DRAFT 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 Essential Port Services and Stevedoring Access the subject of this Contract have been declared by the Minister to be regulated services under section 32 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 first day after the expiry of the Previous Regulatory Contract.

E This Contract regulates the Maximum Allowable Revenue that PNG Ports shall earn for the Regulated Services and the service standards which PNG Ports must meet and the financial consequences that will affect the Maximum Allowable Revenue, for failure to meet those services standards, and the regulation of those service standards pursuant to section 35 of the ICCC Act and the Harbours Act.

F 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 as follows.
1. General

1.1 Definitions

**Actual Cumulative Expenditure** includes [and is the total of] Actual Cumulative Capital Expenditure and Actual Cumulative Operational Expenditure.

**Actual Cumulative Capital Expenditure** means:

(a) all actual capital expenditure in relation to Port Assets undertaken by PNG Ports in the period from 1 January 2015 to the date of the Expenditure Progress Report (both dates inclusive), including capital works in progress; and

(b) all capital expenditure in relation to Port Assets which, as at the date of the Expenditure Progress Report, PNG Ports has contracted unconditionally to undertake,

in each case including capital expenditure on assets to enable the safe, efficient and effective provision of Regulated Services (including but not limited to secure fencing at a Declared Port and computer systems) but excluding any associated overheads.

**Actual Cumulative Operating Expenditure** means:

(a) all actual operating expenditure in relation to Port Assets undertaken by PNG Ports in the period from 1 January 2015 to the date of the Expenditure Progress Report; and

(b) all operational expenditure in relation to Port Assets which, as at the date of the Expenditure Progress Report, PNG Ports has contracted unconditionally to undertake.

**Adjusted Cumulative Expenditure** has the meaning given to it in clause 4.1(a) (iv).

**Adjusted Cumulative Capital Expenditure** has the meaning given to it in clause 4.1(c) (iii)

**Adjusted Cumulative Operational Expenditure** has the meaning given to it in clause 4.1(c) (iv).

**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 Essential Port Services provided by PNG Ports or access seekers;
f) the expenditure will lead to an outcome that is consistent with the Regulator’s Objectives under the ICC Act.

And PNG Ports has contracted unconditionally to undertake.

**Commencement Date** means 1 January 2015.

**Compliance Notice** means a notice given to PNG Ports by the Regulator under clause 6.1(g).

**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 Essential Port Services supplied 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 6.2(b).

**Essential Port Services** means Berth Reservation Services, Berthing Services and Wharfage Services.
**Expenditure Progress Report** means a report submitted to the Regulator in accordance with clause 4.1(a).

**First Regulatory Year** means the period from 1 January 2015 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 Essential Port Service or 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).

**Maximum Allowable Revenue** means the maximum amount that PNG Ports may earn for the supply of a Regulated Service under this Contract.

**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 an Essential Port 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 Essential Port 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 ICCA Act, 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:

$$\text{PHL}_i = \text{LF}_i \times K300,000 \times \left( \frac{\text{PNG CPI}_{t-1}}{\text{PNG CPI}_{2014}} \right)$$

where:

- \(\text{LF}_i\) is the aggregate of the Harbours Licence Fees paid by PNG Ports which are referable to that Regulatory Year;
- \(\text{PNG CPI}_{t-1}\) 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 1 of Schedule 2;
- \(\text{PNG CPI}_{2014}\) is the Adjusted PNG CPI for the 12 month period ending 30 June 2014 and is calculated in accordance with Part 1 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 Essential Port 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, assigns 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 Stevedoring Access, the Essential Port Services and includes but is not limited to the services set out in Schedule 7.

**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 Provinclal 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).

**Rental System** is the system, by which the PNG Ports shall charge third parties for the use of or for providing Regulated Services, and the charges shall be time based and not by Revenue Tonnage or per container or box or per passenger or type of cargo, except those Regulated Services in Schedule 7 Part B and Part C.

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

**Reporting Timeframe** means 30 June of each regulatory year.

**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 Essential Port Service as a result of the occurrence of the Tax Change Event.

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 8

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.

Total Forecast Capital Expenditure means the sum of the Yearly Forecast Capital Expenditures in respect of the Regulatory Years 2015 to 2019 (both inclusive).

Uncontrollable Cumulative Expenditure has the meaning given to it in clause 4.1(a)(ii).

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 third parties 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 within the meaning of the ICCC Act, Harbours Act, The Final Report on the PNG Ports Regulatory Contract Review dated XXXXXXXX.(hereafter the PNG Ports Report), and including generally accepted regulatory principles and regulatory practice in relation to those words, expressions and obligations;

(iii) All words, expressions and obligations in this Contract are to be interpreted together with, and in the context of, and generally accepted regulatory principles and regulatory practice in relation to the relevant words, expressions and obligations in this Contract;

(iv) the PNG Ports Report forms an integral part of this Contract; is inextricably linked with it; and is not severable from it;

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

(vi) 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;

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

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

(ix) 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);

(x) a reference to legislation is a reference to legislation in force in Papua New Guinea; and
(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 $t$ 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 $t$ 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 Regulatory Principles

This Contract shall be read in accordance with the Regulatory Principles as provided under Schedule 4 of this contract.

1.4 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 1.4(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 1.4(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 1.4(a) applies from:

(i) if notice of the new decision is required to be published under clause 1.5(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 1.5(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 1.4(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.

1.5 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 1.6) 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.

1.6 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.

1.7 Term

The term of this Contract commences on 1 January 2015 and ends on 31 December 2019 (both dates inclusive).

1.8 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 maximum revenue control mechanism is appropriate for providing reliable, effective and efficient port services throughout Papua New Guinea; and Maximum Allowable Revenue path for the subsequent regulatory period commencing 1 January 2015 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. Charges, Fees and Maximum Allowable Revenue

2.1 Charges and Fees for Regulated Services

(a) Subject to the terms of this Contract, PNG Ports must charge on a fair and reasonable basis for the Regulated Services it supplies, provided however that the total revenue it earns in a Regulatory Year for all Regulated Services does not exceed the Maximum Allowable Revenue determined by the Regulator for the relevant Regulatory Year.

(b) In the event the total revenue earned by PNG Ports for all Regulated Services in a Regulatory Year exceeds the Maximum Allowable Revenue determined by the Regulator for the relevant Regulatory Year, the Maximum Allowable Revenue for the subsequent Regulatory Year shall be reduced by the Regulator by the amount of revenue earned in excess of the Maximum Allowable Revenue.

