DRAFT PROPOSED FINAL PNG PORTS
REGULATORY
CONTRACT

FOR REGULATORY PERIOD
from
1 January 2015
to
31 December 2019
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Parties

1. PNG PORTS CORPORATION LTD (company number 1-46339) ("PNG Ports").

2. The Independent Consumer and Competition Commission, a body corporate established under the Independent Consumer and Competition Commission Act 2002 (the "Regulator"),

Recitals

A PNG Ports has been declared by the Minister for Treasury to be a regulated entity under section 32 of the Independent Consumer and Competition Commission Act 2002 (the “ICCC Act”)

B The Supply of Regulated Services, listed in Schedule 7, the subject of this Contract have been declared by the Minister and the Independent Consumer and Competition Commission to be Regulated Services under section 32 and 33 of the ICCC Act.

C PNG Ports is licensed under the Harbours Act Chapter 240 (the Harbours Act) to provide port facilities for loading and unloading vessels at declared Ports and to provide berths and berth reservation services for vessels at declared Ports.

D PNG Ports and the Regulator intend for this Contract to replace the previous Regulatory Contract and it shall apply on and from the commencement date.

E This Contract regulates the prices that PNG Ports may charge for the supply of the Regulated Services and related matters.

This Contract is a Regulatory Contract that is binding on PNG Ports and the Regulator pursuant to the provisions of the ICCC Act and the Harbours Act.

This Regulatory Contract issued by the Regulator is as follows;

1. General

1.1 Definitions

Agency refers to an Government Agency or Instrumentality, Department or a Statutory Authority
**Approved FM Pass Through Amount** has the meaning given to it in clause 5.1(e)(ii).

**Approved Harbours Licence Pass Through Amount** has the meaning given to it in clause 5.3(c)(ii).

**Approved Port Closure** means the closure of a declared port which is approved or deemed to be approved by the Regulator under clause 10.1

**Approved Tax Pass Through Amount** has the meaning given to it in clause 5.2(c)(ii).

**Approved Annual Plan** refers to the annual plan of PNG Ports as approved by the Independent Public Business Corporation.

**Berthing Service** means:

(a) a port service consisting of providing berths for Vessels at a Declared Port; and

(b) all services supplied in connection with the supply of such port services.

**Berth Reservation Service** means:

(a) a port service consisting of providing berth reservations for Vessels at a Declared Port; and

(b) all services supplied in connection with the supply of such port services.

**Business Day** means a day other than a Saturday or a Sunday or a day that is a public holiday in Papua New Guinea.

**Capital Expenditure** means expenditure by PNG Ports which conforms with one or more of the following:

a) the expenditure relates to the purchase, development or construction of a new non-current asset of PNG Ports;

b) the expenditure will increase the capacity or functionality of PNG Ports’ non-current assets;

c) the expenditure will significantly reduce the ongoing maintenance of PNG Ports’ non-current assets;

d) the expenditure will extend the service life of PNG Ports’ non-current assets beyond that expected when the assets were originally installed;

e) the expenditure will increase the efficiency, accessibility and/or reliability of Regulated Services provided by PNG Ports or port access seekers;

f) the expenditure will lead to an outcome that is consistent with the Regulator’s objectives under the **ICCC Act**

and PNG Ports has contracted unconditionally to undertake.

**Commencement Date** means **xxx xxx 2015**.

**Contestable Service** means a service other than a Regulated Service.

**Contract** means this PNG Ports Regulatory Contract.

**Customer** means a person to whom Regulated Services are supplied by PNG Ports or a person who is seeking to have Regulated Services supplied to by PNG Ports.
CSO means a community service obligation to provide services to Customers in a particular geographic service area, where the revenues received are less than the direct operating costs, as defined by the ICCC, following due consultation with PNG Ports and due process.

Declared Port means a port declared under Section 2 of the Harbours Act.

Default Notice means a notice given to PNG Ports by the Regulator under clause 6.1(l)

Essential Port Services means Berth Reservation Services, Berthing Services and Wharfage Services.

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

FM Pass Through Amount has the meaning given to it in clause 5.1(a).

Force Majeure Event means:

(a) a cyclone, storm, flood, volcanic eruption, drought that continues for more than two years, earthquake, bushfire, tidal wave or landslide; or

(b) an act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion or any violent or threatening actions, which results or is likely to result in an increase in the costs incurred by PNG Ports in supplying an o in complying with the provisions of any legislation, or of any codes or guidelines made or published by the Regulator under the ICCC Act, which must be complied with in relation to the supply of Regulated Services.

Force Majeure Event Claim means a claim given to the Regulator by PNG Ports under clause 5.1(b)(ii).

Force Majeure Event Notice means a notice given to the Regulator by PNG Ports under clause 5.1(b)(i).

Funded CSO means a CSO which is funded by way of a grant or donation or government funding which is intended to reduce prices to customers in a particular declared port.

Harbours Licence Fees means any licence fees payable by PNG Ports under the Harbours Act where the relevant licences are required to enable PNG Ports to provide Essential Port Services.

Harbours Licence Pass Through Amount has the meaning given to it in clause 5.3(a).

Minimum Service Standards means the service levels or standards specified in Schedule 3.

Minister means the Minister responsible for the ICCC Act.

Negative Tax Change Event means a Tax Change Event which results in PNG Ports incurring materially lower costs than it would have incurred but for that event in supplying a Regulated Service.

Negative Tax Pass Through Amount has the meaning given to it in clause 5.2(e).

Non-Regulated Service refers to services which are not Regulated Services in accordance with this Contract.

Permitted FM Pass Through Amount, at any time in respect of a Force Majeure Event, means the increased costs that PNG Ports has actually incurred as at that time (as calculated by PNG Ports under clause 5.1(a) or by the Regulator under clause 5.1(e), as appropriate):
(a) in supplying an Regulated Service; and

(b) in complying with the provisions of any legislation, or of any codes or guidelines made or published by the Regulator under the ICCAct, which must be complied with in relation to the supply of Regulated Services,

as a result of the occurrence of that Force Majeure Event.

**Permitted Harbours Licence Pass Through Amount**, in respect of a Regulatory Year, means the amount (PHL) calculated as follows:

\[
PHL_t = LF_t - K300,000 \times \left( \frac{PNG\ CPI_{t-1}}{PNG\ CPI_{2014}} \right)
\]

where:

LF\_t is the aggregate of the Harbours Licence Fees paid by PNG Ports which are referable to that Regulatory Year;

PNG CPI\_{t-1} is the Adjusted PNG CPI for the 12 month period ending 30 June in Regulatory Year\_{t-1} and is calculated in accordance with Part 4 of Schedule 2;

PNG CPI\_{2014} is the Adjusted PNG CPI for the 12 month period ending 30 June 2014 and is calculated in accordance with Part 4 of Schedule 2.

**Permitted Tax Pass Through Amount**, in respect of a Tax Change Event, means the increase in costs that PNG Ports has incurred or is likely to incur over the term of this Contract (as calculated by PNG Ports under clause 5.2(a) or by the Regulator under clause 5.2(c), as appropriate) in supplying an Regulated Service as a result of the occurrence of the Tax Change Event.

**PNG Ports** means PNG Ports Corporation Ltd (company number 1-46339), or its successors in law, assignees or related companies, or any person that subsequently carries on substantially the same business, using substantially the same assets, as the business carried on and assets used by PNG Ports Corporation Ltd as at the Commencement Date.

**Port Assets** means:

(a) all assets owned or leased by PNG Ports located in Papua New Guinea which are used or are intended by PNG Ports to be used in connection with the provision of Regulated Services by PNG Ports; and

(b) all assets which PNG Ports has contractually undertaken to acquire in Papua New Guinea and which are intended by PNG Ports to be used in connection with the provision of Regulated Services by PNG Ports.

**Positive Tax Change Event** means a Tax Change Event which results in PNG Ports incurring materially higher costs than it would have incurred but for that event in supplying an Essential Port Service.

**Positive Tax Pass Through Amount** has the meaning given to it in clause 5.2(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).
**Regulator** means the Independent Consumer and Competition Commission established under the *ICCC Act* or its successors at law.

**Regulatory Principles** means the principles set out in Schedule 4.

**Regulated Services** means the services declared under the ICCC Act as Regulated Services and include the services specified in Schedule 8 of this Contract

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

**Related Corporation** has the meaning given in section 2(3) of the *Companies Act 1997*.

**Relevant Interest** has the meaning given to it in the *Securities Act 1997* (PNG).

**Relevant Interest Holder in PNG Ports** means a person who has a Relevant Interest in not less than 20% of the shares in PNG Ports that confer a right to vote at any meeting of shareholders of PNG Ports.

**Relevant Tax** means any Tax payable by PNG Ports 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 established under the *National Capital District Commission Act 2001*, any Provincial or Local-level Governments or any other local authorities;
(f) stamp duty, withholding tax or similar taxes and duties;
(g) penalties, fines, interest, charges, fees or other amounts for late payments relating to any Tax; or
(h) any Tax that replaces any of the Taxes referred to in paragraph (a) to (f), (except where any such Tax referred to in (a) to (h) above is applied only to PNG Ports or is applied to PNG Ports in a discriminatory way).

**Reporting Requirements** means the completion of the templates set out in schedule 5 and reconciled to submitted audited accounts or management accounting information.

**Required Harbours Licence Pass Through Amount** has the meaning given to it in clause 5.3(f)

**Required Tax Pass Through Amount**, in respect of a Tax Change Event, means the costs that PNG Ports has saved or is likely to save over the term of this Contract (as determined by the Regulator under clause 5.2(e)) in supplying an Regulated Service as a result of the occurrence of the Tax Change Event.

**Selection Panel** is the Panel of persons established by IPBC in consultation with PNG Ports and includes the ICCC, to select the new operator of the Motukea Port and any service provider serving the Port or its customers

**Service Standards Report** means a report given to the Regulator by PNG Ports under clause 6.1(b).
Statutory Declaration is a declaration made in accordance with the Oaths, Affirmations and Statutory Declarations Act (Chapter 317) and for the purposes of this Contract PNG Ports shall use the template provided in Schedule 6.

Stevedoring Access means the right of stevedores to enter upon the port and associated facilities operated by a licensee for the purposes of loading and unloading ships and other vessels, but does not include the right to move cargo directly between vessels or services supplied in the stacking areas, or services consisting of storage, sorting, stacking or delivering cargo wholly within the transit sheds and open stacking areas within the boundaries of a declared port.

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

Subsidiary has the meaning given in the Companies Act 1997.

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 PNG Ports incurring materially higher or lower costs than it would have incurred but for that event in supplying an Essential Port Service.

Third Party refers to any other person apart from PNG Ports.

Vessel means a ship, boat or other vessel used for any purpose on the sea or in navigation.

Wharfage Services means:

(a) a port service consisting of providing port facilities for loading or unloading Vessels at a Declared Port; and

(b) all services supplied in connection with the supply of such port services, but does not include the provision of such services to pleasure craft less than 10 metres in length, vessels of primitive build or warships.

Working Day means the days on which PNG Ports receives monies or receives applications for gate passes and issues gate passes, that facilitates customer’s to receive cargo by PNG Ports and the delivery and removal of cargo at the gate, and includes the week days and weekends during which PNG Ports provides the Regulated Services.

1.2 Principles of interpretation

(a) Unless the contrary intention appears, the following principles of interpretation apply to this Contract:

(i) This contract is to be read and interpreted together with, and is subject to, the Objectives in section 5 of the ICCC Act;
(ii) all words, expressions and obligations are to be interpreted consistent with the ICC Act, Harbours Act, the Final Report on the PNG Ports Regulatory Contract Review dated XXXXXXX.

(iii) the Final Report on the PNG Ports Regulatory Contract Review ("PNG Ports Report") forms an integral part of this Contract; is inextricably linked with it; and is not severable from it;

(iv) words denoting persons include corporations, unincorporated associations, firms, governments and any governmental agencies;

(v) 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;

(vi) headings are only included for convenience and do not affect the interpretation of this Contract;

(vii) a reference to a clause or Schedule is to a clause of, or Schedule to, this Contract;

(viii) a reference to an agreement, document or regulatory instrument (including this Contract) is a reference to that agreement, document or regulatory instrument as varied, notated or replaced from time to time (whether or not the parties thereto remain the same);

(ix) a reference to legislation is a reference to legislation in force in Papua New Guinea; and

(x) 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 must 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 Regulator has made a decision under this Contract and later concludes that the decision was made on the basis of information provided to the Regulator that was false, misleading, incorrect or inadequate in a material particular, then, subject to clause 1.3(b), the Regulator may revoke the decision and make a new decision in substitution for the revoked decision.

(b) Before the Regulator revokes and substitutes a decision pursuant to clause 1.3(a) the Regulator must first:

(i) notify PNG Ports of the proposed revocation and of the proposed new decision (including the proposed date of effect of the revocation and new decision), and allow PNG Ports a reasonable opportunity to make submissions to the Regulator regarding the proposed revocation and the proposed new decision (including submissions as to whether the original decision was based on information that was false, misleading, incorrect or inadequate in a material particular); and

(ii) take into account any matters contained in a submission made by PNG Ports pursuant to sub-paragraph (i).

(c) A new decision made under clause 1.3(a) applies from:

(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 Regulator 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 Regulator 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, misleading, incorrect or inadequate 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 Regulator must ensure that a notice of each decision made by the Regulator under this Contract (other than a decision made pursuant to clause 1.5) is:

(i) sent to the Ministers responsible for the Harbours Act and the ICCC Act;

(ii) published in the National Gazette and a newspaper circulating nationally; and

(iii) sent to PNG Ports.

(b) The Regulator must ensure that a copy of each decision made by the Regulator under this Contract, together with a copy of its reasons for that decision, is:
(i) sent to the Ministers responsible for the Harbours Act and the ICCC Act;
(ii) sent to PNG Ports; and
(iii) made available for inspection and purchase by members of the public.

1.5 **Modification of time periods**

The Regulator may, either of its own motion or upon written request by PNG Ports, extend, by written notice to PNG Ports:

(a) the time by which a thing required to be done by PNG Ports or the Regulator must be done; or

(b) the period within which a thing required to be done by PNG Ports or the Regulator must be done.

1.6 **Term**

The term of this Contract commences on the commencement date and ends on 31 December 2019 (both dates inclusive).

1.7 **Final Report on the PNG Ports Regulatory Contract Review**

(a) The principal objectives of the Final Report on the PNG Ports Contract Review dated XXXXXX (hereafter “the PNG Ports Report”) and marked as “ANNEXURE A” are to determine if the current price control mechanism is appropriate for providing reliable, effective and efficient port services throughout Papua New Guinea; and the price path for the regulatory period commencing on the commencement date and ending on 31 December 2019.

(b) The PNG Ports Report forms part of this Contract and is binding on PNG Ports and the Regulator.

