apply the Approved Tax Pass Through Amount on the basis, from the date and over the period specified or deemed to be specified in the notice from the Commission.
- (i) Post agrees that, after receipt of a notice under clause 3.2(e) requiring Post to pass through a Negative Tax Pass Through Amount to Customers, it will apply the Negative Tax Pass Through Amount on the basis, from the date and over the period specified in the notice from the Commission.

3.3 Demand Pass Through

- (a) The Commission will consider an application from Post PNG to reopen the Regulatory Contract if Post PNG substantiates that the demands set out in the Regulatory Contract are materially higher than actual demand.
- (b) The Commission will consider the impact of a decline in actual demand for reserved services if the material impact on Post PNG projected revenues is equal to 1.26 million Kina (in 2010 Kina) per annum in terms of the decline in revenues as a result of the demand shock.
- (c) In reopening the Regulatory Contract the Commission will consider the impact of other factors in addition to changes in demand.

3.4 Foreign Exchange Pass Through

- (a) The Commission will consider, on application from Post PNG, reopening the Regulatory Contract in response to an exchange rate movement if the Kina appreciates significantly, such that the average US dollar to Kina exchange rate for any particular calendar year is 10 US cents or more higher than the average US dollar to Kina exchange rate for the 2010 calendar year. Conversely, the Commission will consider reopening the Regulatory Contract in response to an exchange rate movement if the Kina depreciates significantly, such that the average US dollar to Kina exchange rate for any particular calendar year is 10 US cents or more lower than the average US dollar to Kina exchange rate for the 2010 calendar year. The average US dollar to Kina exchange rate for any calendar year shall be calculated over four quarters as the average of the United States dollar/Kina inter bank mid rate published by the Bank of Papua New Guinea (expressed as \$US/K) prevailing on the last day of each quarter in that year (31 March, 30 June, 30 September and 31 December) or, if that last day is not a business day, on the next day which is a business day.
- (b) Should the Commission reopen the Regulatory Contract, the Commission will consider not only the impact of the exchange rate change on revenue, operating costs and capital expenditure but also other factors impacting on the Regulatory Contract.

4. Service Standards and Customer Rebates

4.1 Post's objective

It is Post's objective to provide a postal service with ready accessibility to postal services for as many people in Papua New Guinea as is commercially practicable.

4.2 Accessibility

- (a) Post shall use its best endeavours to ensure that:
 - (i) Post Offices with a total of five or more staff are open between 8am and 4pm on each working day;
 - (ii) Post Offices with a total of four or less staff are open between 8am and 4pm on each working day (except where and when it is necessary to close at 3.30pm to allow staff to complete paperwork during their normal working hours).

The above does not apply to Post Office agencies.

- (b) It is Post's objective that as many Post Offices as possible shall be open on Saturday between 8.00am and 11.00am to provide customer service.
- (c) The holders of private letter boxes should have access to their letter boxes on a continuous 24 hour day/seven days per week basis, except where access is required to be limited at particular times due to security constraints or to the size or other limitations at the Post Office or Post Office agency where the private letter boxes are located.
- (d) Any variation in access to postal services or private letter boxes at particular Post office or Post Office agency locations shall be communicated to the affected local community.

4.3 Post Office Network

- (a) There shall be no obligation on Post to expand the number of Post Offices currently in operation nor to operate any Post Offices beyond those which it operates at the date of commencement of this Regulatory Contract.
- (b) If Post wishes to close any Post Offices it currently operates, or to significantly reduce the hours of operation of any such Post Office, it must first consult with

the Commission and take into account the Commission's views. When considering any such proposed closure or reduction in hours, the Commission shall take into account those matters put to it by Post, which may include the level of theft, fraud and robbery, whether provision of postal services would be transferred from a Post Office to a Post Office agency, whether the Post Office or Post Office agency should be relocated within a particular district for commercial or other reasons, or any other matters put by Post to the Commission.