2.2 Maximum Allowable Revenue for First Regulatory Year: Supply of Regulated Services

(a) The maximum amount that PNG Ports may earn for the supply of Regulated Services during the First Regulatory Year shall not exceed the applicable Maximum Allowable Revenue set out in Schedule 1, plus the amount of any Goods and Services tax payable by PNG Ports in relation to that supply.

(b) PNG Ports shall not earn more than the Maximum Allowable Revenue for the First Regulatory Year.

(c) Nothing in this clause 2 affects the operation of clauses 5 and 16.

2.3 Maximum Allowable Revenue for Subsequent Regulatory Years: Supply of Regulated Services

(a) The Maximum Allowable Revenue for the subsequent regulatory years will be determined by the Regulator in accordance with Schedule 2, with considerations of Schedule 5 and in accordance with clause 3.

(b) In so far as the supply of Regulated Services during the subsequent Regulatory Year is concerned, and subject to clause 2, 3, 4, 5 and 10, PNG Ports must not
earn more than the Maximum Allowable Revenue that is approved, deemed to be approved or set by the Regulator (as the case may be) pursuant to clause 3.1 for the supply of such Regulated Services, plus the amount of any Goods and Services tax payable by PNG Ports in relation to that supply.

(c) Where PNG Ports exceeds the Maximum Allowable Revenue in a regulatory year, the proposed Maximum Allowable Revenue statement for the subsequent year will be adjusted to remove the revenue collected by PNG Ports over and above the Maximum Allowable Revenue for the previous regulatory year.

2.4 Pricing Approach: Rental Structure

(a) PNG Ports shall implement a pricing structure throughout the regulatory period that is consistent with a rental system for its Regulated Services during this regulatory period, except for the regulated services under Schedule 7 Part B and Part C.

(b) The pricing structure under the rental system is as set out in Schedule 1 shall be maintained throughout the regulatory period.

(c) If PNG Ports wishes to vary the pricing format set out in Schedule 1, PNG Ports must submit its proposed pricing structure to the Regulator for approval of the pricing structure (but not the rates) before implementation. Such approval must be obtained 30 days before PNG Ports implements the pricing structure and the prices.

(d) PNG Ports must submit to the Regulator in the form of the approved pricing structure, its prices for the Regulated Services, 30 days before applying the prices or any variation of the prices. For avoidance of doubt, while the pricing structure is subject to approval of the Regulator, the prices themselves are only required to be submitted to the Regulator but are not required to be approved by the Regulator.

3. Altering the Maximum Allowable Revenue

3.1 Annual variation

(a) PNG Ports must, for each Subsequent Regulatory Year, give to the Regulator a statement in accordance with clause 3.1(b), 3.2(d) and clause 2.3 that:

(i) sets out PNG Ports' proposed total revenue and proposed Maximum Allowable Revenue for the supply of Regulated Services for all the Declared Ports, for that Subsequent Regulatory Year and supporting information that goes to justify that proposal; and

(ii) demonstrates compliance of the proposed total revenue for the supply of regulated Services and the proposed Maximum Allowable Revenue with the relevant requirements and considerations as contained in Schedule 2; and

(iii) sets out any other information the Regulator considers relevant to determining and approving the proposed Maximum Allowable Revenue for
the supply of Regulated Services for the Declared Ports for that Subsequent Regulatory Year.

(b) The 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 the proposed Maximum Allowable Revenue given by PNG Ports under clause 3.1(a) if:

(i) the proposed Maximum Allowable Revenue does not demonstrate compliance of the proposed Maximum Allowable Revenue with the relevant requirements set out in clause 2.3 and Schedule 2; or

(ii) the Regulator is not satisfied that the proposed Maximum Allowable Revenue is fair and reasonable; or

(iii) PNG Ports exceeded the Maximum Allowable Revenue in a regulatory year, and the proposed Maximum Allowable Revenue statement for the subsequent year was not adjusted to remove the revenue collected by PNG Ports over and above the Maximum Allowable Revenue for the previous regulatory year; and

(iv) the Regulator is not satisfied that the proposed Maximum Allowable Revenue is verifiable and all previous errors or omissions and to suit new circumstances and best practice in the calculation of the proposed Maximum Allowable Revenue have been corrected.

(d) The Regulator must approve a proposed Maximum Allowable Revenue given by PNG Ports under clause 3.1(a) if:

(i) the proposed Maximum Allowable Revenue demonstrates compliance of the proposed Maximum Allowable Revenue with the relevant requirements set out in clause 2.3 and the calculation of the CPI as contained in Schedule 2; and

(ii) the Regulator is satisfied that the proposed Maximum Allowable Revenue is fair and reasonable; and

(iii) where PNG Ports exceeded the Maximum Allowable Revenue in a regulatory year, and the proposed Maximum Allowable Revenue statement for the subsequent year was adjusted to remove the revenue collected by PNG Ports over and above the Maximum Allowable Revenue for the previous regulatory year and

(iv) the Regulator is satisfied that the proposed Maximum Allowable Revenue is verifiable and all previous errors and omissions and to suit new circumstances and best practise in the calculation of the proposed Maximum Allowable Revenue are rectified.

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

(f) Clause 3.1 (e) does not apply when the Maximum Allowable Revenue for the regulatory year 2017 is being assessed and determined by the Regulator.

(g) When determining the Maximum Allowable Revenue for regulatory year 2017, the Regulator must notify PNG Ports by the second Friday of December 2016 of PNG Ports' proposed Maximum Allowable Revenue for 2017.

(h) The proposed Maximum Allowable Revenue given by PNG Ports under clause 3.1(a), being a Maximum Allowable Revenue 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 proposed Maximum Allowable Revenue; or

(ii) the start of the Subsequent Regulatory Year in respect of which the proposed Maximum Allowable Revenue is to apply.

(i) If PNG Ports does not provide its proposed Maximum Allowable Revenue to the Regulator as required by and in accordance with clause 3.1(a), or such a proposed Maximum Allowable Revenue is so provided but (by the last 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 proposed Maximum Allowable Revenue, then the Regulator may reset the relevant Maximum Allowable Revenue for the Declared Ports for the relevant Subsequent Regulatory Year in a manner in which the Regulator could have approved the Maximum Allowable Revenue if they were included in a statement given by PNG Ports under clause 3.1(a), or the Regulator may determine that the relevant Maximum Allowable Revenue for the Regulatory Year immediately preceding the relevant Subsequent Regulatory Year, shall apply for the relevant Subsequent Regulatory Year until the Regulator has reset the relevant Maximum Allowable Revenue for the relevant Subsequent Regulatory Year.