(c) Where there is a conflict between any provision in the Contract and the PNG Ports Report which cannot be resolved by applying the principles of interpretation set out in clause 1.2, this Contract shall have precedence over the PNG Ports Report in respect of that particular issue.

2. **Tariffs**

2.1 **Maximum tariffs for First Regulatory Year: Supply of Regulated Services**

(a) The maximum amount that PNG Ports may charge for the supply of Regulated Port Services during the First Regulatory Year is the applicable tariff set out in Schedule 1, plus the amount of any Goods and Services Tax (GST) payable by PNG Ports in relation to that supply.

(b) In so far as the supply of Regulated Services during the First Regulatory Year is concerned, PNG Ports must not charge a Customer more for the supply of such Regulated Service that is set out in Schedule 1 than the amount of that tariff as set out in Schedule 1, plus the amount of any Goods and Services tax payable by PNG Ports in relation to that supply.
(c) PNG Ports must not charge a tariff for the supply of Regulated Service during the First Regulatory Year that is not set out in Schedule 1, and the tariffs set out in Schedule 1 cannot be varied for the First Regulatory Year (save that PNG Ports may allow any Customer a discount to such a tariff).

(d) Nothing in this clause 2.1 affects the operation of clauses 5 and 15

2.2 Maximum Tariffs for Subsequent Regulatory Years: Supply of Regulated Port Services

(a) PNG Ports may, in accordance with this clause 2.2 and clause 3, change the tariffs it charges for the supply of a Regulated Service during a Subsequent Regulatory Year to any Customer. For the avoidance of doubt, except as provided in clauses 2.2(c), 4, 5, 6, 9 or 12, PNG Ports may not change an existing tariff, cease to offer an existing tariff or introduce a new tariff for such supply of a Regulated Service otherwise than in accordance with the procedure set out in clause 3.

(b) The tariffs for the supply of Regulated Services that are set out in a statement for a Subsequent Regulatory Year that is given by PNG Ports to the Regulator pursuant to clause 3.1(a) must be such that:

(i) if there were no Approved Port Closures during the previous Regulatory Year t – 1:

\[ \text{AR}^j_t \leq \text{ESPC}^j_t \]

where

\( \text{AR}^j_t \) is the change in forecast average revenue for that Subsequent Regulatory Year as a result of the new tariffs specified in the statement for the Declared Port or group of Declared Ports \( j \) (as defined in Schedule 1), for Subsequent Regulatory Year \( t \), calculated in accordance with Part 1 of Schedule 2; and

\( \text{ESPC}^j_t \) is the Essential Services Price Control for the Declared Port or group of Declared Ports \( j \) (as defined in Schedule 1), for that Subsequent Regulatory Year \( t \), calculated in accordance with Part 2 of Schedule 2; or

(ii) if there was one or more Approved Port Closure during the previous Regulatory Year \( t – 1 \):

\[ \text{AR(APC)}^j_t \leq \text{ESPC}^j_t \]

where

\( \text{AR(APC)}^j_t \) is the change in forecast average revenue for the Declared Port or group of Declared Ports \( j \) (as defined in Schedule 1), for that Subsequent Regulatory Year \( t \) as a result of the new tariffs specified in the statement for Subsequent Regulatory Year \( t \), adjusted to allow for one or more Approved Port Closure, calculated in accordance with Part 3 of Schedule 2; and

\( \text{ESPC}^j_t \) is the Essential Services Price Control for the Declared Port or group of Declared Ports \( j \) (as defined in Schedule 1), for that Subsequent Regulatory Year \( t \), calculated in accordance with Part 2 of Schedule 2.
In so far as the supply of an Regulated Service during a Subsequent Regulatory Year \( t \) is concerned, and subject to clauses 3, 4, 5, 6, 9 or 12, PNG Ports must not charge a Customer more for a tariff for the supply of an Regulated Service \( i \) for the Declared Port or group of Declared Ports \( j \) (as defined in Schedule 1), during Subsequent Regulatory Year \( t \) than an amount \( (\text{MP}^i_{t,j}) \) calculated as follows (expressed in Kina and rounded to two decimal places):

\[
\text{MP}^i_{t,j} \leq \text{AP}^i_{t-1,j} \times \text{RC}^j_t
\]

where:

- \( \text{AP}^i_{t-1,j} \) is the amount of that tariff (if any) for the supply of an Regulated Service \( i \) that was approved, deemed to be approved or set by the Regulator (as the case may be) pursuant to clause 3.1 for the Regulatory Year immediately preceding the relevant Subsequent Regulatory Year for the Declared Port or group of Declared Ports \( j \) (as defined in Schedule 1). Where the Regulatory Year immediately preceding the relevant Subsequent Regulatory Year is the First Regulatory Year, \( \text{AP}^i_{1-1,j} \) is the amount of the tariff (if any) that is set out in Schedule 1 (as varied, if at all, in accordance with this Contract);

- \( \text{RC}^j_t \) means the Rebalancing Control for the Declared Port or group of Declared Ports \( j \) (as defined in Schedule 1), for Subsequent Regulatory Year \( t \), calculated in accordance with Schedule 3.

\( \text{MP}^i_{t,j} \) must be the same amount for each Declared Port or group of Declared Ports \( j \) such that the maximum price that may be charged for the supply of a Regulated Service is a single rate applicable to all Declared Ports in group \( j \).

The tariffs for the supply of Regulated Port Services that are set out in the statement for the Declared Port or group of Declared Ports \( j \) (as defined in Schedule 1), for that Subsequent Regulatory Year \( t \) that is given by PNG Ports to the Regulator pursuant to clause 3.1(a) must be consistent with the requirements of clause 2.2(c).

### 2.3 Annual Regulatory Reporting Requirements

(a) Subject to clause 2.3(b) and 2.3(c) PNG Ports must provide to the Regulator the Reporting Requirements as set out in the template in Schedule 5.

(b) The Reporting Requirement must be given to the Regulator by the 30 June of each Regulatory Year.

(c) The Reporting Requirement must be accompanied with a Statutory Declaration from Chief Executive Officer or the Chief Financial Officer of PNG Ports [whichever is applicable] and the External Auditor in the forms provided in Schedule 6 that the information contained in the Reporting Requirement is, to the best of his knowledge and information, true, accurate and complete in every possible way and that no information has been withheld that would materially impact the decision of the Regulator.
(d) The information contained in the Reporting Framework in schedule 5 will be also taken into consideration when determining the prices for the Regulated Services for the subsequent regulatory years.

2.4 Funding from Third Parties

(a) Any assets acquired or capital projects carried out using funds from third parties in the form of gifts, donations, interest free or concessional-interest loans or CSO funded by Government or other party, (‘funding from third parties’) intended to make prices cheaper for Customers in a particular service area must be identified separately in PNG Ports’ asset register. For the purposes of clarity funding from third parties means that the third party has gifted, donated or made available funding which does not need to be paid back by PNG Ports or is repayable by PNG Ports but with no interest or with concessional interest and the funding is generally provided for the purpose of providing cheaper Regulated Services or affordable Regulated Services to Customers in a particular declared Port.

(i) This is different from funding provided by PNG Ports’ shareholders on which the shareholders expect to receive a return on their investment.

(b) Any assets or capital projects carried out using funds as described in clause 2.4(a) will not be considered to be part of PNG Ports’ Capital Expenditure if entirely funded by third parties; or their value adjusted for the concessional portion of any interest rate that is below that generally prevailing in the market, for loan funds provided at concessional interest.

(c) When the Regulator is required to set the tariff for PNG Ports for the beginning of the next regulatory contract commencing from 1 January 2020, any assets or capital spending which was funded using funds as describe in clause 2.4(a) will be excluded from the total RAB and PNG Ports will not be entitled to a return on these assets or to recover the depreciation on these assets under the tariff, until such time as these assets are replaced by PNG Ports in the normal course of business.

(d) The Regulator shall, if it considers it necessary or desirable, require PNG Ports to publicise at a time and in a manner the Regulator considers appropriate, the details of the assets and capital projects PNG Ports proposes to acquire using third party funding or financial assistance of any kind, including, but not limited to, concessional interest loans.

2.5 Introduction of new Levy’s or Fees.

PNG Ports shall not charge a new levy without the express permission of the Regulator

3. Altering Tariffs

3.1 Annual variation

a) PNG Ports must, for each Subsequent Regulatory Year, give the Regulator a Statement in accordance with clause 3.1(b) that:

(i) sets out PNG Ports proposed tariffs for the supply of Regulated
Services for the Declared Port or group of Declared Ports j (as defined in Schedule 1), for that Subsequent Regulatory Year; and
(ii) demonstrates compliance of those proposed tariffs with the relevant requirements set out in clause 2.2 and Schedules 2.

b) A statement referred to in clause 3.1(a) must be given to the Regulator by the second Friday in September of the Regulatory Year immediately preceding the relevant Subsequent Regulatory Year.

c) The Regulator must not approve a statement given by PNG Ports under clause 3.1(a) if the statement does not demonstrate compliance of the proposed tariffs with the relevant requirements set out in clause 2.2 and Schedules 2.

d) The Regulator must approve a statement given by PNG Ports under clause 3.1(a) if the statement demonstrates compliance of the proposed tariffs with the relevant requirements set out in clause 2.2 and Schedules 2.

e) If the Regulator does not notify PNG Ports of the Regulator’s decision regarding a statement given by PNG Ports under clause 3.1(a) by the first Monday in October of the Regulatory Year immediately preceding the relevant Subsequent Regulatory Year, the Regulator is deemed to have approved the statement with effect from that day.

f) The tariffs in any statement given by PNG Ports under clause 3.1(a), being a statement which is approved or deemed to have been approved by the Regulator, apply from the later of:
(i) the date on which the Regulator approves or is deemed to have approved the statement; and
(ii) the start of the Subsequent Regulatory Year in respect of which the tariffs are to apply.

g) If PNG Ports does not provide a statement to the Regulator as required by and in accordance with clause 3.1(a), or such a statement is so provided but (by the first Monday in October of the Regulatory Year immediately preceding the relevant Subsequent Regulatory Year) the Regulator notifies PNG Ports of the Regulator’s decision not to approve that statement, then the Regulator may reset the relevant tariffs for the Declared Port or group of Declared Ports j (as defined in Schedule 1), for the relevant Subsequent Regulatory Year in a manner in which the Regulator could have approved the tariffs if they were included in a statement given by PNG Ports under clause 3.1(a). The Regulator must notify PNG Ports in writing of the tariffs so set by the Regulator. The tariffs set by the Regulator apply from the later of:
(i) the date on which the Regulator notifies PNG Ports of the tariffs; and
(ii) the start of the Subsequent Regulatory Year in respect of which the tariffs are to apply.
3.2 Maximum tariffs

In so far as the supply of an Regulated Service during a Subsequent Regulatory Year is concerned, and subject to clauses 4, 5, 10 and 12, PNG Ports must not charge a Customer more than the applicable tariff that is approved, deemed to be approved or set by the Regulator (as the case may be) pursuant to clause 3.1 for that Subsequent Regulatory Year, plus the amount of any Goods and Services Tax payable by PNG Ports in relation to that supply.

4. Approval of Expenditure

4.1 Approval of Capital Expenditure

(a) Subject to clause 4.1(b), at the same time that PNG Ports supplies to the Regulator its Statement in accordance with clause 3.1(a), Ports shall also include a statement that identifies any capital projects which have been completed, commissioned and the Regulator is satisfied that the capital project is operational, meaning customers are using and receiving a benefit from the services being provided by the project.

(b) The Regulator shall only include capital project into the price path for the subsequent regulatory year, in accordance with clause 2.2, if it also;
   (i) Increase capacity to meet forecast demand
   (ii) Increase the reliability of service to customers
   (iii) Enable the regulated entity to meet service level targets set by the Commission
   (iv) Increase the ability of the regulated entity to measure the performance of their assets.
   (v) Increase the efficient operation of the organisation
   (vi) Decrease operating costs.
   (vii) Demonstrates compliance with the tender and procurement principles in clause 7.2

(c) For any Capital Expenditures deemed to be prudent, when the project is completed, PNG Ports will provide evidence of actual costs and make provision for the Regulator to inspect the new assets. Once the Regulator is satisfied that the project has been successfully completed and that all specified conditions have been met, the Regulator will then adjust PNG Ports’ prices. This price adjustment shall take the form of a price increase to all wharfage charges, either as a per tonne increase or a per container increase. The CSO levy will not change.

(d) The process for calculation of the price increase will be as outlined under Schedule 2 Part 5.

(e) The Regulator shall, if it considers it necessary or desirable, appoint an appropriately qualified independent international consultant to assess the prudency and efficiency of the capital expenditure. The reasonable cost of such independent consultant shall be met by PNG Ports.
5. **Regulated Pass Through**

5.1 **Force Majeure Event Pass Through**

*Application by PNG Ports*

(a) If a Force Majeure Event occurs, PNG Ports shall seek the Regulator’s approval to charge Customers, in addition to the tariffs that PNG Ports is otherwise permitted to charge for the supply of Regulated Services pursuant to clauses 2 and 3, an amount *(FM Pass Through Amount)* that is not greater than the Permitted FM Pass Through Amount (as calculated by PNG Ports) in respect of that Force Majeure Event as at the date of the Force Majeure Event Claim (if any) given to the Regulator pursuant to clause 5.1(d) in respect of that Force Majeure Event.

(b) To seek the Regulator’s approval to pass through an FM Pass Through Amount under clause 5.1(a), PNG Ports must give to the Regulator:

(i) a Force Majeure Event Notice pursuant to clause 5.1(c) within 3 months of the Force Majeure Event occurring; and

(ii) a Force Majeure Event Claim pursuant to clause 5.1(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 PNG Ports has actually incurred as at the date of the Force Majeure Event Claim:

(A) in supplying Regulated Services; and

(B) in complying with the provisions of any legislation, or of any codes or guidelines made or published by the Regulator under the *ICCC Act*, which must be complied with in relation to the supply of Regulated Services,

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

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

(v) the FM Pass Through Amount PNG Ports proposes in relation to the Force Majeure Event;

(vi) the basis on which PNG Ports proposes to apply the FM Pass Through Amount to Customers; and

(vii) the date from, and period over, which PNG Ports proposes to apply the FM Pass Through Amount to Customers,
and must be accompanied by evidence of the increase in costs referred to in paragraph (iii).

**Approval by Regulator**

(e) If the Regulator receives a Force Majeure Event Claim under clause 5.1(d) in relation to a Force Majeure Event, the Regulator must decide whether the Force Majeure Event occurred and, if the Regulator decides the Force Majeure Event occurred, the Regulator must decide:

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

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

(iii) the date from, and period over, which the Approved FM Pass Through Amount in respect of the Force Majeure Event may be applied to Customers, and notify PNG Ports in writing of the Regulator’s decision and the reasons for the Regulator’s decision.