- (c) The requirement in paragraph (b) does not apply where:
 - (i) it is necessary for Post to close a particular Post Office urgently and temporarily because of an emergency or civil disturbance or other sudden unforeseen circumstance; or
 - (ii) the closure of a particular Post Office occurs at or about the same time as another Post Office is opened in the same postal district.

4.4 Letter Delivery Services

It is Post's objective to deliver more than 95% of letters and postal articles within the timeframes set out below, which have regard to the different transport modes available to Post in different locations. Those deliveries shall be to a Post Office or a private letter box for collection and need not be delivered to residential addresses.

Destinations	Entry time	Time of Delivery	Example
Same Post Office	Before noon After noon	Same day Next day	Boroko
Within the same town/city where a post office is located	Before noon After noon	Same day Next day	NCD, Lae etc
Post Office destinations connected by two or more direct scheduled flights a day	Before noon After noon	Next day Within 2 working days	POM to Lae
Post Office destinations which are connected by one direct scheduled flight a day	Before 3 pm After 3 pm	Within 2 working days Within 3 working days	POM to Kavieng
Post Office destinations that have indirect flights		Within 5 working days	Vanimo to Lae
Post Office destinations with no airport, but that have road connections and scheduled flights		Within 5 working days	POM to Banz
Remote Post Office destinations that include as part of the journey - infrequent flights and/or - road and/or boat connections		Within 10 working days	Finschafen to Banz via Lae

4.5 Monitoring and Review

Post shall monitor compliance with the service delivery times referred to in clause 4.4 and report on all service standards to the Commission at the same time as it provides the Commission with a statement of its proposed prices for each Subsequent Regulatory Year. The extent to which Post has achieved its performance standards is a factor which

may be taken into account by the Commission during the review of the Regulatory Contract under clause 5.

5. Subsequent Regulatory Contract

5.1 Setting next Regulatory Contract

- (a) Post may, in accordance with clause 5.1(b), submit to the Commission a draft Postal Services Regulatory Contract which Post considers should bind it for a period of not more than five years commencing with effect from (and including) 1 January 2016 and any written proposal as to its form and content that Post considers appropriate.
- (b) The draft Regulatory Contract and any proposal, as referred to in clause 5.1(a), must be given to the Commission by 31 March 2015.
- (c) After considering:
 - (i) the draft Regulatory Contract and any proposal submitted by Post under clause 5.1(a);
 - (ii) any submissions made by any other person in relation to the form or content of the Regulatory Contract which should bind Post following the expiry of this Contract; and
 - (iii) the particular circumstances of the Postal Service in Papua New Guinea, the Commission must publish a draft Regulatory Contract that is proposed to bind Post for a period of not more than five years commencing with effect from (and including) 1 January 2016.
- (d) In preparing the draft Regulatory Contract referred to in clause 5.1(c), the Commission must also take into account:
 - (i) the legitimate business interests of Post;
 - (ii) the legitimate interests of suppliers to, and customers of, Post;
 - (iii) the nature and uses of the services the prices of which would be regulated under the draft Regulatory Contract;

- (iv) the costs of providing the services the prices of which would be regulated under the draft Regulatory Contract;
- (v) the costs of complying with relevant health, safety, environmental, social and other legislation and regulatory requirements applying to Postal Services in Papua New Guinea;
- (vi) the return on assets required to sustain past and future investment in Postal Services industry in Papua New Guinea;
- (vii) any relevant international benchmarks for prices, costs and return on assets in comparable industries, taking into account the particular circumstances of Papua New Guinea;
- (viii) the financial implications of the draft Regulatory Contract (if it were to come into force) for Post and the supply of Postal Services industry in Papua New Guinea;
- (ix) any other factors specified in or under relevant legislation; and
- (x) any other factors the Commission considers relevant.
- (e) In addition, the draft Regulatory Contract referred to in clause 5.1(c):
 - (i) must not be inconsistent with, and must be prepared in accordance with, the Regulatory Principles; and
 - (ii) must comply with the requirements of the *Independent Consumer and Competition Commission Act 2002*.
- (f) The Commission must publish the draft Regulatory Contract referred to in clause 5.1(c) by 30 June 2015.
- (g) Post may, in accordance with clause 5.1(h), make such written submissions to the Commission as it thinks appropriate in relation to the form and content of the draft Regulatory Contract referred to in clause 5.1(c).
- (h) The submissions referred to in clause 5.1(g) must be given to the Commission by 13 August 2015.
- (i) After considering:
 - (i) any submissions made by Post under clause 5.1(g); and