(j) The Regulator must notify PNG Ports in writing of the Maximum Allowable Revenue so set by the Regulator in accordance with clause 3.1(i). The Maximum Allowable Revenue set by the Regulator apply from the later of:

(i) the date on which the Regulator notifies PNG Ports of the Maximum Allowable Revenue; or

(ii) the start of the Subsequent Regulatory Year in respect of which the Maximum Allowable Revenue is to apply.

3.2 Annual Regulatory Reporting Requirements

(a) Subject to paragraphs (b) and (c) PNG Ports must provide to the Regulator the Reporting Requirements as set out in the template set out 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 and the External Auditor [whichever is applicable] in the forms provided in Schedule 8 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 Maximum Allowable Revenue for the subsequent regulatory years.

3.3 Funding from Third Parties

(a) Any assets 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:

(i) 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 and/or no or concessional interest is payable on this funding by PNG Ports and generally provided for the purpose of providing cheaper regulated services or affordable Regulated Services to Customers in a particular declared Port.

(ii) 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 3.3 (a) will not be considered to be part of PNG Ports' Cumulative Capital Expenditure as part of the mid-term capital spending review 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 Maximum Allowable Revenue 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 3.3 (a) will be excluded from the RAB and PNG Ports will not be entitled to a return on these assets or to recover the depreciation on these assets under the Maximum Allowable Revenue, 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.

4. Mid-term Review of Expenditure and Demand Forecast

4.1 Process for Mid-term Review of Expenditure

(a) PNG Ports must, in accordance with clause 4.1(b), submit an Expenditure Progress Report for the calendar years 2015 to 2016 and up to 30 June 2017 (inclusive) plus an expenditure forecast for the years 2017, 2018 and 2019, that sets out:

(i) the Actual Cumulative Expenditure which is to include the Actual Cumulative Capital Expenditure and the Actual Cumulative Operational Expenditure:

(A) For the Actual Cumulative Capital Expenditure the report must be broken down into individual projects showing the budgeted amount and the actual amount, the dates of spending and a description of the assets built or acquired, as a result of the spending, including a description of the quantitative capacity provided by the assets and how it fits within the definition of 'capital expenditure' in clause 1.1.

(B) For the Actual Cumulative Operational Expenditure the report must be broken down into major cost categories (above K500,000) showing the budgeted amount and the actual amount, and a description of the expenditure.

(ii) the forecast expenditure, which is to include:

(A) the Forecast Capital Expenditure, for which the report must be broken down into individual projects showing the budgeted amount and the actual amount, the projected dates of spending, and a description of the assets to be built or acquired, as a result of the spending.

(B) the Forecast Operational Expenditure, for which the report must be broken down into major cost categories (above K500,000) showing the budgeted amount and the actual amount, and a description of the expenditure.

(iii) any amounts which have been funded by grants, donations, interest free or concessional interest loans, or funded CSOs must be separately identified as required under clause 3.4, with full details of such funding. These are not to be treated as Capital Expenditure by PNG Ports to the extent of the benefit.

A.
(iv) the Adjusted Cumulative Expenditure which includes [and is the total of] the Adjusted Cumulative Capital Expenditure and the Adjusted Cumulative Operational Expenditure.

(v) if the Actual Cumulative Capital Expenditure reduced by the Uncontrollable Cumulative Expenditure (such reduced amount being referred to as the Adjusted Cumulative Expenditure) is less than 80% of the estimated Total Forecast Capital Expenditure, and PNG Ports considers that the difference between the Adjusted Cumulative Expenditure and the estimated Total Forecast Capital Expenditure is the result of more efficient capital expenditure, the details of such efficient capital expenditure must be provided.

(vi) the methodology used to determine the Actual Cumulative Annual Expenditure in the Expenditure Progress Report must be consistent as at the start of the regulatory period.

(b) The Expenditure Progress Report referred to in clause 4.1(a) must be given to the Regulator not earlier than 31 July 2017 and not later than 31 August 2017 and:

(i) must be certified under generally accepted accounting principles as ‘true and fair’ by a registered company auditor (as defined in Section 2 of the Accountants Act 1996) nominated by the Regulator and the Terms of Reference for the auditor shall be framed by the Regulator.

(ii) must be placed on PNG Ports’ website, and notice of its release published by PNG Ports in the Daily Newspaper for circulation nationwide and made available to the general public to make comments to the Regulator.

(c) The Regulator may, within 30 days after the Expenditure Progress Report referred to in clause 4.1(a) is received by the Regulator, give written notice to PNG Ports that it shall appoint an appropriately qualified independent international consultant for the purposes of this clause 4.1. As soon as reasonably practicable after the giving of any such notice the Regulator shall appoint an appropriately qualified independent international consultant (‘Consultant’) to report to the Regulator and PNG Ports, by 15 October 2017, as to:

(i) Any items in the capital budget which are found not to be prudent and efficient by the Consultant;

(ii) Any items of operational expenditure which are found not to be prudent and efficient by the Consultant;

(iii) Any adjustment that should be made to the Actual Cumulative Capital Expenditure or the Forecast Capital Expenditure in light of the items identified in 4.1 (c) (i) and the adjusted total figure is the Adjusted Cumulative Capital Expenditure;

(iv) Any adjustment that should be made to the Actual cumulative operational expenditure or the forecast operational expenditure in light of the items identified in 4.1 (c) (ii) and the adjusted total figure is the Adjusted Cumulative Operational Expenditure;
(v) if the Adjusted Cumulative Expenditure on any individual item or total Adjusted Cumulative Expenditure is less than the Forecast Expenditure whether, in the Consultant’s opinion, the difference between the Adjusted Cumulative Expenditure and the Forecast Expenditure is entirely or partially the result of more efficient expenditure; and

(vi) if the Adjusted Cumulative Expenditure is less than the Forecast Expenditure for any item or the total Adjusted Cumulative Expenditure in the Consultant’s opinion the difference between the Adjusted Cumulative Expenditure and the Forecast Expenditure is not entirely the result of more efficient expenditure the amount of expenditure which it considers to be in excess of the Adjusted Cumulative Expenditure that PNG Ports would need to make as at that time so as to avoid there being any imprudent shortfall in expenditure in relation to any declared port then operated by PNG Ports.

(vii) If the methodology used to determine the Actual Cumulative Annual Expenditure in the Expenditure Progress Report was consistent as at the start of the regulatory period.

(d) Where the Consultant in accordance with clause 4.1 (c) (iv) finds that the Adjusted Cumulative Operational Expenditure is less than Forecast Operational Expenditure as the result of more efficient operational expenditure, the efficiency gains shall be retained by PNG Ports.