(f) If the Regulator does not give a notice to PNG Ports under clause 5.1(e) within 20 working days of receiving:

(i) a Force Majeure Event Claim from PNG Ports under clause 5.1(d); and

(ii) such evidence of the increase in costs referred to in clause 5.1(d)(iii) as is required by the Regulator,

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

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

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

**Relevant Factors**

(g) In making a decision under clause 5.1(e), the Regulator 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 PNG Ports to have procured insurance against the consequences of the Force Majeure Event; and
any amount recoverable by PNG Ports under insurances against the consequences of the Force Majeure Event and of which PNG Ports has the benefit, and, subject to the requirement that PNG Ports is not to be compensated for losses against which it would have been reasonable for PNG Ports to have been insured, or for losses to the extent they are able to be compensated for by claiming under insurances of which PNG Ports has the benefit, the Regulator must seek to ensure that PNG Ports is fully (but not over) compensated for the increase in costs referred to in clause 5.1(d)(iii) to the extent that it was reasonable for PNG Ports to incur those costs, taking into account:

(iv) the relative amounts of Regulated Services supplied by PNG Ports to each Customer or class of Customer;

(v) the time cost of money for the period over which the Approved FM Pass Through Amount is to be applied;

(vi) the basis on and period over which the Approved FM Pass Through Amount is to be applied;

(vii) any previous application of this clause 5.1 which has resulted in PNG Ports 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 5.1; and

(viii) any other factors the Regulator considers relevant.

Application of Approved FM Pass Through Amount

PNG Ports may, after:

(i) receipt or deemed receipt of a notice under clause 5.1(e) or (f) allowing PNG Ports to pass through an Approved FM Pass Through Amount; and

(ii) publishing a notice in a daily newspaper circulating nationally that sets out:

(A) the Approved FM Pass Through Amount which the Regulator has approved or is deemed to have approved;

(B) the circumstances giving rise to the Approved FM Pass Through Amount; and

(C) the basis on, date from and period over which PNG Ports will apply the Approved FM Pass Through Amount to Customers,

apply the Approved FM Pass Through Amount on the basis, from the date and over the period specified or deemed to be specified in the notice from the Regulator.

The effect of an Approved FM Pass Through Amount must be:

(i) shown on the bill of each affected Customer; or

(ii) otherwise notified to such Customers in a manner approved by the Regulator.

Relevance of Approved FM Pass Through Amount

An Approved FM Pass Through Amount applied by PNG Ports under this clause 5.1 is not to be taken into account in the application of clauses 2 and 3.
5.2 Tax Pass Through

Application by PNG Ports

(a) If a Positive Tax Change Event occurs, PNG Ports may seek the Regulator’s approval to charge Customers, in addition to the maximum amounts that PNG Ports is otherwise permitted to charge Customers for the supply of Regulated Services pursuant to clauses 2 and 3, an amount (Positive Tax Pass Through Amount) that is not greater than the Permitted Tax Pass Through Amount (as calculated by PNG Ports) in respect of that Tax Change Event.

(b) To seek the Regulator’s approval to pass through a Positive Tax Pass Through Amount under clause 5.2(a), PNG Ports must give the Regulator a statement within 6 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 PNG Ports has incurred and is likely to incur over the term of this Contract in supplying Regulated Services as a result of the occurrence of the Tax Change Event;

(iv) the Positive Tax Pass Through Amount PNG Ports proposes in relation to the Tax Change Event;

(v) the basis on which PNG Ports proposes to apply the Positive Tax Pass Through Amount to Customers; and

(vi) the date from, and period over, which PNG Ports 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 Regulator receives a statement under clause 5.2(b) in relation to a Positive Tax Change Event, the Regulator must decide whether that Tax Change Event occurred and, if the Regulator decides the Tax Change Event occurred, the Regulator 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 PNG Ports 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 Regulator (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 PNG Ports in writing of the Regulator’s decision and the reasons for the Regulator’s decision.

(d) If the Regulator does not give a notice to PNG Ports under clause 5.2(c) within 20 Business Days of receiving:
(i) a statement from PNG Ports under clause 5.2(b); and

(ii) such evidence of the actual and likely increase in costs referred to in clause 5.2(b)(iii) as is required by the Regulator,

then, on the 21st Business Day after receiving PNG Ports’ statement and that evidence, the Regulator is deemed to have notified PNG Ports of its decision that:

(iii) the Positive Tax Pass Through Amount proposed by PNG Ports in relation to the relevant Tax Change Event in PNG Ports’ 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 PNG Ports’ statement.

**Required Tax Pass Through**

(e) If a Negative Tax Change Event occurs, the Regulator may require PNG Ports 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 Regulator) in respect of that Tax Change Event. In such a case, the Regulator 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 PNG Ports in writing of the Regulator’s decision and the reasons for the Regulator’s decision.

(f) PNG Ports must provide to the Regulator within the time specified by the Regulator, such information as the Regulator requires for the purpose of making a decision under clause 5.2(e).

**Relevant Factors**

(g) In making a decision under clause 5.2(c) or 5.2(e), the Regulator must (in the case of a decision under clause 5.2(c)) take into account the matters and proposals set out in PNG Ports’ statement and:

(i) in the case of a decision under clause 5.2(c) - the Regulator must ensure that PNG Ports is fully (but not over) compensated for the actual and likely increase in costs referred to in clause 5.2(b)(iii); and

(ii) in the case of a decision under clause 5.2(e) – the Regulator must ensure that the aggregate amount that PNG Ports is required to pass through to Customers is an amount that is equivalent to (but not more than) the costs that PNG Ports has saved and is likely to save over the term of this Contract in supplying Regulated Services as a result of the occurrence of the Negative Tax Change Event,
taking into account:

(iii) the relative amounts of Regulated Services supplied by PNG Ports to each Customer or class of Customer;

(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 5.2 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 5.2;

(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 Regulator'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 5.2 in relation to a Tax Change Event; and

(ix) any other factors the Regulator considers relevant.

Application of Approved Tax Pass Through Amount or Negative Tax Pass Through Amount

(h) PNG Ports may, after:

(i) receipt or deemed receipt of a notice under clause 5.2(c) or (d) allowing PNG Ports 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 Regulator 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 which PNG Ports 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 Regulator.

(i) PNG Ports must, after receipt of a notice under clause 5.2(e) requiring PNG Ports to pass through a Negative Tax Pass Through Amount to Customers, apply the Negative Tax Pass Through Amount on the basis, from the date and over the period specified in the notice from the Regulator.

(j) The effect of an Approved Tax Pass Through Amount or a Negative Tax Pass Through Amount must be:

(i) shown on the bill of each affected Customer; or
otherwise notified to such Customers in a manner approved by the Regulator.

5.3 Harbours Licence Pass Through

(a) Subject to clause 5.3(b), PNG Ports may at any time propose to the Regulator that it charge Customers an amount (**Harbours Licence Pass Through Amount**) that is
not greater than the Permitted Harbours Licence Pass Through Amount in respect of a Regulatory Year (the **Relevant Regulatory Year**) (to the extent that amount is positive).

(b) In order to seek the Regulator’s agreement to pass through a Harbours Licence Pass Through Amount referred to in clause 5.3(a), PNG Ports must give the Regulator a statement, by 31 January of the Regulatory Year immediately following the Relevant Regulatory Year, specifying:

(i) the Harbours Licence Pass Through Amount proposed by PNG Ports;
(ii) the amount of the Harbours Licence Fees referable to the Relevant Regulatory Year which have been paid by PNG Ports;
(iii) the basis on which PNG Ports proposes to apply the Harbours Licence Pass Through Amount to Customers; and
(iv) the date from, and period over, which PNG Ports proposes to apply the Harbours Licence Pass Through Amount to Customers,

and must be accompanied by evidence of the payments in a verifiable form referred to in paragraph (ii).

(c) If the Regulator receives a statement under clause 5.3(b), the Regulator must decide:

(i) the Permitted Harbours Licence Pass Through Amount in respect of the Relevant Regulatory Year;
(ii) the basis on which the Harbours Licence Pass Through Amount proposed by PNG Ports or the Permitted Harbours Licence Pass Through Amount as determined by the Regulator (whichever is the lesser) (**Approved Harbours Licence Pass Through Amount**) may be applied to Customers; and
(iii) the date from, and period over, which the Approved Harbours Licence Pass Through Amount may be applied to Customers,

and notify PNG Ports in writing of the Regulator’s decision and the reasons for the Regulator’s decision.

(d) If the Regulator does not give a notice to PNG Ports under clause 5.3(c) within 20 Business Days of receiving:

(i) a statement from PNG Ports under clause 5.3(b); and
(ii) such evidence of the payments referred to in clause 5.3(b)(ii) as is required by the Regulator,

then, on the 21st Business Day after receiving PNG Ports’ statement and that evidence, the Regulator is deemed to have notified PNG Ports of its decision that:
(iii) the Harbours Licence Pass Through Amount proposed by PNG Ports in PNG Ports’ statement be the Approved Harbours Licence Pass Through Amount; and

(iv) the basis on, date from and period over which that Approved Harbours Licence Pass Through Amount may be applied to Customers are as specified in PNG Ports’ statement.

(e) The Regulator may require PNG Ports to pass through to Customers or otherwise apply for the benefit of Customers or potential Customers an amount that is equal to the Permitted Harbours Licence Pass Through Amount in respect of any Regulatory Year (to the extent that amount is negative).

(f) If the Regulator requires PNG Ports to pass through to Customers or otherwise apply for the benefit of Customers or potential Customers, a Permitted Harbours Licence Pass Through Amount as referred to in clause 5.3(e), the Regulator must decide:

(i) that amount (such amount being referred to as the Required Harbours Licence Pass Through Amount);

(ii) the basis on which that Required Harbours Licence Pass Through Amount must be passed through to Customers or applied for the benefit of Customers or potential Customers; and

(iii) the date from, and period over, which that Required Harbours Licence Pass Through Amount must be passed through to Customers or how and when the Required Harbours Licence Pass Through Amount must be applied for the benefit of Customers or potential Customers,

and notify PNG Ports in writing of the Regulator’s decision and the reasons for the Regulator’s decision.

(g) PNG Ports must provide to the Regulator within the time specified by the Regulator, such information as the Regulator may request for the purpose of making a decision under clause 5.3(f).

(h) PNG Ports may, after:

(i) receipt or deemed receipt of a notice under clause 5.3(c) or (d) allowing PNG Ports to pass through an Approved Harbours Licence Pass Through Amount; and

(ii) publishing a notice in a daily newspaper circulating nationally that sets out:

(A) the Approved Harbours Licence Pass Through Amount which the Regulator has approved or is deemed to have approved;

(B) the circumstances giving rise to the Approved Harbours Licence Pass Through Amount; and

(C) the basis on, date from and period over which PNG Ports will apply the Approved Harbours Licence Pass Through Amount to Customers, apply the Approved Harbours Licence Pass Through Amount on the basis, from the date and over the period specified or deemed to be specified in the notice from the Regulator.
PNG Ports must, after receipt of a notice under clause 5.3(f) requiring PNG Ports to pass through a Required Harbours Licence Pass Through Amount to Customers or to apply a Required Harbours Licence Pass Through Amount for the benefit of Customers or potential Customers, apply the Required Harbours Licence Pass Through Amount on the basis, from the date and over the period specified in the notice from the Regulator.

The effect of an Approved Harbours Licence Pass Through Amount or a Required Harbours Licence Pass Through Amount must be:

(i) shown on the bill of each affected Customer; or
(ii) notified by public advertisement in a national newspaper; or
(iii) otherwise notified to such Customers in a manner agreed by PNG Ports and the Regulator.

5.4 Leisure craft, vessels of primitive build and warships

PNG Ports must provide free of charge, port facilities for loading or unloading leisure craft of less than 10 metres in length, vessels of primitive build and warships, at each Declared Port if and to the extent to which such facilities existed as at the date of this Contract and all services supplied in connection with the supply of such services at each Declared Port.

6. Service Standards, Key Performance Indicators, Compliance and Enforcement

6.1 Minimum Service Standards

(a) PNG Ports must ensure that the Minimum Service Standards specified in Schedule 3 are satisfied in respect of each declared sort at all times.

(b) Subject to clause 6.1 (h), PNG Ports must submit to the Regulator no later than 1 March each regulatory year, a service standards report that demonstrates PNG Ports’ compliance with Clause 6.1(a) and contains evidence of that compliance. The service standards report must be in such form (if any) as is required by the Regulator.

(c) The Regulator may at any time audit and verify PNG Ports’ compliance with clause 6.1(a). Without limiting the steps which the Regulator may take when conducting such an audit, the Regulator may:

(i) Require PNG Ports to provide information relevant to its compliance with Schedule 3
(ii) Inspect any assets, premises, property or records of PNG Ports relevant to its compliance with Schedule 3.

(d) The Regulator must notify PNG Ports within 10 business days of commencing an audit under clause 6.1(c)

(e) The Regulator may appoint an appropriately qualified independent consultant to report (through an audit and verification of the Service Standards Report by Ports, for Tier One and Tier Two Ports) to the Regulator, within three months, as to:

(i) whether PNG Ports is in compliance with clause 6.1(a);
(ii) if PNG Ports is not in compliance with clause 6.1(a), the relevant service standards that have not been complied with and the nature and extend of the non-compliance.

(f) The Regulator must not exercise its power under clause 6.1(c) or (e) more than once per calendar year.

(g) The reasonable cost of the consultant appointed in clause 6.1(e) shall be met by PNG Ports.

(h) The Service Standards report shall provide details and evidence of PNG Ports’ compliance or otherwise with the service standards specified in Schedule 3 for the relevant regulatory Year. If PNG Ports is not in compliance with the service standards specified in Schedule 3, the Service Standards report must provide details of PNG Ports’ explanations and reasons for any failure to achieve those service standards, and details of how PNG Ports intends to improve its performance so as to achieve the relevant Service Standards in Schedule 3 for the Subsequent Regulatory Year.

(i) For the purposes of this clause 6, PNG Ports must, at its expense provide the consultant appointed under clause 6.1(e) and the Regulator with such access to PNG Ports’ assets, premises, property, records, employees and contractors as the consultant or the Regulator requires for the purpose of this clause 6.

(j) PNG Ports must provide to the Regulator within the time specified by the Regulator, any additional information and documents that the Regulator requires in connection with Schedule 3.

(k) The Regulator shall publish the service standards report in clause 6.1(b) subject to any confidentiality assessment under the ICC Act.

(l) After considering:

(i) the Service Standards report submitted by PNG Ports to the Regulator in accordance with clause 6.1(b).

(ii) any report provided in accordance with clause 6.1(e) by a consultant (if any) appointed pursuant to that clause; and any further information obtained by the Regulator pursuant to clauses 6.1(c) or (i) or otherwise,

the Regulator must determine whether or not PNG Ports is in compliance with clause 6.1(a).

(m) If the Regulator has determined that PNG Ports is in compliance with clause 6.1(a) the Regulator shall issue a Compliance Notice, for each Declared Port at which the Service Standard has been satisfied. The Regulator shall publish the Compliance notice.