- (ii) any submissions made by any other person in relation to the form or content of the draft Regulatory Contract referred to in clause 5.1(c), the Commission must publish a final Regulatory Contract referred to in clause 5.1(c) by not later than 30 September 2015.
- (j) In preparing the final Regulatory Contract referred to in clause 5.1(c), the Commission must also take into account the matters referred to in clause 5.1(d).
- (k) In addition, the final Regulatory Contract referred to in clause 5.1(c):
 - (i) must not be inconsistent with, and must be prepared in accordance with, the Regulatory Principles;
 - (ii) must comply with the requirements of the *Independent Consumer and Competition Commission Act 2002*; and
 - (iii) must be for such period of not more than five years, commencing on 1 January 2016, as the Commission may determine, after consultation with Post.
- (l) The Commission may issue statements of regulatory intent which elaborate on how the Commission will exercise its rights and perform its obligations under this clause 5.1.

6. Amendment of Regulatory Contract

6.1 Agreed Amendments

- (a) Subject to clause 6.1(b), this Contract may be varied from time to time by written agreement between the Commission and Post but any such variation must not be inconsistent with the Regulatory Principles or the requirements of the *Independent Consumer and Competition Commission Act 2002*.
- (b) The Commission must consider in good faith any proposal by Post to vary this Contract if Post can demonstrate to the Commission:
 - (i) that the costs in international air transport or terminal dues have increased significantly during the term of this Contract; or

- (ii) that the maximum prices Post is permitted to charge under this Contract for Postal Services will not allow Post to recover its efficient costs of providing Postal Services.
- (c) No variation may be made to this Contract unless:
 - (i) at least 40 Business Days prior to any such variation taking effect:
 - (A) the Commission has published a notice describing the proposed variation in both the National Gazette and a daily newspaper circulating nationally and inviting the making of submissions in relation to the proposed variation not less than 20 Business Days after the date of publication of that notice;
 - (B) the Commission has provided a notice to the Minister responsible for the *Postal Services Act 1996*, or any Act which replaces this Act, describing the proposed variation; and
 - (C) the Commission has made available, for inspection or purchase by the public, copies of the precise form of the proposed variation; and
 - (ii) the Commission has considered such submissions in relation to the proposed variation as it receives under clause 6.1(c)(i)(A).

6.2 Amendments made by virtue of the operation of the Independent Consumer and Competition Commission Act 2002

If, with the consent of PNG Post, any Postal Service ceases to be a regulated service (as that term is defined in the *Independent Consumer and Competition Commission Act 2002*), this Contract will be varied, in accordance with the operation of section 33(4) of the *Independent Consumer and Competition Commission Act 2002*, by deleting any reference in this Contract to such of those services as have ceased to be regulated services.

7. Termination of Regulatory Contract

7.1 Agreed termination

This Contract may be terminated at any time by written agreement between the Commission and Post.

7.2 Termination by virtue of the operation of the Independent Consumer and Competition Commission Act 2002

This Contract will terminate automatically if Post ceases to be a regulated entity (as that term is defined in the *Independent Consumer and Competition Commission Act 2002*).

Schedule 1 – Pricing Formula

Part 1: Introduction

The pricing formula for regulated postal services is based on an annual CPI + X adjustment to apply in the manner set out on Part 2 and Part 3 below to the Postal Services, namely:

- domestic standard letter services;
- international standard letter services (average across the three international zones); and
- rental of private letter boxes in three sizes and bags.

All other services provided by Post are not subject to price regulation under this Regulatory Contract.