(e) Where the Consultant in accordance with clause 4.1 (c) (vii) finds that the any Actual Cumulative Expenditure did not achieve the capital works benchmarks set at the start of the regulatory period, then the Regulator shall determine whether to impose a reduction in the RAB in accordance with Schedule 6.

(f) Where the Consultant in accordance with clause 4.1 (c) (iv) finds that the Adjusted Cumulative Operational Expenditure is less than Forecast Operational Expenditure as a result of more efficient operational expenditure and the more efficient operational expenditure is expected to result in lower operational expenditure for the remainder of the regulatory period, then 50% of the future benefit of the efficiency gains shall be removed from the revenue requirement and passed on to customers via a reduction in the Smoothing X factor in accordance with Schedule 6.

(g) Subject to Clauses 3 and 5 of this Contract, any Cumulative Operational Expenditure in excess of Forecasts Operational Expenditure shall be borne by PNG Ports and not passed on to Customers. The Consultant appointed according to clause 4.1 (c) will follow a process similar to that described in Schedule 6.

(h) After considering the Expenditure Progress Report submitted by PNG Ports and making any other enquiries which the Regulator deems necessary, any report provided in accordance with clause 4.1(c) by the Consultant (if any) appointed pursuant to that clause, and any further information obtained by the Regulator or provided by PNG Ports, the Regulator must, not earlier than 1 November 2017 and not later than 30 November 2017, notify PNG Ports of its determinations as to the following matters:
(i) the findings of the Consultant (if one is appointed) under 4.1 (c);

(ii) any adjustments the Regulator has elected to make to the cumulative expenditure and the forecast expenditure in light of the consultant’s report; and

(iii) Any adjustment to the Smoothing Factor (X) as described in Schedule 1. If the Regulator does adjust the X Factor in Schedule 1, then this will apply to the regulatory years for 2018 and 2019.

If the Regulator fails to notify PNG Ports of its determinations by 30 November 2017, then PNG Ports’s proposed Maximum Allowable Revenue for the Subsequent Regulatory Year will be deemed approved.

(i) PNG Ports must, at its expense, provide the Regulator and any Consultant appointed pursuant to clause 4.1(c) with such access to PNG Ports’ records, employees and contractors as the Regulator or the Consultant requires for the purposes of this clause 4.1.

(j) The reasonable costs of any Consultant appointed pursuant to clause 4.1(c) shall be borne by PNG Ports.

(k) Where PNG Ports fails to comply with clause 4.1(b), the Regulator may not assess the subsequent Maximum Allowable Revenue for 2018 or the Regulator may determine that the relevant Maximum Allowable Revenue for the Regulatory Year immediately preceding the relevant Subsequent Regulatory Year, shall apply for the relevant Subsequent Regulatory Year until the Regulator has reset the relevant Maximum Allowable Revenue for the relevant Subsequent Regulatory Year.

(l) Notwithstanding clause 4.1(c), the Regulator may, where it considers it necessary or desirable, carry out physical inspection as to the state and operational condition of PNG Ports’ assets throughout the country, where the Regulator deems necessary and prepare a report of the Regulator’s findings and such report may be taken into consideration by the Consultant in the Consultant’s final report.

(m) The reasonable cost of the physical inspection carried out by the Regulator under 4.1(l) must be borne by PNG Ports.

4.2 Process for Review of Demand Forecasts

(a) The Regulator shall, if it considers it necessary or desirable, appoint an appropriately qualified independent international consultant to assess the robustness of demand forecasts, including latent or unmet demand. The reasonable cost of such independent consultant shall be met by PNG Ports.

(b) If the forecasts of demand are found not to be robust by the consultant, the Regulator shall make adjustment to the Smoothing Factor (X) to reflect only robust demand forecasts. If the Regulator does adjust the X Factor in Schedule 1, then this will apply to the regulatory years for 2018 and 2019.
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 maximum amounts 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

(iii) 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.
(i) The effect of an Approved FM Pass Through Amount must be:

(ii) 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

(j) 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

(ii) 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) (the 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’s 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’s 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’s 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.

(i) 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.

(j) 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.
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 Port at all times.

(b) PNG Ports must submit to the Regulator no later than 1 March each Regulatory Year, in accordance to clause 6.1(c) a Service Standards Report for each Declared Port.

(c) The Service Standards Report shall:
   
   (i) be in such form (if any) as is required by the Regulator.
   
   (ii) provide details of PNG Ports’ compliance or otherwise with the Minimum Service Standards specified in this Contract for the Relevant Regulatory Year;
   
   (iii) provide details of PNG Ports’ explanations and reasons for any failure to achieve those Minimum Service Standards; and
   
   (iv) provide details of how PNG Ports intends to improve its performance so as to achieve the relevant Minimum Service Standards for the Subsequent Regulatory Year.

(d) 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 the Service Standards Report referred to in clause 6.1(c).

6.2 Key Performance Indicators

(a) PNG Ports shall in the first Regulatory Year consult with relevant stakeholders within the Port Industry, including Port users and Port service providers, on what may be some appropriate Key Performance Indicators for PNG Ports to propose to the Regulator that may increase productivity and efficiency of its regulated services.

(b) Subject to paragraph (a) PNG Ports shall submit to the Regulator on the last Friday of November 2015 its proposed Key Performance Indicators to be applied for the Subsequent Regulatory Years.

(c) The Regulator may take into consideration PNG Ports Submission referred to in clause 6.2(b) and shall determine the appropriate Key Performance Indicators to be applied to PNG Ports from the 1 January 2016 to 31 December 2019.

(d) The Key Performance Indicators determined by the Regulator shall be published and treated as a part of Schedule 3 Minimum Service Standards.
6.3 **Dispute Resolution Process between PNG Ports and Port users**

(a) As part of its Minimum Service Standards, PNG Ports shall submit to the Regulator by the first Friday of March 2015, a proposed Dispute Resolution Process framework aimed at dealing with and resolving disputes between itself and third parties.

(b) The proposed Dispute Resolution Process must contain the following:

(i) As a first step require PNG Ports and the third party to use their best endeavour to resolve that dispute within 7 days from the date the third party serves a notice of dispute on PNG Ports.

(ii) Creating a Tribunal to determine within a specified reasonable time any dispute that arises between any third party and PNG Ports in respect of its Regulated Services and charges for those Regulated Services.

(iii) Where the third party and PNG Ports are unable to resolve the dispute, the third party may lodge the complaint with the Tribunal.