(n) If the Regulator has determined that PNG Ports is not in compliance with clause 6.1(a), the Regulator shall issue a Default Notice, specifying the details of the non-compliance of the particular service standard(s) for, including each Declared Port at which the Service Standard has not been satisfied. The Regulator shall publish the Default Notice.
6.2 Minimum Service Standards Price Discounts

(a) If the Regulator gives PNG Ports a Default Notice in accordance with clause 6.1 stating that Ports has not complied with the Schedule 3, then from the day immediately following the day on which PNG Ports receives a Default Notice until the day on which the Regulator notifies PNG Ports in writing that the Regulator is satisfied that PNG Ports is in compliance with the Default Notice, the maximum amount that PNG Ports may charge for the supply of the Regulated Service at the relevant Port the subject of the Default Notice is an amount equal to 80% of the MP\textsuperscript{ij} determined in accordance with clause 2.2(c) and approved, deemed to be approved or set by the Regulator (as the case may be) pursuant to clause 3.1 for the declared port or group of declared ports j (as defined in the Schedule 1), for each regulatory year during which the Default Notice remains on foot.

(b) Clause 6.2(a) is not applicable in respect of schedule 3(II).

(c) PNG Ports may at any time after service of the Default Notice notify the Regulator that it considers that it is in compliance of the Schedule 3(I).

(d) Within 10 business days of receiving such a notice in clause 6.2(b) from PNG Ports, the Regulator must notify PNG Ports in writing whether or not the Regulator is satisfied that PNG Ports is in compliance with the service standards.

(e) For the avoidance of doubt:

(i) a reduction in a maximum amount that may be charged by PNG Ports for the supply of an Regulated Service during Regulatory Year t as a result of clause 6.2(a) is not to be taken into account in any calculation made under clause 2.2(b) or (c), whether during that Regulatory Year t or during any subsequent Regulatory Year. In particular, the reduction in maximum amount that may be charged is not to be taken into account in any calculation or determination of AP\textsuperscript{ij} t-1 (as defined in clause 2.2(a)), p\textsuperscript{ij} t, or p\textsuperscript{ij} t-1 (as defined in Schedule 2); and

(ii) if a Default Notice is given in Regulatory Year t and the Regulator has not notified PNG Ports that the Regulator is satisfied that PNG Ports is in compliance with clause 6.1(a) by the commencement of Regulatory Year t+1 or any subsequent Regulatory Year, then from the commencement of that Regulatory Year t + 1 (and each subsequent Regulatory Year) the maximum amount that PNG Ports may charge for the supply of an Regulated Service at the Declared Port specified in that Notice of Default becomes an amount equal to 80% of the new MP\textsuperscript{ij} calculated for the Declared Port or group of Declared Ports j (as defined in Schedule 1), for Regulatory Year t + 1 (or the subsequent Regulatory Year, as the case may be) in accordance with clause 2.2(c) and approved, deemed to be approved or set by the Regulator (as the case may be) pursuant to clause 3.1.

6.3 Enforcement of Minimum Service Standards

(a) Where deemed appropriate by the Regulator, a letter may be sent to the Board of PNG Ports with copies to the Chairman of the Independent Public Business Corporation (IPBC), the Minister responsible for Public Enterprises, as shareholders of PNG Ports or representatives of the shareholders, suggesting they consider
penalising the Chief Executive Officer and the Senior Management Team of PNG Ports within one month of receiving the report and recommendation from the Regulator, without indemnity from PNG Ports, as the PNG Ports’ regulatory performance is sub-standard, and not in compliance with the Contract.

6.4 Dispute Resolution Process between PNG Ports and Customers

(a) As part of its Minimum Service Standards, PNG Ports must submit to the Regulator by the first Friday of March 2015, for the Regulator’s approval, a proposed Dispute Resolution Process framework, aimed at effectively dealing with and satisfactorily resolving disputes between PNG Ports and customer within a reasonable time.

(b) Without limiting the generality of the preceding paragraph (a), the proposed Dispute Resolution Process framework must include the process for amicable resolution between the parties or arbitration or similar that can bring about a binding decision, if the dispute is not resolved between the parties.

(c) The Regulator shall consider the proposed Dispute Resolution Process of PNG Ports submitted in accordance with clause 6.4 (a), and any other appropriate information available to it and determine the Dispute Resolution Process to be applied to PNG Ports and Customers of PNG Ports.

(d) The Regulator will take into account the number of complaints and decisions found for or against the PNG Port when considering the compliance or otherwise of the service standards by PNG Ports.

7. Competitive Capital and Operational Procurement Processes

7.1 Mode of Operation

PNG Ports must at all times operate as a commercial enterprise as prudently and efficiently as comparable businesses in Papua New Guinea not only with a view to maximising the value of its shareholders’ investment but also to provide Regulated Services for reasonably expected value and standards to the people of Papua New Guinea.

7.2 Procurement and Tender Principles

PNG Ports shall comply with and give effect to the following principles when procuring capital or operational items:

(a) PNG Ports shall pursue value for money as the core principle underlying all its procurement.

(b) PNG Ports shall only incur capital or operational expenditure that is both prudent and efficient as is determined by the Regulator.

(c) PNG Ports shall adopt and follow competitive and non-discriminatory procurement processes by being committed to competition which promotes economy, efficiency and effectiveness in procurement expenditure and contributes to the competitiveness of suppliers;

(d) PNG Ports shall promote in its work place and in procurement, an organizational structure of efficient, effective and ethical use of its resources; and
PNG Ports shall ensure at all times that its procurement is consistent with its general obligations; its functions and objectives and its other general Government obligations and its other general obligations prescribed under the Harbours Act.

7.3 Compliance of Prescribed Procurement and Tender Procedure

Without derogating from, but with all intent to give full effect to the Principles in clause 7.2, PNG Ports shall, where applicable, comply with all the requirements for, relating to or affecting procurement and tender and provide a statutory declaration to that effect in respect of any information requested by the Regulator in accordance with Schedule 6.

7.4 General Duties and Obligations of PNG Ports

(a) PNG Ports shall provide to the Regulator its Approved Annual Plans within 10 business days after it is approved, indicating its annual capital and operational expenditure plans, which it intends to undertake, the value of which is K500,000.00 or more.

(b) PNG Ports must publish in the daily newspapers circulating around Papua New Guinea the same information provided to the Regulator as in clause 7.4(a) subject to clause 14.

(c) The Regulator may, where it considers it necessary or desirable, require PNG Ports to:

(i) provide information associated with the Procurement and Tender of the Capital and Operational Expenditure which is valued at K500,000.00 and above, such information to include but is not limited to:

(A) the manner of inviting tenders publicly;
(B) the number of tenders received;
(C) details of the tenders received;
(D) the method used to deal with the tenders;
(E) the criteria applied in the evaluation of the tenders;
(F) the appointment by PNG Ports of advisers in technical matters;
(G) the keeping by the PNG Ports of records of the performance of each successful tenderer;
(H) the manner of regulating the disposal of property no longer required by PNG Ports;
(I) the method of obtaining and dealing with quotations for –

(1) the purchase and disposal of property and stores; and
(2) the supply of goods and services;

(ii) demonstrate the prudency and efficiency of that Capital and Operational Expenditure, regarding any Capital or Operational Expenditure or investment that goes to determining the current tariffs in schedule 1, Schedule 2 and in accordance with clause 2.2 and 3 of this Contract.
The Regulator shall, if it considers it necessary or desirable, appoint an appropriately qualified independent international consultant to assess the prudency and efficiency of the Capital or Operational Expenditure and the robustness of demand forecasts, including latent or unmet demand. The reasonable cost of such independent consultant shall be met by PNG Ports.

7.5 Effect of General Duties and Obligations of PNG Ports

(a) The Regulator shall determine whether PNG Ports has applied the principles in clause 7.2 with consideration of the Objectives of the ICCC Act, to assess the prudency and efficiency of the project and the efficiency of the entity awarded the project.

(b) The Regulator shall, where it considers it necessary or desirable, conduct a physical inspection of the Capital or Operational Expenditure Projects.

(c) Where the Regulator finds that a Capital or Operational Expenditure was not tendered according to the principles in clause 7.2, the Regulator will allocate a value to the asset which in its judgment it considers appropriate, as guided by the Regulatory Principles in Schedule 4.

(d) The Capital and Operational Expenditure incurred contrary to the requirements of the Procurement and Tender Principles under clause 7.2 and the general duties and obligations of PNG Ports, shall not be taken into account when formulating the price path, and a report will be sent by the Regulator to the Chairman of IPBC and the Minister for Public Enterprise.

8. Regulatory and Statutory Accounts

(a) PNG Ports shall submit to the Regulator in accordance with this clause, within two months and five months, respectively, after the close of each financial year during the regulatory period, all of its respective draft and audited financial statements and returns in respect of the Regulatory and Statutory Accounts.

(b) All Regulatory and Statutory Accounts and returns submitted to the Regulator are to be certified by a professional auditor nominated by the Regulator, as being true and fair, under generally accepted accounting principles. For the purposes of this clause, an auditor is required to be a registered company auditor as defined under the Accountants Act 1996.

(c) The auditor must certify that the Regulatory Accounts and returns are reconciled with the Statutory Accounts audited by the Auditor General or external auditors as the case may be.

(d) If the Statutory Accounts have not been audited by the Auditor General or external auditors as the case may be, the auditor must certify that the Regulatory Accounts and returns have been reconciled with the Statutory Accounts submitted to the Auditor General or external auditors for audit.

(e) Where the Statutory Accounts have not been submitted to the Auditor General or external auditors as the case may be for audit, the auditor must certify that the
Statutory Accounts and returns are consistent with generally accepted accounting principles and proper accounting records.

(f) The Chief Financial Officer of PNG Ports must declare, by means of a statutory declaration as contained in Schedule 8 that:

(i) all the records and books of account maintained by PNG Ports for the purpose of generating the Regulatory and Statutory Accounts have been approved by the Board of PNG Ports; and

(ii) declare that all the Statutory Accounts and the reporting requirements for the most recent completed financial year are, to the best of his knowledge and belief, true and fair.

(g) The reasonable cost of the external auditor in compliance with clause 8 shall be borne by PNG Ports.

9. Competition Policy

9.1 Ring Fencing

(a) If the Regulator considers it necessary or desirable to do so in order to promote competition in a market for non-regulated services; or to achieve the objectives of the ICCC Act; or to facilitate more effective regulation of Regulated Services; or to facilitate the introduction of any future regulation of one or more Regulated Service(s); it may serve a notice on PNG Ports specifying steps PNG Ports must take in order to separate its Regulated Port Services from non-regulated services provided by PNG Ports or Relevant Interest Holder in PNG Ports or the Regulator shall determine an otherwise alternative approach or joint objective intended to improve regulation. PNG Ports must comply with any such notice within 20 Business Days of service of the notice or within such longer period as the Regulator may allow.

(b) PNG Ports shall provide to the Regulator a description of any new non-regulated service it intends to provide, not less than one month prior to the commencement of the non-regulated service. Where the Regulator requires further information PNG Ports shall provide that information within 14 days from the date the request by the Regulator was received by PNG Ports or within such other time as specified by the Regulator.

(c) PNG Ports must prepare an annual reconciliation between the revenues and costs relating to its non-regulated services and its Regulated Services. Within this requirement PNG Ports must provide an annual statement to the Regulator in the form required by the Regulator one month after the close of the Regulatory Year that the reconciliation refers to.

(d) PNG Ports must allocate any costs, revenues and assets that are shared between Regulated Services, non-regulated services and other activities:

(i) in a manner that ensures there is full attribution of fixed and variable costs and distribution of revenues to respective services; and

(ii) according to a methodology approved by the Regulator.
Subject to paragraph (f), for the subsequent regulatory years’ tariffs to be approved, the Regulator will need to be provided by PNG Ports with a Strategic Capital Plan for subsequent regulatory years’. The Regulator requires PNG Ports to prepare and publish a detailed strategic capital plan by 30 November of the current relevant regulatory year. The Strategic Capital Plan will have, but is not limited to having, due regard for:

(i) the scalability of projects;
(ii) the potential that individual projects will be stranded by alternative decisions taken by management;
(iii) the financial benefits associated with each project, including a cost/benefit analysis;
(iv) the underlying investment need;
(v) the prioritization of Capital Expenditure;
(vi) the improvements to underlying services which will be delivered by the Capital Expenditure;
(vii) the potential involvement of additional parties through either funding or delivery of required services;
(viii) the timeframe required to scope, tender and deliver the services required; and
(ix) the identification and assessment of the probability of the risk factors associated with not undertaking the Capital Expenditure and associated costs.

Should the Strategic Capital Plan not be provided in accordance with clause 8.1(e) by 30 November of the current relevant Regulatory Year, the Regulator will deem that PNG Ports is in breach of the Contract and will therefore not allow the tariffs for the subsequent Regulatory Year to change by more than CPI. That is the X factor for the Subsequent Regulatory Year will be zero percent (0%) or an X factor, whichever is lower.

The Regulator requires PNG Ports to prepare and publish generally in the daily newspapers circulating in Papua New Guinea an annual detailed Strategic Capital Plan for the subsequent regulatory year by 30 November in each current relevant regulatory year.

Without limiting what may be required by the Regulator under clause 9.1, the Regulator may require:

(i) that PNG Ports not provide non-regulated services (although a Relevant Interest Holder in PNG Ports or a Subsidiary of PNG Ports would be free to do so);

(ii) that any contract, arrangement or understanding between PNG Ports and a Relevant Interest Holder in PNG Ports or a Subsidiary of PNG Ports providing non-regulated services in relation to the provision of Regulated Port Services by PNG Ports to the Shareholder of PNG Ports not be entered into unless first approved by the Regulator; and/or
 confidential information provided by a user of Non-Regulated Services to PNG Ports not be provided to employees, contractors or advisers of PNG Ports or a Relevant Interest Holder in PNG Ports or a subsidiary of PNG Ports involved in the provision of Non-Regulated Services.

9.2 Stevedoring Access

(a) PNG Ports shall charge for Stevedoring Access on a fair and reasonable basis and shall not compel the Stevedores to compulsorily use facilities provided by PNG Ports.

(b) In the event of a dispute in respect of the amount of a charge and usage for Stevedoring Access facilities, PNG Ports shall charge such amount for Stevedoring Access as the Regulator determines to be fair and reasonable, until a dispute resolution process between PNG Ports and Customer is determined by the Regulator in accordance with clause 6.4 is available to solve disputes. PNG Ports shall assist the Regulator by providing the information requested by the Regulator to determine the fair and reasonable charge for Stevedoring Access.

9.3 Review of competition in the market

(a) subject to clause 9.3(b), PNG Ports may submit to the Regulator a written statement which makes an assessment of the need for and extent of regulation of the provision of ports infrastructure services in PNG.