Part 2: Domestic and International Standard Letter Services

The maximum price for a Subsequent Regulatory Year t for the domestic letter service, and the simple average of the three maximum prices for each Zone for the international letter service, will be calculated as follows:

$$RP_t = AP_t \pm O_{at} \text{ or } U_{at}$$

Where

RP_t = the maximum average price for a subsequent regulatory period for the domestic standard letter service and the simple average of the maximum prices for the three zones for international standard letter services plus or minus any rounding to bring the price to the nearest 5 toea.

AP_t = the maximum average price for a subsequent regulatory year t for the domestic standard letter service and the simple average of the maximum for the three zones for international standard letter services such that:

$$AP_t = (1/11 * \text{average price of international mail}) + (10/11 * \text{average price of domestic mail})$$

$$AP_t \leq AP_{t-1} * (1 + (CPI_t + X_t))$$

$$AP_{2010} = (1/11 * K5.20) + (10/11 * K1.00) \\ = K1.38$$

CPI_t = the adjusted CPI for PNG for year t as adjusted in accordance with Part 4 of this Schedule 1.

O_{at} = an amount of up to 2.5 toea to allow rounding up to the price of domestic postage or the simple average of the three international zone rates to permit the price for domestic postage or the simple average of the three international zones postage rates respectively to be evenly divisible by 5 toea should the prices for domestic postage or international postage be equal to or less than 2.5 toea below the

nearest price for domestic and international postage and that is evenly divisible by 5 toea;

$$\text{Where: } O_{dt} = (O_{dt-1} * 10/11) + (O_{it-1} * 1/11)$$

Where: O_{dt-1} is the over recovery on domestic postage rates in the previous year;

O_{it-1} is the over recovery on the simple average of the three international zone rates in the previous year.

U_{dt} = an amount of up to 2.4999 toea to allow rounding down of domestic postage or the simple average of the three international zone rates to the nearest price for domestic postage or the simple average of the three international zone postage rates respectively to be evenly divisible by 5 toea should the prices for domestic postage or international postage be less than 2.5 toea above the nearest price for domestic and international postage which is evenly divisible by 5 toea.

$$\text{Where: } U_{dt} = (U_{dt-1} * 10/11) + (U_{it-1} * 1/11)$$

Where: U_{dt-1} is the under recovery on domestic postage rates in the previous year ;

U_{it-1} in the under recovery on the simple average of the three international zones rates in the previous year.

Where an over recovery (O_{dt}) exists, O_{dt} is deducted from AP_t to derive RP_t,

Where an under recovery (U_{dt}) exists, U_{dt} is added to AP_t to derive RP_t,

X = the relevant figure set out in the table below

Domestic and International Letter Service

2011	2.6%
2012	2.6%
2013	2.6%
2014	2.6%
2015	2.6%

Domestic letter rate in 2010 = K1.00

International letter rate in 2010 is:

Zone 1 = K4.65

Zone 2 = K4.65

Zone 3 = K6.30

$O_{a,2011}$ = the amount of over recovery in 2010, as submitted by Post and agreed by the Commission in the price adjustment process for 2011

$U_{a,2011}$ = the amount of under recovery in 2010, as submitted by Post and agreed by the Commission in the price adjustment process for 2011

Part 3: Post Boxes

The maximum price for a Subsequent Regulatory Year t for each post box type (that is small, medium and large) will be calculated as follows:

$$RP_t = RP_{t-1} * (1 + CPI_t + X_t)$$

where

RP_t = the maximum rental price for a Subsequent Regulatory Year t for the relevant post box type (that is small, medium and large).

RP_{t-1} = the maximum rental price for the Regulatory Year t-1 for the relevant post box type.

CPI_t = CPI as calculated in accordance with Part 4 of this Schedule 1.