(iv) The Tribunal shall carry out an investigation into the merits or otherwise of the complaint regarding the Regulated Service.

(v) Where the Tribunal finds merit in the complaint, PNG Ports shall be deemed to be liable to:

   (A) compensate the third party up to K50,000; and

   (B) reimburse all reasonable costs of the third party relating to the dispute, including storage and legal costs.

(c) The Regulator may, if it considers it necessary or desirable, require any other or further information from PNG Ports.

(d) The Regulator shall consider the proposed Dispute Resolution Process of PNG Ports submitted in accordance with clause 6.3 (a) and any other appropriate information available to it and determine the Dispute Resolution Process to be applied to PNG Ports and Third Party users of PNG Ports.

(e) The determination of the Tribunal under this clause shall be final unless determined otherwise in a court of competent jurisdiction.

(f) 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 when determining the Maximum Allowable Revenue for the subsequent regulatory year.

6.4 **Compliance with Minimum Service Standards**

(a) PNG Ports and the Regulator shall monitor compliance of the service standards and the Key Performance Indicators stated in Schedule 3.

(b) The Regulator shall notify PNG Ports within 10 Business Days of commencing an audit under clause 6.3(c).
(c) The Regulator may at any time audit PNG Ports’ compliance with Schedule 3. 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 and verifying its compliance with Schedule 3; and

(ii) inspect any assets, premises, property or records of PNG Ports relevant to its compliance with Schedule 3.

(d) The Regulator or PNG Ports may at any time give written notice to the other that it requires the appointment of an appropriately qualified independent international consultant for the purposes of this clause 6 and the Objectives of the ICCC Act. 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, within three months or within such time as is determined by the Regulator. The terms of reference for the consultant will be determined by the Regulator.

(e) The Regulator must not exercise its power under clauses 6.3 (d) more than once per calendar year.

(f) PNG Ports must, at its expense, provide the Regulator and any international consultant appointed pursuant to clause 6.1(d) with such access to PNG Ports’ assets, premises, property, records, employees and contractors as the Regulator or the international consultant requires for the purposes of this clause 6 and the Objectives of the ICCC Act.

(g) The reasonable costs of any appropriately qualified international consultant appointed pursuant to clause 6.1(d) and any other verification exercise conducted by the Regulator must be borne by PNG Ports.

(h) After considering:

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

(ii) the achievement or otherwise of the Key Performance Indicators in Schedule 3 from 1 January 2016 onwards.

(i) any report provided in accordance with clause 6.1(d) by an appropriately qualified international consultant (if any) appointed pursuant to that clause; and

(ii) any further information obtained by the Regulator pursuant to clauses 6.1(c) or (h) or otherwise,

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

(j) The Regulator reserves the right to independently verify the Service Standards Report provided by PNG Ports.
(k) The Regulator shall, if it considers it necessary or desirable, require PNG Ports to publish the details of the Service Standards Report, at a time and in a manner the Regulator considers appropriate for public comments subject to the confidentiality requirements under clause 14.

(l) The Regulator reserves the right to publish the Regulator’s determination and PNG Ports Compliance Notice in clause 6.5 for public viewing and comments, subject to clause 14.

6.5 Enforcement of Minimum Service Standards

(a) Where the Regulator determines that PNG Ports has failed to achieve any of its Minimum Service Standards, the Regulator shall give PNG Ports a Compliance Notice:

(i) stating that PNG Ports is not in compliance with one or more of the Minimum Service Standards; and

(ii) requiring PNG Ports to remedy the non-compliance within a reasonable period specified by the Regulator.

(b) If PNG Ports:

(i) fails to remedy its non-compliance with [clause 6.3(a)] the Minimum Service Standards within the period specified in a Compliance Notice; and

(ii) fails to provide the Regulator with evidence to the satisfaction of the Regulator demonstrating PNG Ports’ compliance with clause 6.3(a), within the period specified in a Compliance Notice,

the Regulator may give PNG Ports a Default Notice. A Default Notice must specify the relevant Minimum Service Standards that have not been complied with and must provide details of the non-compliance, including each Declared Port at which the Minimum Service Standards have not been satisfied.

(c) From the day immediately following the day on which PNG Ports receives a Default Notice in accordance with clause 6.5(b) until the day on which the Regulator notifies PNG Ports in writing that the Regulator is satisfied that PNG Ports is in compliance with clause 6.1(a), the Regulator, may take those periods of non-compliance and default into consideration, when determining, subject to clause 6.3(d), the Maximum Allowable Revenue under clauses 2 and 3 and Schedules 1 and 2 for the Succeeding Regulatory Year.

(d) Where PNG Ports is found not to be in compliance with the Minimum Service Standards and Key Performance Indicators in clause 6 schedule 3, the Regulator shall impose, financial consequences of up to 2% for unsatisfactory compliance of each service standard and key performance indicators in relation to the X factor at the discretion of the Regulator.

(e) Where deemed appropriate by the Regulator, a letter shall 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.

(f) The extent to which PNG Ports has achieved its Minimum Service Standards and Key Performance Indicators referred to in clause 6, it shall be taken into account by the Regulator during the annual variation of the Maximum Allowable Revenue in clause 3 and the mid-term review of expenditure and demand forecast and during the consideration of the Subsequent Regulatory Contract pursuant to clause 12, and as guided by the Regulatory Principles in Schedule 4.

6.6 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.

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 of 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:

(i) PNG Ports shall pursue value for money as the core principle underlying all its procurement. PNG Ports shall only incur capital or operational expenditure that is both prudent and efficient as is determined by the Regulator in accordance with the PNG Ports Report and Regulatory Principles set out in schedule 4.

(ii) 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;

(iii) PNG Ports shall promote in its work place and in procurement, an organizational structure of efficient, effective and ethical use of its resources; and

(iv) 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 this clause 7.

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 require PNG Ports to demonstrate the estimates of demand including latent demand underlying the operational or capital expenditures in clause 7.4(a), at the mid-term review.

(d) 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 prudence and efficiency of that Capital and Operational Expenditure, regarding any Capital or Operational Expenditure or
investment that goes to determining the current Maximum Allowable Revenue in schedule 1, clause 3 and schedule 2 of this Contract.

(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 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.

(f) If any Capital and Operational Expenditure are found not to be prudent and efficient or forecasts of demand are found not to be robust by the consultant, the Commission shall make adjustment to the X Factor to reflect only the prudent and efficient Capital and Operational Expenditure and robust demand forecasts. If the Regulator does adjust the X Factor in Schedule 1 then this will apply to the regulatory years for 2018 and 2019.