(b) This submission must be given to the Regulator by 30 April 2017.

(c) After considering:

(i) The submission made by PNG Ports;

(ii) Any submissions made by any other person in relation to the review; and

(iii) The Regulator’s Objectives set out in Section 5 of the ICCC Act;

the Regulator must publish a draft report that presents the Regulator’s findings on:

(iv) Whether PNG Ports has substantial market power in the provision of ports infrastructure services, and if so at which of the Declared Port(s) and in connection with the provision of which services substantial power exists; and

(v) The need for and extent of continued regulation of the provision of ports infrastructure services in PNG on a port-by-port basis (in particular, the need for and extent of declaration of ports services under the ICCC Act).

(d) In preparing its draft report, the Regulator must take into account (but is not necessarily limited to consideration of):

(i) The key characteristics of the market, including the existence of providers of ports infrastructure services other than PNG Ports and the ability of consumers to substitute ports infrastructure services;

(ii) The time frames within which the Declared Ports can be substituted for one another;

(iii) The commercial constraints that may affect the potential for market power;

(iv) The benefits and costs of the need for and extent of continued regulation of the provision of ports infrastructure services in PNG;
Whether its findings on the above factors differ between declared ports and between different sub-markets;

Any other factors the Regulator considers to be relevant.

The Regulator must publish the draft report referred to in clause 9.3(c) by 30 June 2017

Submissions to the draft report must be given to the Regulator by 31 July 2017

After considering any submissions made by PNG Ports or any other person in relation to the Regulator’s draft report the Regulator must publish a final report that presents the Regulator’s findings on:

(i) Whether PNG Ports has substantial market power in the provision of ports infrastructure services, and if so at which of the Declared Port and in connection with the provision of which services substantial power exists; and

(ii) The need for and extent of continued regulation of the provision of ports infrastructure services in PNG (in particular, the need for and extent of declaration of ports services under the ICCC Act).

The final report referred to in clause 9.3(f) must be published by 31 August 2017

10. Obligation to Supply Regulated Services

10.1 Approved Port Closures

(a) Subject to clause 10.1(h), PNG Ports must provide Regulated Services to each person who seeks the provision of those services at a Declared Port.

(b) PNG Ports may apply to the Regulator at any time for authorisation to close one or more Declared Ports. Each application must be in respect of one Declared Port only. The application must:

(i) be in such form (if any) as is required by the Regulator; and

(ii) be supported by an explanation of why the closure of that Declared Port is sought by PNG Ports; and

(iii) set out in sufficient detail the reasons why PNG Ports considers that the closure of that Declared Port satisfies the criteria for closure specified in clause 10.1(c); and

(iv) contain sufficient information, data, or other material to enable the Regulator to determine whether the application satisfies the criteria for closure specified in clause 10.1(c).

(c) The Regulator may approve a closure of a Declared Port only if the Regulator is satisfied that:

(i) alternate port facilities are available to serve existing users’ needs in the particular location; or

(ii) for any other reason, the Declared Port is no longer required by users.
(d) The Regulator:

(i) must consult with the relevant government department or authority responsible for ports and harbours; and

(ii) may require PNG Ports to provide to the Regulator within the time specified by the Regulator, such further information, explanations or other material as the Regulator requires; and

(iii) may inspect any assets, premises, property, accounts, records or other information or material of PNG Ports,

in order to determine whether to, or whether it is authorised to, approve a closure of a Declared Port.

(e) The Regulator or PNG Ports may, within 20 Business Days of an application to close a Declared Port submitted by PNG Ports to the Regulator under clause 10.1(b), give written notice to the other of them that it requires the appointment of an appropriately qualified independent international consultant for the purposes of this clause 9.1. As soon as reasonably practicable after the giving of any such notice and after consulting with PNG Ports, the Regulator must appoint an appropriately qualified independent international consultant to report to the Regulator and PNG Ports whether PNG Ports’ application satisfies the criteria for closure specified in clause 10.1(c).

(f) After considering:

(i) any information, explanations or other material provided by PNG Ports under clause 10.1(b) or 10.1(d)(ii);

(ii) any information, data or other material obtained by the Regulator under clause 10.1(d)(i) or (iii);

(iii) any report provided in accordance with clause 10.1(e) by an international consultant (if any) appointed pursuant to that clause; and

(iv) the criteria for closure specified in clause 10.1(c),

the Regulator must determine whether or not to approve a closure of a Declared Port sought by PNG Ports.

(g) The Regulator must give PNG Ports notice of its determination to approve or not approve the closure of a Declared Port under clause 10.1(f) within three months. If the Regulator does not so notify PNG Ports within that period, it is deemed to have approved the closure of the Declared Port.

(h) If the Regulator notifies PNG Ports that it has approved the closure of a Declared Port, or if the Regulator is deemed to have approved the closure of the Declared Port under clause 10.1(g), PNG Ports is not obliged to supply Regulated Services to any person, and is not subject to Minimum Service Standards, in respect of that closed Declared Port from the last day of the Regulatory Year in which that approval was provided.

(i) An approval or deemed approval by the Regulator of the closure of a Declared Port is automatically revoked if, at any time after that approval, PNG Ports provides any person with an Regulated Service in respect of that closed Declared Port.
PNG Ports must, at its expense, provide the Regulator and any international consultant appointed pursuant to clause 10.1(e) with such access to PNG Ports' assets, premises, property, accounts, records, other information or material, employees and contractors as the Regulator or the international consultant requires for the purposes of this clause 10.1.

The reasonable costs of any international consultant appointed pursuant to clause 10.1(e) must be borne by PNG Ports.

10.2 Forced Port Closure

(a) In the event that a Declared Port is closed due to a force majeure event or through a directive or instruction from the Government of Papua New Guinea (through an Agency, Authority or some other relevant State organisation) then PNG Ports shall;

(i) Notify the Regulator for approval within 24 hours of the Declared Port closure, and recommended a course of action to efficiently deal with the force majeure or Government agency directive or instruction in order to reopen the Declared Port as soon as practicable.

(ii) If the Regulator does not give a response to the notice by PNG Ports referred in paragraph (i) within the next 48 hours of receiving PNG Ports notice, then the proposed closure of the Declared Port is deemed to be approved. The Regulator may provide instructions to PNG Ports on how it shall effectively deal with the closure of the Declared Port and its respective Regulated Services and its reopening of the Declare Port, at a later date.

(b) If the Regulator notifies PNG Ports that it has approved or deemed to have approved the closure of a Declared Port, PNG Ports is not obliged to supply Regulated Services to any person, and is not subject to Minimum Service Standards, in respect of that closed Declared Port from the last day of the Regulatory Year in which that approval or deemed approval has been given.

(c) An approval or deemed approval by the Regulator for the closure of a Declared Port is automatically revoked if, at any time after that approval, PNG Ports provides any person with an Regulated Service in respect of that closed Declared Port.

11. Discrimination

(a) The charges and fees PNG Ports charges for the supply of a Regulated Service (including any discounts allowed in respect of those charges) and all the services supplied in connection with the supply of such Essential Port Services must not discriminate unreasonably between customers who are in substantially the same circumstances at the Declared Ports. The Declared Ports which could be categorised together and which are determined to be in substantially the same circumstances for the regulatory period commencing 1 January 2015, are provided in Schedule 1.

(b) If the Regulator, after consulting with PNG Ports, notifies PNG Ports that any charges or fees (including any discounts allowed in respect of those charges or services supplied in connection with the supply of such Essential Port Services) which PNG Ports is charging for the supply of a Regulated Service does unreasonably
discriminate between such customers, then PNG Ports must immediately change those charges and fees (including any discounts allowed in respect of those charges) and all discriminatory services supplied in connection with the supply of such Regulated Service so as to remove that discrimination and must advise the Regulator of the new charge and the removal of that discriminatory charge or services supplied in connection with the supply of such Regulated Service within 30 days of its removal.

12. Subsequent Regulatory Contract

12.1 Process for issuance of the Subsequent Regulatory Contract

(a) PNG Ports may, in accordance with clause 12.1(b), submit to the Regulator a draft Contract which PNG Ports considers should bind PNG Ports for a period of time not exceeding 10 years commencing with effect from (and including) 1 January 2020 and any written submission as to its form and content that PNG Ports considers appropriate.

(b) The draft Contract and any submissions, as referred to in clause 12.1(a), must be given to the Regulator by 31 January 2019.

(c) After considering:

(i) the draft Contract and any submissions made by PNG Ports under clause 12.1(a);
(ii) any submissions made by any other person in relation to the form or content of the Contract which should bind PNG Ports following the expiry of this Contract; and
(iii) clause 12.1(d) and (e)

the Regulator must publish a draft Contract that is proposed to bind PNG Ports for a period of time not exceeding 10 years commencing with effect from (and including) 1 January 2020. For the avoidance of doubt, where PNG Ports does not submit a draft Contract under clause 12.1(a) by the date provided in clause 12.1(b), the Regulator may commence a public consultation process to determine a new Contract for the Subsequent Regulatory Period following due process as required by this clause 12.

(d) In preparing the draft Contract referred to in clause 12.1(c), the Regulator must also take into account:

(i) the legitimate business interests of PNG Ports;
(ii) the legitimate interests of suppliers to, and customers of, PNG Ports;
(iii) the nature and uses of the Regulated Services under the draft Contract;
(iv) the costs of supplying the services would be regulated under the draft Contract;
(v) the costs of complying with relevant health, safety, environmental, social and other legislation and regulatory requirements applying to the Port regulated services;
(vi) the return on assets required to sustain past and future investment in the Regulated Services;

(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 Contract (if it were to come into force) for PNG Ports and the ports Regulated Services industry in Papua New Guinea;

(ix) any other factors specified in or under relevant legislation;

(x) government of PNG’ Regulated Services policy in relation to ports in PNG; and

(xi) any other factors the Regulator considers relevant.

(e) In addition, the draft Contract referred to in clause 12.1(c):

(i) must not be inconsistent with, and must be prepared in accordance with, the regulatory principles in clause 4; and

(ii) must comply with the requirements of the ICC Act

(f) For the avoidance of doubt, the subsequent regulatory Contract shall not be treated as a continuation of the current Contract and the subsequent Contract is not bound to the current Contract except in respect of decisions and obligations as per clause 1.6.

(g) The Regulator must publish the draft Contract referred to in clause 12.1(c) by 30 June 2019.

(h) PNG Ports may, in accordance with clause 12.1(i), make such written submissions to the Regulator as it thinks appropriate in relation to the form and content of the draft Contract published by the Regulator and referred to in clause 12.1(c).

(i) The submissions referred to in clause 12.1(h) must be received by the Regulator by 31 July 2019.

(j) After considering:

(i) any submissions made by PNG Ports under clause 12.1(h); and

(ii) any submissions made by any other person in relation to the form or content of the draft Contract referred to in clause 12.1(c),

the Regulator must publish a final draft of the Contract referred to in clause 12.1(d) by not later than 30 November 2019.

(k) In preparing the final draft of the Contract referred to in clause 12.1(j), the Regulator must also take into account the matters referred to in clause 12.1(d).

(l) In addition, the final draft of the Contract referred to in clause 12.1(j):

(i) must not be inconsistent with, and must be prepared in accordance with, the regulatory principles;

(ii) must comply with the requirements of the ICC Act; and

(iii) must be for a period of time not exceeding 10 years commencing with effect from (and including) 1 January 2020.
12.2 Cost of Funding next Regulatory Contract

(a) The Regulator will seek funding from the Papua New Guinea Government to fund the cost of the review of the subsequent Regulatory Contract.

(b) Where the Regulator finds that the Papua New Guinea Government will not fund, or make available the funds for the Review of the Regulatory Contract:

(i) The Regulator may advise PNG Ports up to 60 days prior to January 31\textsuperscript{st} 2019, give written notice to PNG Ports that it shall appoint an appropriately qualified independent consultant ("consultant") for the purposes of clause 12.1

(ii) The reasonable costs of engaging the consultant in clause 12.2(b)(i) must be borne by PNG Ports; and

(iii) By 31 January 2019, PNG Ports must pay to the Regulator what is deemed to be the reasonable cost by the Regulator to fund the review of the next Regulatory Contract.

(c) The cost incurred by PNG Ports to fund the review of the next Regulatory Contract will be taken into account when determining the Tariff in the first regulatory year in the next regulatory contract (2020 -2014).

12.3 Regulatory Process for Issuance of the Subsequent Regulatory Contract

The Regulator and PNG Ports shall comply with the provisions of this regulatory contract and the \textit{ICCC Act} in relation to the release of the Subsequent Regulatory Contract, irrespective of the lodgement of appeal with the Appeals panel in accordance with Part V of the \textit{ICCC Act}, unless restrained by order of a competent Court.

13. Information and Documents

(a) All information or reports required under this contract must be accompanied by a Statutory Declaration as provided in Schedule 6 of this Contract.

(b) Where the Regulator, or an officer authorised in writing for the purposes of the Regulator, considers it necessary or desirable, it may give written notice requiring PNG Ports to provide information and/or documents regarding any aspect of this Regulatory Contract. The information must be provided by PNG Ports and received by the Regulator within a maximum of 10 business days, unless specified otherwise.

(c) Where the Regulator, or an officer authorised in writing for the purposes of the Regulator, considers it necessary or desirable, it may give written notice requiring PNG Ports to provide information and/or documents regarding any aspect of this Regulatory Contract and any previous Regulatory Contract that it deems necessary to determine the current tariffs and service standards or to establish whether any information or documents previously provided was false or misleading and PNG Ports shall provide the information and/or documents requested within such time specified.
by the Regulator. Where a time is not specified by the Regulator, the information must be provided by PNG Ports and received by the Regulator within a maximum of 10 business days.

(d) PNG Ports is required to provide the information and/or documents referred to in clause 13(a) or (b) and (c) notwithstanding that this Contract or a previous Contract has expired and a subsequent Regulatory Contract is in force.

(e) The Regulator or an officer authorised in writing for the purposes by the Regulator may require that the information and/or documents to be given or the questions to be answered be given on oath or through a signed statutory declaration that the information is true and complete to the best of the knowledge and belief of the signatory.

14. Confidentiality

(a) Subject to paragraph (b), the Regulator may make available for public inspection the request for documents and/or information made by the Regulator to PNG Ports and the documents and/or information submitted to it in the course of this contract except information that is designated “confidential” by PNG Ports or other person to whom a request is made or by whom documents or information is provided and the Regulator grants confidentiality in accordance with the ICCC Act.

(b) Where information or documents designated “confidential” is requested by or submitted to the Regulator, the Regulator may disclose or require its disclosure if it determines, after considering any representation from PNG Ports, that the disclosure is in the public interest, under the ICCC Act.

15. Amendment of Regulatory Contract

15.1 Agreed Amendments

(a) Subject to clause 15.1(2), this Contract may be varied from time to time by written agreement between the Regulator and PNG Ports but any such variation must not be inconsistent with the Regulatory Principles described in Schedule 4 or the requirements of the ICCC Act and neither party shall unreasonably withhold consent to amendments at the reasonable request of the other party.