(A) X = the relevant figure set out in the table below

	Post boxes
2011	8.2%
2012	8.2%
2013	8.2%
2014	8.2%
2015	8.2%

For the purposes of the above:

- Small boxes:
RP₂₀₁₀ = K85.00 per year
- Medium boxes:
RP₂₀₁₀ = K216.00 per year
- Large boxes:
RP₂₀₁₀ = K569.00 per year

Part 4: CPI

(a) CPI_t for the 12 month period ending on 30 June in Regulatory Year t is calculated as follows:

$$CPI_t = \frac{CPI_{March(-1)} + CPI_{June(-1)} + CPI_{Sept(-2)} + CPI_{Dec(-2)}}{CPI_{March(-2)} + CPI_{June(-2)} + CPI_{Sept(-3)} + CPI_{Dec(-3)}} - 1$$

(b) If the CPI for the June quarter of the previous regulatory year is not available when the calculation of CPI_t needs to be made, that calculation in paragraph (a) shall be made using instead the most recent eight quarterly CPI figures then publicly available.

Where:

CPI means the Adjusted Consumer Price Index published by the National Statistics Office (excluding the effects of betelnut, alcohol and cigarettes)

Year t is the year for which tariffs are being set

Year t – 1 is the previous regulatory year

Year t – 2 is regulatory year two years previous

Year t – 3 is regulatory year three years previous

Dec is December and Sept is September.

Part 5: Other

- Prices determined under the formula in this Schedule are exclusive of any tax such as VAT that might be applied on goods or services by the National Government or Provincial Governments. Any imposition of such taxes which are not currently imposed will be treated as a pass through to customers in accordance with Clause 3 of this Regulatory Contract.

Schedule 2 - Regulatory Principles

The following principles will apply when considering the Regulatory Contract to operate from 1 January 2011:

- The price path will be for a period of at least 5 years;
- The price path should be efficient cost reflective in the context of PNG conditions, and should use a building block approach to arrive at total costs, thus:
 - Operating costs (including international settlement payments in foreign currency);
 - Return of assets (depreciation); and
 - Return on assets;
- Any amount in the unders and overs account for the year 2010 will be allowed to flow through into the price path for 2011 as defined in the price path formula for 2005 to 2010;
- Allowance in the price path will need to be made for forward capex requirements. A recovery of this investment in new capex via depreciation should only apply to assets that have been funded internally (aid or grant funded assets should not be depreciated for regulatory price path purposes);
- A regulated rate of return on capital should be determined using a Capital Asset Pricing Model (CAPM) formula with appropriate allowance for the relative risk of investment in postal activities in PNG;
- The regulatory asset base for Post as at 1 January 2011 will be calculated using the roll forward methodology outlined in the 2010 final report. That is, the opening asset base as at 1 January 2011 plus adjustments for:
 - Prudent capital expenditure over the regulatory period to 1 January 2016;;
 - Regulatory depreciation over the regulatory period to 1 January 2016;;
 - Any asset disposals over the regulatory period to 1 January 2016; and
 - Actual inflation over the regulatory period to 1 January 2016;
- In preparing the price path, the Commission will use an average price approach based upon the best available estimates of likely volumes of activity for the forward period;
- To the extent that efficiencies in operating costs have been achieved and these are greater than has been incorporated into the current price path, the Commission is to allow a sharing of the benefits from these efficiency gains such that by the end of the first 5 years of the next regulatory period, Post will still have the benefit of at least 50% of these additional efficiency gains achieved over the regulatory period and these efficiency gains will have been fully passed through to customers by 10 years after the next regulatory reset; and

- Post is required to prepare a full set of financial accounts for the business covering the regulatory period and to provide projections of opex and capex together with volume projections for the next regulatory period (of at least 5 years). Post is also required to undertake some form of Activity Based Accounting to allow financial separation of the Reserved Services activities from the other business activities undertaken by Post.

Executed by Post PNG Limited

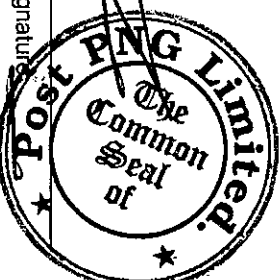
Paul

Director Signature

P. G. MARIEN

Print Name

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Director/Secretary Signature

BROWN

Print Name

Executed by the Independent Consumer
and Competition Commission

B. A. Manoka

Associate Professor Billy Manoka, (PhD)

Commissioner & CEO

For and on behalf of the Independent Consumer and Competition Commission