(g) For the purposes of clause 7.4(e) demand forecasts are robust if they have been developed using appropriate forecasting methodologies and reflect reasonable data assumptions. In particular, whether all relevant factors and key drivers of demand have been taken into account. These may include historic information, the impact of demand management, supply restrictions, population growth and economic conditions, and the elasticity of demand of customers.

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 and 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 Maximum Allowable Revenue in 2016 and the relevant Subsequent Regulatory Years, 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 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.

(e) Subject to paragraph (f), for the subsequent regulatory years Maximum Allowable Revenue 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 9.1(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 Maximum Allowable Revenue 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.

(f) 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.

(g) 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 Services by PNG Ports to the Shareholder of PNG Ports not be entered into unless first approved by the Regulator; and/or

(iii) 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. 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;
(iii) 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;

(v) Whether its findings on the above factors differ between declared ports and between different sub-markets;

(vi) Any other factors the Regulator considers to be relevant.

(e) The Regulator must publish the draft report referred to in clause 9.4(c) by 30 June 2017.

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

(f) 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).

(g) The final report referred to in clause 9.4(f) must be published by 31 August 2017.
9.4 Review of Regulated Services in the market

(a) 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.

(b) 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) Where the Regulator believes that an existing non-regulated service or a new non-regulated service is a service in connection to an Essential Port Service, that service shall be regulated in accordance with this Contract and included in Schedule 7.

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 10.1. 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 Essential Port Service in respect of that closed Declared Port.

(j) 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.
(k) 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 Declared 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 Reguatory 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 Essential Port Service in respect of that closed Declared Port.

11. Discrimination

(a) The charges and fees PNG Ports charges for the supply of an Essential Port 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’s 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 the case of 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**.

(m) The Regulator may issue statements of regulatory intent which elaborate on how the Regulator will exercise its power under this clause 12.

### 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 reasonable costs of engaging any consultant to assist the Regulator to undertake the review of the next Regulatory Contract must be borne by PNG Ports; and

(ii) 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 Maximum Allowable Revenue under Schedule 1.

### 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 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 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 8 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 maximum allowable revenues 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 section 131 of the ICCC Act.

15. Enforcement of Contractual Obligations

Where the Regulator or PNG Ports forms the opinion on the balance of probabilities, that the other is contravening or is likely to contravene the provisions of this Contract and the contravention is of a material nature, then the provisions of the ICCC Act will be followed and complied with in dealing with the subject of the contravention or the likely contravention by either party to this Contract.

16. Amendment of Regulatory Contract

16.1 Amendments

(a) Subject to clause 17.1(b), this Contract may be varied from time to time by the Regulator in consultation with PNG Ports but any such variation must not be inconsistent with the regulatory principles described in Schedule 4 or the Objectives and requirements of the ICCC Act.
(b) No variation may be made to this Contract (whether pursuant to this clause 16.1 or pursuant to clause 4) 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

(C) 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 16.1(b) (i).

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

In consultation with PNG Ports, any service comprising a Regulated Service ceases to be a Regulated Service (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 Regulated Services as have ceased to be Regulated Services.

16.3 Amendments for uncertain events

(a) PNG Ports shall make an application for a review of the need for and the extent of regulation of the provisions of the Essential Port Services in PNG, the Maximum allowable Revenue, and the Minimum Service Standards only subject to clause 16.3(b) where PNG Ports is of the view that due to a change in the Government Policy regarding PNG Ports being required to:

(i) Take ownership or operational responsibilities for the ports at Motukea Island or

(ii) Take ownership or operational responsibilities for the ports at the Lae Tidal Basin or

(iii) Relocate the current Port Moresby port to another location.

(b) An application under clause 16.3 (a) must include a statement from PNG Ports that sets out

(i) The details of the uncertain event referred to in clause 16.3 (a) and why it was not reflected in the regulatory contract.

(ii) The impact it will have on the operating and or capital expenditure requirements.
(iii) The impact it will have on PNG Ports financial and revenue position and PNG Ports' proposed adjustments to the regulatory contract (if any).

(iv) And in respect of clause 6.3 (a) (iii) for the avoidance of doubt, the stranded capital at the time of the relocation will be excluded from the RAB.

(c) The Regulator in reviewing and determining the application made under clause 16.3(a) together with the statement under clause 16.3(b) shall have regard to;

(i) The PNG Ports proposed maximum allowable revenue adjustments or,

(ii) The legitimate commercial interest of PNG Ports or,

(iii) The regulatory principles set out in Schedule 4 or,

(iv) The report by the Consultants appointed under 16.3(d) (if any).

(v) any other factors, the Regulator Considers relevant.

(d) The regulator may appoint an appropriate independent international consultant to review the application and statement by PNG Ports under clause 16.3(a) and (b).

(e) The Cost incurred by the Regulator to fund the Review of this Clause will be paid for by PNG Port and will be taken into consideration when determining the Maximum Allowable Revenue under clause 3.

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 Allowable Revenue For First Regulatory Year

The Maximum Allowable Revenue that PNG Ports shall earn for the supply of Regulated Services for all the Declared Ports is **K149.6 million** where the **X Factor will be set at negative 5.17% (-5.17%)** for 2015.

A. Pricing Structure System for Wharfage Services.

The following pricing system shall be applied by PNG Ports May Charge for the supply of a Wharfage Service during the term of this contract is outlined in the following.

Ports of Port Moresby, Lae, Kimbe and Samari (Tier 1 Declared Ports)

<table>
<thead>
<tr>
<th>Rental for use of Quay surface for loading and unloading cargo kina per hour</th>
<th>Rental for use of MHC kina per hour</th>
<th>Rental for use of RTG kina per hour</th>
<th>Rental for use of Storage space kina per day*</th>
</tr>
</thead>
<tbody>
<tr>
<td>K0.00 per hour</td>
<td>K0.00 per hour</td>
<td>K0.00 per hour</td>
<td>K0.00</td>
</tr>
</tbody>
</table>

Ports of Madang, Rabaul, Alotau, Oro Bay, Kavieng, Buka, Kieta, Aitape, Lorengau and Wewak. (Tier 2 Declared Ports)

<table>
<thead>
<tr>
<th>Rental for use of quay surface for loading and unloading cargo kina per hour</th>
<th>Rental for use of MHC kina per hour</th>
<th>Rental for use of RTG kina per hour</th>
<th>*Rental for use of storage space, per Unit x Day x Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>K0.00 per hour</td>
<td>K0.00 per hour</td>
<td>K0.00 per hour</td>
<td>Unit x Day x Rate</td>
</tr>
</tbody>
</table>

*Storage*

The current 2014 charging structure (except the rates in Kina shall be determined by PNG Ports) being used by PNG Ports for

i. Empty Container Storage Rates

ii. FCL and LCL Container Storage Charges and

iii. Break Bulk Storage.

shall be maintained and

- Export cargo shall receive 5 free days storage in the Port prior to the declared ships estimated time of arrival
- Export cargo shall receive 5 free days storage in the Port prior from the ships departure date
- Transshipment cargo shall receive 10 free days of storage in the Port of Transshipment
• There may no long term storage available for empty international containers at the Ports of Port Moresby, Lae and Kimbe. Containers left in these ports past the allowed free days discharge or back loading may attract penalty fees.