(b) No variation may be made to this Contract unless:

(i) at least 40 Business Days prior to any such variation taking effect:

(A) the Regulator 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 Regulator has provided a notice to the Minister responsible for the Harbours Act describing the proposed variation; and
the Regulator has made available, for inspection or purchase by the public, copies of the precise form of the proposed variation; and

(ii) the Regulator has considered such submissions in relation to the proposed variation as it receives under clause 15.1(2) (i).

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

With the consent of PNG Ports, where any Regulated Services ceases to be a Regulated Services (as that term is defined in the ICCC Act), this Contract will be varied, in accordance with the operation of section 33(4) of the ICCC Act, by deleting any reference in this Contract to such of those services as they have ceased to be regulated services.

16. Relocation of Port Moresby Port to Motukea Port

16.1 Stranded Assets and Costs of Port Moresby Port

When PNG Ports shuts down Port Moresby port to relocate to Motukea port, the stranded capital at the time of the relocation will be excluded from the total regulated asset base ("RAB") of PNG Ports. All the costs associated with the operations of Port Moresby Port will also be excluded.

16.2 PNG Ports’ and Regulator’s Obligations

(a) PNG Ports may continue to provide port services at Port Moresby port until and up to the date the main port operations at Port Moresby port are transferred to the Motukea port and Motukea port is fully operational.

(b) To the extent that PNG Ports continues to have regulatory or licensing oversight over the Motukea port or over the providers of any port services in or related to Motukea port, it will exercise those functions in consultation with, and having regard to any recommendations of, the Regulator.

(c) PNG Ports shall not operate or have any involvement in the operation of the Motukea port or any business providing port or port related services at, to, from or in connection with the Motukea port except as provided in paragraph (d) and except to the extent, if any, approved by the Regulator in writing and subject to such conditions as the Regulator may require. This provision does not preclude PNG Ports acting as landlord entering into long term leasing agreements with persons as selected in accordance with paragraph (d) as the selection panel shall approve and upon such terms, conditions and charges (including rental) as the Regulator shall approve, the intention being that PNG Ports should act only as a passive landlord upon terms, conditions and at rentals which do not adversely affect competition and potential competition.

(d) IPBC in consultation with PNG Ports will establish a selection panel to select a new operator for the Motukea port and any service provider serving the port or its customers. PNG Ports may participate as a minority member of the selection panel. The Regulator will also participate as a member of the selection panel.
PNG Ports shall not at any port discriminate between any customers of the port on price or service.

PNG Ports shall publish the charges which it makes for regulated services and shall adhere to those published charges without any discounts or allowances.

PNG Ports shall deal with incoming ships strictly on a first come first served basis except in the case of emergency, in which case it shall issue a press statement within 24 hours identifying the preference given and the reason. Should PNG Ports give preference to any ship out of order, it shall pay to the ship owners of all ships which should have had priority the sum of K15,000 per ship or such lesser sum as shall be agreed with the Regulator.

PNG Ports shall include in every contract of engagement with suppliers of services in or in relation to port services, the obligation that these suppliers shall not discriminate in favour of their own integrated businesses or against the business of their competitors in such terms as shall be satisfactory to the Regulator and include in such contracts terms enabling a process of complaint to the Regulator and determination by it of any disputes and terms ensuring the Regulator’s determination is considered final to be abided by all parties.

Consideration will be given to international benchmarks among other Regulatory Principles in determining prices for Regulated Services.

PNG Ports shall not impose extra charges for any delay where the delay has been occasioned by no fault of the port customer. Any port charges may be protested to the Regulator, which shall act as a ports dispute arbitrator and shall have the power to review charges and levies and reverse or reduce them. The Regulator shall have power to order either party to pay the costs of any such review.

17. Termination of Regulatory Contract

17.1 Termination

This Contract may be terminated at any time by the Regulator in consultation with PNG Ports.

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

This Contract will terminate automatically if PNG Ports ceases to be a regulated entity (as that term is defined in the ICCC Act).
## SCHEDULE 1 – Maximum Tariffs for First Regulatory Year

### Maximum Wharfage Tariffs

<table>
<thead>
<tr>
<th>Service</th>
<th>Charging Units</th>
<th>2015 Price</th>
<th>Price + CSO Levy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Containerised Tier 1 - Bulk Oil Price</td>
<td>K / Tonne</td>
<td>4.32</td>
<td>6.22</td>
</tr>
<tr>
<td>Non-Containerised Tier 1 - Palm Oil Price</td>
<td>K / Tonne</td>
<td>4.32</td>
<td>6.22</td>
</tr>
<tr>
<td>Non-Containerised Tier 1 - Break Bulk Price</td>
<td>K / Tonnes</td>
<td>10.79</td>
<td>12.69</td>
</tr>
<tr>
<td>Non-Containerised Tier 2 - Bulk Oil Price</td>
<td>K / Tonnes</td>
<td>10.70</td>
<td>10.70</td>
</tr>
<tr>
<td>Non-Containerised Tier 2 - Palm Oil Price</td>
<td>K / Tonnes</td>
<td>10.70</td>
<td>10.70</td>
</tr>
<tr>
<td>Non-Containerised Tier 2 - Break Bulk Price</td>
<td>K / Tonne</td>
<td>13.94</td>
<td>13.94</td>
</tr>
<tr>
<td>Container Volumes Tier 1 Price</td>
<td>K / TEU</td>
<td>64.56</td>
<td>91.94</td>
</tr>
<tr>
<td>Container Volumes Tier 2 Price</td>
<td>K / TEU</td>
<td>160.11</td>
<td>160.11</td>
</tr>
<tr>
<td>International to international price</td>
<td>K / TEU</td>
<td>64.56</td>
<td>64.56</td>
</tr>
</tbody>
</table>

### Maximum Berthage Tariffs

<table>
<thead>
<tr>
<th>Berthage Prices</th>
<th>Charging Units</th>
<th>2015 Price</th>
<th>Price + CSO Levy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Berthage Tier 1 Price</td>
<td>K / MLOA</td>
<td>1.86</td>
<td>1.86</td>
</tr>
<tr>
<td>Berthage Tier 2 Price</td>
<td>K / MLOA</td>
<td>2.33</td>
<td>2.33</td>
</tr>
<tr>
<td>Pilot Berthage Price</td>
<td>K / Boat Days</td>
<td>22.34</td>
<td>22.34</td>
</tr>
</tbody>
</table>

### Maximum tariffs for Berth Reservation Services

The maximum amount that may be charged for the supply of a Berth Reservation Service during the First Regulatory Year in respect of a particular vessel is the tariff set out in the following tables.

#### At Tier 1 Ports

<table>
<thead>
<tr>
<th>Type of Vessel</th>
<th>Unit</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overseas Vessels - cargo and passenger vessels at</td>
<td>Per Occasion</td>
<td>970.69</td>
</tr>
</tbody>
</table>
the ports of Rabaul

<table>
<thead>
<tr>
<th>Type of Vessel</th>
<th>Unit</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overseas Vessels - cargo and passenger vessels - at remaining ports</td>
<td>Per Occasion</td>
<td>485.33</td>
</tr>
<tr>
<td>Overseas Tankers - Large</td>
<td>Per Occasion</td>
<td>1470.30</td>
</tr>
<tr>
<td>Overseas Tankers - Small</td>
<td>Per Occasion</td>
<td>737.53</td>
</tr>
<tr>
<td>Overseas Vessel of any type or at any port - each alteration to arrival time</td>
<td>Per Occasion</td>
<td>247.44</td>
</tr>
<tr>
<td>Coastal Vessels - Rabaul</td>
<td>Per Occasion</td>
<td>487.72</td>
</tr>
<tr>
<td>Coastal Vessels - at other ports</td>
<td>Per Occasion</td>
<td>247.44</td>
</tr>
<tr>
<td>Coastal Vessel - any, port each alteration to arrival time</td>
<td>Per Occasion</td>
<td>97.54</td>
</tr>
</tbody>
</table>

At Tier 2 Ports

<table>
<thead>
<tr>
<th>Type of Vessel</th>
<th>Unit</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overseas Vessels - cargo and passenger vessels at the ports of Madang</td>
<td>Per Occasion</td>
<td>1476.04</td>
</tr>
<tr>
<td>Overseas Vessels - cargo and passenger vessels - at remaining ports</td>
<td>Per Occasion</td>
<td>738.03</td>
</tr>
<tr>
<td>Overseas Tankers - Large</td>
<td>Per Occasion</td>
<td>2235.76</td>
</tr>
<tr>
<td>Overseas Tankers - Small</td>
<td>Per Occasion</td>
<td>1121.53</td>
</tr>
<tr>
<td>Overseas Vessel of any type or at any port - each alteration to arrival time</td>
<td>Per Occasion</td>
<td>376.26</td>
</tr>
<tr>
<td>Coastal Vessels - Madang</td>
<td>Per Occasion</td>
<td>741.63</td>
</tr>
<tr>
<td>Coastal Vessels - at other ports</td>
<td>Per Occasion</td>
<td>376.26</td>
</tr>
<tr>
<td>Coastal Vessel - any, port each alteration to arrival time</td>
<td>Per Occasion</td>
<td>148.33</td>
</tr>
</tbody>
</table>

PASSENGER FEES

Tier 1 Ports

<table>
<thead>
<tr>
<th>Unit</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passenger Fees - Adult</td>
<td>Per Adult</td>
</tr>
<tr>
<td>Passenger Fees - Children</td>
<td>Per Child</td>
</tr>
</tbody>
</table>

Tier 2 Ports

<table>
<thead>
<tr>
<th>Unit</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passenger Fees - Adult</td>
<td>Per Adult</td>
</tr>
<tr>
<td>Passenger Fees - Children</td>
<td>Per Child</td>
</tr>
</tbody>
</table>
Storage and utility and other services tariffs will not be adjusted by the X factor each year, however they will have annual CPI adjustment.

**Empty container Storage Rates**

Empty container storage (for containers left in the port past the free period)

<table>
<thead>
<tr>
<th>Description</th>
<th>2015 Rates Kina Exc GST</th>
<th>Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>Empty container storage (per TEU)- International (after 5 consecutive free days) days 6 &amp; 7</td>
<td>16.27</td>
<td>TEU x Day x Rate</td>
</tr>
<tr>
<td>Empty container storage (per TEU)- International days 8 to 14</td>
<td>32.54</td>
<td>TEU x Day x Rate</td>
</tr>
<tr>
<td>Empty container storage (per TEU)- International day 15 onwards</td>
<td>65.08</td>
<td>TEU x Day x Rate</td>
</tr>
</tbody>
</table>

Coastal Empty Containers for All Ports including Port Moresby, Lae & Kimbe and International Empty Containers for Ports excluding Port Moresby, Lae and Kimbe - Storage Charges

<table>
<thead>
<tr>
<th>Description</th>
<th>2015 Rates Kina Exc GST</th>
<th>Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>Empty container storage (per TEU)- Coastal/International (after 5 consecutive free days)</td>
<td>12.51</td>
<td>TEU x Day x Rate</td>
</tr>
</tbody>
</table>

**FCL and LCL Container Storage Charges**

<table>
<thead>
<tr>
<th>Description</th>
<th>2015 Rates Kina Exc GST</th>
<th>Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>FCL &amp; LCL container storage (per TEU)- International (after 5 consecutive free days) days 6 &amp; 7</td>
<td>104.72</td>
<td>TEU x Day x Rate</td>
</tr>
<tr>
<td>FCL &amp; LCL container storage (per TEU)- International days 8 to 14</td>
<td>127.25</td>
<td>TEU x Day x Rate</td>
</tr>
<tr>
<td>FCL &amp; LCL container storage (per TEU)- International day 15 &amp; onwards</td>
<td>149.77</td>
<td>TEU x Day x Rate</td>
</tr>
<tr>
<td>FCL &amp; LCL container storage (per TEU)- International Import POM Only days 15 to 21</td>
<td>149.77</td>
<td>TEU x Day x Rate</td>
</tr>
<tr>
<td>FCL &amp; LCL container storage (per TEU)- International Import POM Only day 22 &amp; onwards</td>
<td>374.42</td>
<td>TEU x Day x Rate</td>
</tr>
</tbody>
</table>

Coastal FCL & LCL Containers for Ports including Port Moresby, Lae & Kimbe and International FCL & LCL Containers for Ports

<table>
<thead>
<tr>
<th>Description</th>
<th>2015 Rates Kina Exc GST</th>
<th>Formula</th>
</tr>
</thead>
</table>
excluding Port Moresby, Lae and Kimbe - Storage Charges

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate 2015</th>
<th>Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>FCL &amp; LCL container storage (per TEU) - Coastal/International (after 5</td>
<td>59.68</td>
<td>R/T x Day x</td>
</tr>
<tr>
<td>consecutive free days) days 6 &amp; 7</td>
<td></td>
<td>Rate</td>
</tr>
<tr>
<td>FCL &amp; LCL container storage (per TEU) - Coastal/International days 8</td>
<td>82.20</td>
<td>R/T x Day x</td>
</tr>
<tr>
<td>to 14</td>
<td></td>
<td>Rate</td>
</tr>
<tr>
<td>FCL &amp; LCL container storage (per TEU) - Coastal/International day 15 &amp;</td>
<td>104.72</td>
<td>R/T x Day x</td>
</tr>
<tr>
<td>onwards</td>
<td></td>
<td>Rate</td>
</tr>
</tbody>
</table>

**Break Bulk Storage**

Break bulk Storage - all Ports

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate 2015</th>
<th>Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Ports - Storage Charges for Coastal &amp; International Break Bulk -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inwards/Outwards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Break Bulk, etc. Storage - Coastal/International (After 5</td>
<td>3.31</td>
<td>R/T x Day x</td>
</tr>
<tr>
<td>consecutive free days) - days 6 &amp; 7</td>
<td></td>
<td>Rate</td>
</tr>
<tr>
<td>Break Bulk, etc. Storage - Coastal/International - days 8 to</td>
<td>4.57</td>
<td>R/T x Day x</td>
</tr>
<tr>
<td>14</td>
<td></td>
<td>Rate</td>
</tr>
<tr>
<td>Break Bulk, etc. Storage - Coastal/International - day 15 &amp;</td>
<td>5.82</td>
<td>R/T x Day x</td>
</tr>
<tr>
<td>onwards</td>
<td></td>
<td>Rate</td>
</tr>
<tr>
<td>Break Bulk, etc. Storage - International Import (POM Only) - day 15 to</td>
<td>5.82</td>
<td>R/T x Day x</td>
</tr>
<tr>
<td>20</td>
<td></td>
<td>Rate</td>
</tr>
<tr>
<td>Break Bulk, etc. Storage - International Import (POM Only) - day 21 &amp;</td>
<td>24.96</td>
<td>R/T x Day x</td>
</tr>
<tr>
<td>onwards</td>
<td></td>
<td>Rate</td>
</tr>
</tbody>
</table>

**Reefer Power Charges - All Ports**

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate 2015</th>
<th>Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power Point Reefer Charges - TEU</td>
<td>6.13</td>
<td>TEU x Day x</td>
</tr>
</tbody>
</table>

**Dangerous Goods Storage (Under DG Code)**

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate 2015</th>
<th>Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>Container (TEU) - All DG cargo except Class 1 and Class 7</td>
<td>65.06</td>
<td>TEU x Day x</td>
</tr>
<tr>
<td>Break Bulk - All DG cargo except Class 1 and Class</td>
<td>5.44</td>
<td>R/T x Day x</td>
</tr>
</tbody>
</table>

The X factor will not apply to these storage rates and they will have an annual CPI adjustment.
<table>
<thead>
<tr>
<th>Utilities and Other Services</th>
<th>2014 Rates Kina Exc GST</th>
<th>Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water (Ports other than Port Moresby)</td>
<td>5.29</td>
<td>Kilo Litre x Rate</td>
</tr>
<tr>
<td>Water (Port Moresby)</td>
<td>5.44</td>
<td>Kilo Litre x Rate</td>
</tr>
<tr>
<td>Electricity (Other than Easy - pay)</td>
<td>1.12</td>
<td>Per Kilowatt x hour x rate</td>
</tr>
<tr>
<td>Commercial Vehicle Pass - New or Renewal</td>
<td>375.36</td>
<td>Year x Rate</td>
</tr>
<tr>
<td>Commercial Vehicle Pass - Tourist Buses Only</td>
<td>107.51</td>
<td>Per Occasion</td>
</tr>
<tr>
<td>Stevedoring Tonnage Fee (All Ports)</td>
<td>0.25</td>
<td>Tonne x Rate</td>
</tr>
<tr>
<td>Security Passes - Personal - New or Renewal</td>
<td>62.56</td>
<td>Year x Rate</td>
</tr>
<tr>
<td>Equipment Passes - Forklift and Crane Equipment - New or Renewal</td>
<td>625.59</td>
<td>Year x Rate</td>
</tr>
<tr>
<td>Surcharge Generator (Port Moresby, Lae, Kimbe, Madang, Alotau, Oro Bay)</td>
<td>0.38</td>
<td>Tonne x Rate</td>
</tr>
<tr>
<td>Surcharge Yard Maintenance (Port Moresby)</td>
<td>0.38</td>
<td>Tonne x Rate</td>
</tr>
<tr>
<td>Surcharge - Casual Labour Pool Maintenance (Port Moresby Only)</td>
<td>1.60</td>
<td>Tonne x Rate</td>
</tr>
<tr>
<td>Surcharge - Ash Levy (Rabaul)</td>
<td>0</td>
<td>Tonne x Rate</td>
</tr>
<tr>
<td>Gangway Hire</td>
<td>42.54</td>
<td>Hour x Rate</td>
</tr>
<tr>
<td>Cleaning of Wharf (Compulsory after wheat and rice cargo operation)</td>
<td>625.59</td>
<td>Per ship visit</td>
</tr>
<tr>
<td>Fumigation Fee</td>
<td>4.57</td>
<td>Tonne x Rate</td>
</tr>
<tr>
<td>Mooring Gang - Accepting or casting mooring lines</td>
<td>268.77</td>
<td>Per occasion</td>
</tr>
</tbody>
</table>

The X factor will not apply to utilities and other services and they will have an annual CPI adjustment.

- Where rates were previously described in a rate per revenue tonne, they are now described as a rate per tonne.
- The Ash Levy cannot be no longer be charged.
- Cleaning of Wharf can only be charged where a customer has left a wharf in a state that warrants cleaning.
- Yard maintenance can only be charged where a customer damages the yard, but not for wear and tear.
SCHEDULE 2 – TARIFF FORMULAE

Part 1. Average Revenue Change (No Port Closures)

The change in forecast average revenue for Subsequent Regulatory Year t (AR_t) is calculated as follows:

\[ AR_t = \sum_{i=1}^{n} p_{i, t} \times q_{i, t-1} \]

\[ \sum_{i=1}^{n} p_{i, t-1} \times q_{i, t-1} \]

where

- there are n tariffs;
- \( p_{i, t} \) is the rate for tariff i proposed to apply in Regulatory Year t in a statement given under clause 3.1;
- \( p_{i, t-1} \) is the rate for tariff i that applied in Regulatory Year t-1; and
- \( q_{i, t-1} \) is the actual chargeable quantity in relation to tariff i that was supplied by PNG Harbours in the 12 months between 30 September of Regulatory Year t-1 and 30 September of Regulatory Year t-2.

Part 2. Essential Services Price Control

The Essential Services Price Control for Regulatory Year t (ESPC_t) is calculated as follows:

\[ ESPC_t = PNGCPI_{t-1} \times X_t \times PNGCPI_{t-2} \]

where:

- PNGCPI_{t-1} is the Adjusted PNGCPI for the 12 month period ending 30 September in Regulatory Year t-1; and
- PNGCPI_{t-2} is the Adjusted PNGCPI for the 12 month period ending 30 September in Regulatory Year t-2.
- \( X_t \) is the Price Control Factor for a Declared Port or group of Declared Ports j for Regulatory Year t and equals the values set out in the following table:

<table>
<thead>
<tr>
<th></th>
<th>Ports of Port Moresby, Lae, Kimbe and Vanimo (Declared Ports j = 1)</th>
<th>Ports of Madang, Rabaul, Alotau, Oro Bay, Kavieng, Daru, Buka, Kieta, Aitape, Lorengau, Wewak (Declared Ports j = 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>X factor in each Regulatory Year</td>
<td>-0.069</td>
<td>-0.069</td>
</tr>
</tbody>
</table>

Part 3. Average Revenue Change (Approved Port Closures)

The change in forecast average revenue for Subsequent Regulatory Year t (AR(APC)_t), adjusted to allow for one or more Approved Port Closure, is calculated as follows:
\[
\text{AR(APC)}_t = \sum_{i=1}^{n} p_{i,t} \cdot \{ q_{i,t-1} - cpq_{i,t-1} \} \\
\sum_{i=1}^{n} \left( p_{i-1,t-1} \cdot q_{i-1,t-1} \right) - \{ \text{doc + ahoc} \}
\]

where

there are \( n \) tariffs;

\( p_{i,t} \) is the rate for tariff \( i \) proposed to apply in Regulatory Year \( t \) in a statement given under clause 3.1;

\( p_{i,t-1} \) is the rate for tariff \( i \) that applied in Regulatory Year \( t-1 \);

\( q_{i,t-1} \) is the actual chargeable quantity in relation to tariff \( i \) that was supplied by PNG Ports in the 12 months between 30 September of Regulatory Year \( t-1 \) and 30 September of Regulatory Year \( t-2 \);

\( cpq_{i,t-1} \) is the actual chargeable quantity in relation to tariff \( i \) that was supplied by PNG Ports in respect of ports closed on the last day of Regulatory Year \( t-1 \), which quantity was supplied during the 12 months between 30 September of Regulatory Year \( t-1 \) and 30 September of Regulatory Year \( t-2 \);

doc is the total amount of direct operating and maintenance costs (expressed in Kina) incurred by PNG Ports during the 12 months between 30 September of Regulatory Year \( t-2 \) and 30 September of Regulatory Year \( t-3 \) in respect of ports closed during Regulatory Year \( t-1 \); and

ahoc is the total amount [per annum] of avoidable head office costs incurred by PNG Ports [during the 12 months between 30 September of Regulatory Year \( t-2 \) and 30 September of Regulatory Year \( t-3 \)] in respect of ports closed during Regulatory Year \( t-1 \) and likely not to be incurred by PNG Ports in Regulatory Year \( t \) as a result of the port closures.

**Part 4. Changes in calculation of CPI**

\( \text{PNGCPI}_{t-1} \) is calculated as follows:

The adjusted PNG CPI for the 12 month period ending on 30 June in Regulatory Year \( t-1 \) is calculated as follows:

\[
\text{PNGCPI}_{t-1} = \frac{\text{PNGCPI}_{(q3, t-2)} + \text{PNGCPI}_{(q4, t-2)} + \text{PNGCPI}_{(q1, t-1)} + \text{PNGCPI}_{(q2, t-1)}}{4}
\]

where:

PNGCPI for a Quarter \( q \) is the All Groups Weighted Average CPI for Urban Areas excluding Drinks, Tobacco and Betel Nut, published by the National Statistics Office;

PNGCPI\(_{(q2, t-1)}\) is the PNGCPI for the Quarter ending on 30 June in Regulatory Year \( t-1 \) or calendar year \( t-1 \);

PNGCPI\(_{(q1, t-1)}\) is the PNGCPI for the Quarter ending on 31 March in Regulatory Year \( t \) or calendar year \( t \);

PNGCPI\(_{(q4, t-2)}\) is the PNGCPI for the Quarter ending on 31 December in Regulatory Year \( t \) or calendar year \( t \) and
PNGCPI\textsubscript{(q4, t-2)} is the PNGCPI for the Quarter ending on 30 September in Regulatory Year t or calendar year t.

PNGCPI\textsubscript{t-2} is calculated as follows:

The adjusted PNG CPI for the 12 month period ending on 30 June in Regulatory Year t-2 is calculated as follows:

\[
\text{PNGCPI}_{t-1} = \frac{\text{PNGCPI}_{(q3, t-3)} + \text{PNGCPI}_{(q4, t-3)} + \text{PNGCPI}_{(q1, t-2)} + \text{PNGCPI}_{(q2, t-2)}}{4}
\]

Where:

\(\text{PNGCPI}_{(q3, t-3)}\) is the PNGCPI for the Quarter ending on 30 September in Regulatory Year t-3 or calendar year t-3;

\(\text{PNGCPI}_{(q4, t-3)}\) is the PNGCPI for the Quarter ending on 31 December in Regulatory Year t-3 or calendar year t-3;

\(\text{PNGCPI}_{(q1, t-2)}\) is the PNGCPI for the Quarter ending on 31 March in Regulatory Year t-2 or calendar year t-2; and

\(\text{PNGCPI}_{(q2, t-2)}\) is the PNGCPI for the Quarter ending on 30 June in Regulatory Year t-2 or calendar year t-2.

If a source of data described in this Contract is no longer published, or if any other change occurs in relation to such data which would cause the continued use of the source to result in inaccurate comparisons between data calculated using the source prior to the change and data calculated using the source after the change, then the Regulator may by notice to PNG Ports substitute an alternative source of such data to apply from a date determined by the Regulator in the notice.

If the CPI for the period ending on 30 June in Regulatory Year t-1 is not available when the calculation of PNGCPI\textsubscript{(q2, t-1)} needs to be made, the calculation in Part B above shall be made using instead the most recent eight quarterly CPI figures then publicly available.

**Part 5: Calculating the Price Adjustments for Approved Capital Expenditure**

In the first regulatory year following the completion of the project, the project cost for the year is calculated as follows:

Project cost (year t) = project depreciation (year t) plus project return (year t)

Where:

Project Depreciation (Kina) - This is the project asset value divided by the economic life in years. The amount is the same every year.

Project Return (year t) (Kina) = Project Asset Value (year t) times 0.1301 (the WACC).

The price increase per tonne is then calculated as follows:

Price increase (year t) (Kina / Tonne) = project return (year t) divided by contract volume

Where:
Contract volume is the forecast regulatory contract volume for that calendar year in the contract.
Price increase per tonne is the project cost for that year divided by the Contract volume for that year.
Price increase per TEU: This is the Price increase per tonne x 14.96.
The Project Asset Value for each subsequent year is calculated as follows:
Project Asset Value (year t+1) = Project Asset Value (year t) less Project Depreciation (year t)

A CPI adjustment to the price increase per tonne for each year will be made at the end of each year. The adjustment will be made to all future years for that project until the end of the contract. The CPI adjustment will be calculated in accordance with Part 4.
### SCHEDULE 3 - Minimum Service Standards

#### (I) Minimum Service Standards

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A. <strong>Infrastructure Minimum Services Standards</strong></td>
<td></td>
</tr>
<tr>
<td>1. Wharves must be maintained:</td>
<td></td>
</tr>
<tr>
<td>• in a condition which is suitable for safely berthing a vessel with a minimum size of Length 57m, Beam 9.8m, Draft 3.3m;</td>
<td></td>
</tr>
<tr>
<td>• in such condition to enable the safe carriage of a fully loaded standard “20 foot” container, placed onto a standard tractor-drawn 4 wheel container-trailer.</td>
<td></td>
</tr>
<tr>
<td>2. A suitable hardstand area must be maintained at each wharf or end of causeway to allow for the manoeuvre of a tractor and container-trailer. As a minimum, the hardstand must be reasonably smooth and level gravel, free draining, and have area allocated for the storage of at least 10 containers, stacked single height.</td>
<td></td>
</tr>
<tr>
<td>3. Roads and pavements within a wharf must be maintained in a well graded condition, free of large potholes or failed areas, freely draining and such that container trucks can load, unload and turn without undue hindrance.</td>
<td></td>
</tr>
<tr>
<td>4. The minimum security requirement will be a robust 1.8m high chain wire fence maintained around each wharf area, with lockable access gates 4.2m wide. The fence must not have holes or gaps which would allow an unauthorised person to enter.</td>
<td></td>
</tr>
<tr>
<td>5. A suitably equipped office must be maintained and must be manned at least during normal office hours, with functioning radio facilities available for communication from, to and with vessels wishing to obtain Regulated Port Services or requiring any other service.</td>
<td></td>
</tr>
<tr>
<td>6. Town water must be available to reprovision vessels.</td>
<td></td>
</tr>
<tr>
<td>7. Full telecommunications service must be supplied to the port office.</td>
<td></td>
</tr>
<tr>
<td>8. Power (3ph 415 v) must be available, supported by a functioning back-up generator of suitable capacity, if primary power supply is PNG Ports reticulated supply.</td>
<td></td>
</tr>
</tbody>
</table>

#### B. Asset Management System

*In order for the PNG Ports to operate efficiently and effectively, the assets need to be in good repair and operating at their highest level of efficiency. Before 1 January 2016 the following must be met;*

a. **PNG Ports must adopt international standards for asset management as ISO 555000 to ISO 555002 systems.**

b. **PNG Ports must first, assess the inventory of assets it owns; second, assess the physical and operational condition of each asset; and thirdly, assess the financial burden to maintain each assets at a targeted physical and operational condition**

c. **Essential processes and activities for asset management system include the following:**

  ✓ **Maintaining a systematic record of individual assets (an inventory)—e.g., acquisition**
cost, original service life, remaining useful life, physical condition, repair and maintenance consistency

- Developing a defined program for sustaining the aggregate body of assets through planned maintenance, repair, and replacement
- Implementing and managing information reporting systems in support of these systems

C. Risk Management System

Establishment and implementation of the risk management process involving establishing the context and the identification, analysis, evaluation, treatment, communication and ongoing monitoring of risks.