B. Maximum Tariffs for Berth Reservation Services

Ports of Port Moresby, Lae, Kimbe and Samari (Tier 1 Declared Ports)

<table>
<thead>
<tr>
<th>Type of Vessel</th>
<th>Berth Reservation Schedule of Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overseas vessels í cargo and passengers vessels at the Ports of Ports Moresby and Lae</td>
<td>K0.00 per occasion</td>
</tr>
<tr>
<td>Overseas vessels í cargo and passenger vessels í at remaining ports</td>
<td>K0.00 per occasion</td>
</tr>
<tr>
<td>Overseas tankers í large</td>
<td>K0.00 per occasion</td>
</tr>
<tr>
<td>Overseas tankers í small</td>
<td>K0.00 per occasion</td>
</tr>
<tr>
<td>Overseas vessels of any type or at any port í each alteration to arrival time</td>
<td>K0.00 per occasion</td>
</tr>
<tr>
<td>Coastal vessels í POM and Lae</td>
<td>K0.00 per occasion</td>
</tr>
<tr>
<td>Coastal vessels í at remaining ports</td>
<td>K0.00 per occasion</td>
</tr>
<tr>
<td>Coastal vessels í any, port each alteration to arrival time</td>
<td>K0.00 per occasion</td>
</tr>
</tbody>
</table>

Ports of Madang, Rabaul, Alotau, Oro Bay, Kavieng, Buka, Kieta, Aitape, Lorengau and Wewak. (Tier 2 Declared Ports)

<table>
<thead>
<tr>
<th>Type of Vessel</th>
<th>Berth Reservation Schedule of Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overseas vessels í cargo and passengers vessels at the ports of Rabaul and Madang</td>
<td>K0.00 per occasion</td>
</tr>
<tr>
<td>Overseas vessels í cargo and passenger vessels í at remaining ports</td>
<td>K0.00 per occasion</td>
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<tr>
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<td>K0.00 per occasion</td>
</tr>
<tr>
<td>Coastal vessels í at other ports</td>
<td>K0.00 per occasion</td>
</tr>
<tr>
<td>Coastal vessels í any, port each alteration to arrival time</td>
<td>K0.00 per occasion</td>
</tr>
</tbody>
</table>

C. Maximum tariffs for Berthing Services
The maximum amount that may be charged for the supply of the berthages services during the term of this contract in respect of a particular vessel is in accordance with the following charging system.

**Ports of Port Moresby, Lae, Kimbe and Samari (Tier 1 Declared Ports)**

<table>
<thead>
<tr>
<th>Type of Vessel</th>
<th>Berthage Schedule of Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overseas vessels (including cargo, passenger and tankers)</td>
<td>K0.00/metre LOA/hour alongside PNGH wharf</td>
</tr>
<tr>
<td>Coastal vessels ï under 20 metres (or part thereof)</td>
<td>K0.00/metre LOA/hour alongside PNGH wharf</td>
</tr>
<tr>
<td>Coastal vessels ï 20 metres &lt;LOA&lt; 49 metres</td>
<td>K0.00/metre LOA/hour alongside PNGH wharf</td>
</tr>
<tr>
<td>Coastal vessels ï 49&lt;LOA</td>
<td>K0.00/metre LOA/hour alongside PNGH wharf</td>
</tr>
<tr>
<td>Work boats ( quarterly fee)</td>
<td>K0.00 alongside PNGH wharf</td>
</tr>
<tr>
<td>Tugs</td>
<td>K0.00 per tug/ day</td>
</tr>
</tbody>
</table>

**Ports of Madang, Rabaul, Alotau, Oro Bay, Kavieng, Buka, Kieta, Aitape, Lorengau and Wewak. (Tier 2 Decla**

<table>
<thead>
<tr>
<th>Type of Vessel</th>
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<tr>
<td>Tugs</td>
<td>K0.00 per tug/ day</td>
</tr>
</tbody>
</table>

Where:
PNGH wharf means a wharf in a Declared Port owned, operated or controlled by PNG Ports
A coastal vessel carrying cargo loaded at any place outside of Papua New Guinea will be charged for Berthing Services at the rate applicable for overseas vessels until such cargo is completely unloaded at which time in will revert to being a coastal vessel.

**Declared Ports**

The Maximum Allowable Revenue is applicable for the following Declared Ports

<table>
<thead>
<tr>
<th>TIER ONE DECLARED PORTS</th>
<th>TIER TWO DECLARED PORTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Port Moresby</td>
<td>Madang</td>
</tr>
<tr>
<td>Lae</td>
<td>Rabaul</td>
</tr>
<tr>
<td>Kimbe</td>
<td>Alotau</td>
</tr>
<tr>
<td>Vanimo</td>
<td>Oro Bay</td>
</tr>
<tr>
<td>Samarai</td>
<td>Kavieng</td>
</tr>
<tr>
<td></td>
<td>Daru</td>
</tr>
<tr>
<td></td>
<td>Buka/Kieta</td>
</tr>
<tr>
<td></td>
<td>Aitape</td>
</tr>
<tr>
<td></td>
<td>Lorengau</td>
</tr>
<tr>
<td></td>
<td>Wewak</td>
</tr>
</tbody>
</table>
SCHEDULE 2 – Maximum Allowable Revenue Considerations for Subsequent Regulatory Years

PART A

| Regulated Revenue Requirement (K Million, Real 2015) |
|---------------------------------|--------|--------|--------|--------|
| Year               | 2015  | 2016  | 2017  | 2018  | 2019  |
| Return on Capital/Assets | 39.4  | 46.1  | 52.9  | 59.9  | 66.9  |
| Operating Expenditure      | 72.9  | 75.5  | 77.5  | 79.5  | 81.5  |
| Return of Capital (depreciation) | 15.9  | 19.4  | 23.1  | 27.0  | 31.2  |
| Total                         | 128.2 | 141.1 | 153.5 | 166.4 | 179.7 |

The Net Present Value of the revenue requirement based on a discount rate of 13.01% (pre-tax real WACC) is K529.73 million. Based on the revenue requirement, the X factor derived is negative 5.17% (-5.17%).