PNG Ports must manage its risk by anticipating, understanding and deciding whether to modify it. Throughout this process they communicate and consult with stakeholders and monitor and review the risk and the controls that are modifying the risk.

The management of risk must enable PNG Ports to:

a) increase the likelihood of achieving objectives;
b) encourage proactive management;
c) be aware of the need to identify and treat risk throughout the organisation;
d) improve the identification of opportunities and threats;
e) achieve compatible risk management practices between organisations and nations;
f) comply with relevant legal and regulatory requirements and international norms;
g) improve financial reporting;
h) improve governance;
i) improve stakeholder confidence and trust;
j) establish a reliable basis for decision making and planning;
k) improve controls;
l) effectively allocate and use resources for risk treatment;
m) improve operational effectiveness and efficiency;
n) enhance health and safety performance as well as environmental protection;
o) improve loss prevention and incident management;
p) minimise losses;
q) improve organisational learning; and
r) improve organisational resilience.

The regulator shall take into consideration that each port is different and no one measure will suffice, as the differences between ports and the interrelated nature of the metrics create multiple possible interpretations for single data elements.

C. Web Site

Before 1 January 2016, PNG Ports’ website must be updated and thereafter regularly maintained to include all necessary up to date information required by vessels including:

- Port operations
  - Details of port conditions and statistics for all ports
  - Weather, wave and wind conditions
  - Live webcams
- Ship movement
- Underwater survey results
- Safety
- Emergency and security
- Port facilities

- **Publications**
  - Handbook with all tariffs
  - Documents and permits required for entry to port and services. The documents should be streamlined as far as possible to minimise the “paperwork” and ability to complete the forms online
  - Applications for gate passes – online application
  - Surveys
  - Submissions
  - Tide tables
  - Safety, environment management plan
  - Legal notices of changes to port waters that could affect the safe and efficient movement of shipping in or out of the Ports
  - Company KPIs

- **Useful links**
  - Customs website
  - Quarantine website
  - Stevedores
  - Storage
  - Transport operators

- **Company news**
  - Media releases
  - Company management
  - Board of directors
  - Company announcements and news
  - Directory of all services offered / available at PNG Ports
  - Financial statements (as required under the Companies Act)
  - Safety standards
  - Minimum standards

- **Port development**
  - Vision and strategy
  - Projects in progress
  - Upgrades of port
(II) Key Performance Indicators.

The key performance indicators shall be incorporated as at 1 January 2015. No later than the 1st of March of each year during the regulatory contract, PNG Ports will provide the Commission with a report showing how each tier 1 port performed on each of these measures.

<table>
<thead>
<tr>
<th>KPI Name</th>
<th>KPI calculation</th>
</tr>
</thead>
</table>
| Berth Availability - % of ships waiting more than 2 hours | \(
|\text{KPI calculation} \quad = \frac{\text{No. of ships where wait time is greater than 2 hours}}{\text{Total No. of ships}}.  \\
|This would be reported by individual port.\)              |
| Berth Availability (Average wait time)            | Calculated as the average wait time of any ship that waits for longer than 2 hours.                                                                  |
| Berth Utilisation                                  | \(\% \text{ Berth Usage} = \frac{\text{Billed LOA hours}}{\text{total LOA hours available}}.\)                                                  |
| Berth Throughput – Container per berth metre      | Total containers per annum divided total length of container wharves                                                                               |
| Berth Throughput – Total tonnage per berth metre  | Total cargo weight including both bulk and containers divided by total length of wharf                                                              |
| Storage Utilisation                                | \(\% \text{ Storage Utilisation} = \frac{\text{Total TEU days recorded}}{\text{maximum number of TEU days possible}} \times 100.\)      |
| Container inbound transit time                     | \((\text{Total Inbound Storage hours} + \text{Ship in berth hours})/ \text{Inbound containers per year}\)                                      |
| Container outbound transit time                    | \((\text{Total Outbound Storage hours} + \text{Ship in berth hours})/ \text{Outbound containers per year}\)                                      |
| Unloading rate                                     | \(\text{TEU's Loaded or unloaded per year divided by Total hours ship is in port}.\)                                                               |
SCHEDULE 4 - Regulatory Principles

In 2019 when the Regulator reviews the current regulatory Contract and drafts the subsequent regulatory Contract for the next regulatory period (i.e. from 1 January 2020 to 31 December 2024), the Regulator must;

1. Take into account any factors which affect the long term financial sustainability of PNG Ports. In particular, the Regulator must ensure that PNG Ports continue to earn sufficient return on its capital investment and cover all reasonable costs so that shareholders and stakeholders of PNG Ports can continue to invest in PNG Ports and make long term investment decisions with confidence.

2. Consider what services standards and performance measures should be in place so as to ensure that customers can make efficient use of the Regulated Services.

3. Ensure that the regulatory Contract supports the implementation of any Government policy concerning Regulated Port Services except where it conflicts with the ICCC Act.

4. Ensure that PNG Ports has incentives to deliver regulated Port Services at the lowest-possible economically efficient cost. This may include incentives to ensure efficiencies for end to end processes at the port, even though PNG Ports may not have direct control over all these activities.

5. Ensure that the regulatory Contract complies with all the requirements and objectives specified in the ICCC Act.

6. Take into consideration new circumstances that are significant and relevant to the contract, which emerge during the regulatory period. The regulator should not simply roll forward what is in the previous contract.

7. Correct and rectify any errors or omissions that are discovered in previous contracts.
SCHEDULE 5 - Reporting Framework

These are requirements and principles that PNG Ports must follow when preparing and reporting financial information for all of its regulated services.

PNG Ports is required to submit the following FORMS to the Regulator on June 30 annually.

**FORM 1 – PNG PORTS**
Disaggregated Statement
Profit and Loss Statement for the
For the Period Ended [  ]

<table>
<thead>
<tr>
<th>Account Description</th>
<th>Audited Accounts</th>
<th>Regulated Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Revenue</td>
<td>K’000</td>
<td>R¹</td>
</tr>
<tr>
<td>Expenditure</td>
<td>A²</td>
<td>A³</td>
</tr>
<tr>
<td>Earnings before interest and Tax (EBIT)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest and Dividend Income and Finance Charges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profit/(Loss) Before Tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax Charge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profit/(Loss) After Tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dividend Paid</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retained Profit</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹ Represents Revenue earned from all regulated services
² Represents Total Annual Expenditure for PNG Ports
³ Represents amount directly allocated to all regulated services
FORM 2 – PNG PORTS

Following the above, Disaggregation Statement, the table below will provide a further breakdown of Income and Costs for all regulated services.

<table>
<thead>
<tr>
<th>Account Description</th>
<th>Regulated Services</th>
<th>Regulated Service (*) (eg: Berthage only)</th>
<th>Regulated Service (*) (eg: Wharfage only)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>K'000</td>
<td>K'000</td>
<td>K'000</td>
</tr>
<tr>
<td>Total Revenue</td>
<td>R*</td>
<td>R*</td>
<td></td>
</tr>
<tr>
<td>Expenditure</td>
<td>E*</td>
<td>E*</td>
<td></td>
</tr>
<tr>
<td>Earnings before interest and Tax (EBIT)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest and Dividend Income and Finance Charges</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profit/(Loss) Before Tax</td>
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<tr>
<td>Profit/(Loss) After Tax</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dividend Paid</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retained Profit</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(*) PNG Ports must list and include financial information, for each of its regulated services listed in Schedule 7, in separate columns.

For example, R* is the total revenue earned from provision of Berthage whereas E* refers to the gross expenditure provision of Berthage. This process must be applied for respective sections of this form as well.

PNG Ports must apply the same procedure for all of its regulated services.

---

4 "R" is the value given in "R" of 'FORM 1 – PNG PORTS'.

5 "E" is the value given in "A" of 'FORM 1 – PNG PORTS'.
FORM 3

**Regulated Services Provided in Individual Ports**

Disaggregated Statement

Profit and Loss Statement for the

Regulated Business Segment [Name of Service Type]

For the Period Ended [ ]

<table>
<thead>
<tr>
<th>Account Description</th>
<th>Regulated Services</th>
<th>Port(*) (eg: Lae Port)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>K'000</td>
<td>K'000</td>
</tr>
<tr>
<td>Total Revenue</td>
<td></td>
<td>R**</td>
</tr>
<tr>
<td>Expenditure</td>
<td></td>
<td>E**</td>
</tr>
<tr>
<td>Earnings before interest and Tax (EBIT)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest and Dividend Income and Finance Charges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profit/(Loss) Before Tax</td>
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<td></td>
</tr>
<tr>
<td>Tax Charge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profit/(Loss) After Tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dividend Paid</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retained Profit</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(*) PNG Ports must provide financial information of the regulated services for each port. Financials for every port must be reported in a separate column, i.e. Lae Port will have its separate column so as ports of Port Moresby, Rabaul and Kimber etc..

For example, R** would show total revenue earned from all regulated services provided in Lae Port. E** is the gross expenditure for all regulated services in Lae Port. This process must be followed in filling the respective sections of the form.

PNG Ports must apply the same procedure for all of its ports in the country.
SCHEDULE 6 - Statutory Declarations

PAPUA NEW GUINEA

STATUTORY DECLARATION

I, (a).

do solemnly and sincerely declare that (b)

…….confirm that I have reviewed in detail the Reporting Requirement and that all the information disclosed therein is factually correct and free of material omissions of fact.

... confirm that there are no other material matters or information that has come to my attention, or to which I am privy, that would impact on the content and/or conclusions of the Reporting Requirement that has not already been disclosed to the Regulator.

……also confirm that, after having made reasonable enquiries, to the best of my knowledge and belief the information that the Regulator has been provided is true, correct and accurate.

And I make this solemn declaration by virtue of Oaths, Affirmations and Statutory Declarations Ordinance 1962 conscientiously believing the statements contained therein to be true in every particular.

Declared at:       (c):……………………………….

Before me-      the…… ………..     201…

(d)………………………………..

(e)…………………………………

(a) Here insert name, address and occupation of person making the declaration.
(b) Here insert the matter declared to. Where the matter is long it should be set out in numbered paragraphs.
(c) Signature of person making the declaration.
(d) Signature of person before whom the declaration is made.
(e) Here insert title of person before whom the declaration is made.

Note – Any person who wilfully makes a false statement in a Statutory Declaration is guilty of an indictable offence, and is liable to imprisonment, with or without hard labour, for four years.
Part B – Template for External Auditor to be accompanied by the INDEPENDENT AUDIT REPORT.

PAPUA NEW GUINEA

STATUTORY DECLARATION

I, (a)….. for and on behalf of [auditing organisation]
do solemnly and sincerely declare that (b)

Scope

We have audited the Regulatory Accounting Statements of PNGPCL for the Regulatory Accounting Period ended [insert date]. The Regulatory Accounting statements are a special purpose financial report consisting of the profit and loss account, provisions, and accompanying notes, set out on pages [ ] to [ ]. PNGPCL's management is responsible for the preparation and presentation of the Regulatory Accounting Statements and the information they contain. The PNGPCL management have determined that the accounting principles and policies used are appropriate to meet the requirements of the Regulatory Information Requirements. We have conducted an independent audit of the Regulatory Accounting Statements in order to express an opinion on them to the Regulated Services on their preparation and presentation and on their compliance with the requirements of the Reporting Framework outlined the PNG Ports Regulatory Contract2015-2019. No opinion is expressed as to whether the accounting principles and policies used are appropriate to the needs of the members.

The Regulatory Accounting Statements have been prepared for the purpose of fulfilling the requirements of the Independent Consumer and Competition Commission (ICCC). This report is prepared for submission to the ICCC and for the Disclosure of PNGPCL and is not to be used for any other purpose than that specified herein. We disclaim any assumption of responsibility for any reliance on this report, or on the Regulatory Accounting Statements to which it relates, to any person other than that for which it was prepared.

Our audit has been conducted in accordance with International Financial Reporting Standards. Our procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the Regulatory Accounting Statements, and the evaluation of significant accounting estimates. These procedures have been undertaken to form an opinion as to whether, in all material respects, the Regulatory Accounting Statements are presented fairly in accordance with the Regulatory Accounting Principles and Policies and the requirements of the ICCC. These Regulatory Accounting Principles and Policies do not require the application of all Accounting Standards nor other mandatory professional reporting requirements. The audit opinion expressed in this report has been formed on the above basis.

Audit Opinion

In our opinion, the Regulatory Accounting Statements presents fairly in accordance with the requirements of the Essential Services Commission of South Australia the results of the financial performance of [the Regulated Operator] for the period ended [period end], and the provisions carried on its Statement of Financial Position as at that date.
PAPUA NEW GUINEA

STATUTORY DECLARATION

I

cont….

…and therefore confirm that I have reviewed in detail the Reporting Requirement and that all
the information disclosed therein is factually correct and free of material omissions of fact.
... confirm that there are no other material matters or information that has come to my
attention, or to which I are privy, that would impact on the content and/or conclusions of the
Reporting Requirement that has not already been disclosed to the Regulator.
......also confirm that, after having made reasonable enquiries, to the best of my knowledge
and belief the information that the Regulator has been provided is true, correct and accurate.

And I make this solemn declaration by virtue of Oaths, Affirmations and Statutory
Declarations Ordinance 1962 conscientiously believing the statements contained therein to be
true in every particular.

Declared at:       (c):……………………………….

Before me-      the…… ............ 201...

(d)………………………………..

(e)…………………………………

(f) Here insert name, address and occupation of person making the declaration.

(g) Here insert the matter declared to. Where the matter is long it should be set out in numbered paragraphs.

(h) Signature of person making the declaration.

(i) Signature of person before whom the declaration is made.

(j) Here insert title of person before whom the declaration is made.

Note – Any person who wilfully makes a false statement in a Statutory Declaration is guilty of an indictable offence,
and is liable to imprisonment, with or without hard labour, for four years.
SCHEDULE 7 - Regulated Services

The services that are regulated under this contract and are termed as regulated services include the following:

1. Wharfage
2. Berthage
3. Berth Reservation
4. Stevedoring Access
5. Storage services
6. Gate Pass,
7. Anchorage,
8. Mobile Harbor Cranes,
9. Rubber Tyred Gantry,
10. Cleaning of Wharf,
11. Fumigation,
12. Provision of Water Services,
13. Provision of Electricity Services,
14. Reefer charges and electricity for containers,
15. Generator backup as part of reefer usage,
16. Yard Maintenance,
17. Ash Levy Removal,
18. Casual Labour surcharge for maintenance,
19. Commercial Vehicle and Tourist Bus passes,
20. Stevedoring Tonnage fee,
21. Building Leases and Rentals on Wharf land
Executed by the Independent Consumer and Competition Commission

Dr Billy Manoka
CEO and Commissioner