The maximum allowable revenue will be adjusted annually by a control equation of 1+CPI+X. The X factor in this case is a negative number.

*The Maximum Allowable Revenue for 2015-2019 has been determined, with the Maximum Allowable Revenue for the subsequent years 2016-2019 being subject to variation by the Regulator upon the adequate provision by PNG Ports of all relevant information under the Contract and the review of all other relevant considerations under this contract.
PART B  
Changes in calculation of CPI

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:

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

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

PNGCPI\(_{t-2}\) 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:

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

where:

- PNGCPI\(_{(q3, t-3)}\) is the PNGCPI for the Quarter ending on 30 September in Regulatory Year \(t-3\) or calendar year \(t-3\);
- PNGCPI\(_{(q4, t-3)}\) is the PNGCPI for the Quarter ending on 31 December in Regulatory Year \(t-3\) or calendar year \(t-3\);
- 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
- 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_{(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.
SCHEDULE 3 - Minimum Service Standards

PART ONE(1) Minimum Service Standards

A. Infrastructure Minimum Services Standards

1. Wharves must be maintained:
   - in a condition which is suitable for safely berthing a vessel with a minimum size of Length 57m, Beam 9.8m, Draft 3.3m;
   - 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.

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.

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.

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.

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 Services or requiring any other service.

6. Town water must be available to reprovision vessels.

7. Full telecommunications service must be supplied to the port office.

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.

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.
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 system

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:

- increase the likelihood of achieving objectives;
- encourage proactive management;
- be aware of the need to identify and treat risk throughout the organisation;
- improve the identification of opportunities and threats;
- achieve compatible risk management practices between organisations and nations;
- comply with relevant legal and regulatory requirements and international norms;
- improve financial reporting;
- improve governance;
- improve stakeholder confidence and trust;
- establish a reliable basis for decision making and planning;
- improve controls;
- effectively allocate and use resources for risk treatment;
- improve operational effectiveness and efficiency;
- enhance health and safety performance as well as environmental protection;
- improve loss prevention and incident management;
- minimise losses;
- improve organisational learning; and
- 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 (refer appendix 1)
  - 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
  - Safety standards
  - Minimum standards

- **Port development**
  - Vision and strategy
  - Projects in progress
  - Upgrades of port
  - History and heritage information

- **Community and recreation**
  - Community programs and support
  - Community news
  - Community events

- **Fact sheets**
- **Careers and education**
PART TWO (2) Key Performance Indicators.

The key performance indicators shall be incorporated as at 1 January 2016, after the Regulators’ determination in accordance with clause 6.2
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. Ensure that PNG Ports delivers Essential Port Services to the level of reliability as required by Government policy.

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

4. Ensure that PNG Ports has incentives to deliver Essential Port Services at the lowest-possible economically-efficient cost.

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

6. The Regulator will take into consideration new circumstances that are significant and relevant to the Contract, which emerge during the regulatory period, including, but not limited to, the making of new Government Policy or amendment of existing policy and propose amendments to this Contract which it considers to be necessary or desirable to achieve the Objectives of the ICC Act.

7. Have regard to and correct and rectify any errors or omissions and to suit new circumstances and best practice in any matter in the previous determinations of the Contract dated 1 February 2010 to 31 December 2014 and current regulatory contract to be corrected in the following Regulatory Year or regulatory period whichever is relevant.
SCHEDULE 5 - Reporting Framework

PART A:
Financial Performance

Following is the Financial Performance measures that PNGPCL must provide to the Regulator. These are requirements and principles that PNGPCL must follow when preparing and reporting financial information. The following will be reported annually on June 30.

FORM A1
Disaggregated Statement
Profit and Loss Statement for the
For the Period Ended [ ]

<table>
<thead>
<tr>
<th>Account Code or Reference to Account Code</th>
<th>Description</th>
<th>Audited Accounts</th>
<th>Regulated Services</th>
<th>Other Business</th>
<th>Not Allocated</th>
<th>Work-Paper Reference</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Revenue (analysed as appropriate by Discretionary Heading)</td>
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</table>
In addition, it is mandatory to produce for each cost or revenue item that has been allocated to each a supporting work-paper that includes the following:

- **a)** the amounts that have been directly attributed to each regulated business
- **b)** the amounts that have been allocated to each regulated business segment
- **c)** a description of the allocation basis
- **d)** the numeric quantity of each allocator
FORM A2

Essential Port Services and Services provided in Connection to EPS

Following the above, Disaggregation Statement, the table below will provide a further breakdown of Income and Costs for Essential Port Services (EPS) and services provided in connection to the EPS by port.

<table>
<thead>
<tr>
<th>Account Code or Reference to Account Code</th>
<th>Description</th>
<th>Regulated Services</th>
<th>Storage Services</th>
<th>Proprietary Services</th>
<th>Storage Services</th>
<th>Wages &amp; Salaries</th>
<th>Other Expenses</th>
<th>Other Services</th>
<th>Net Income Before Tax</th>
<th>Tax Charge</th>
<th>Profit/(Loss) After Tax</th>
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</table>
FORM A4

Work Paper Reference

Following the above summary Profit and Loss Account by service and by port, a supporting Work paper for each provision carried on a PNGPCL’s Statement of Financial Position will be provide as per the following table:

<table>
<thead>
<tr>
<th>Work paper Supporting Disaggregation Statement</th>
<th>Summary of Provisions</th>
<th>For the Period Ended [ ]</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Essential Ports Services</th>
<th>Services in Connection to EPS</th>
<th>Not Allocated</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at Start of Period</td>
<td>K'000</td>
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<td>K'000</td>
<td>K'000</td>
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<tr>
<td>Amounts set aside to provisions</td>
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<tr>
<td>Expenditure incurred debited to provisions</td>
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<tr>
<td>Amounts written back from provisions</td>
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<tr>
<td>Balance at the End of Period</td>
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</tbody>
</table>

| Comprising:                  |                          |                                |               |       |
| Current Provisions           |                          |                                |               |       |
| Non-current Provisions       |                          |                                |               |       |

| Total per Balance Sheet      |                          |                                |               |       |

In addition, it is mandatory to produce for each cost or revenue item that has been allocated to each service provided a supporting work paper that includes the following:

a) the amounts that have been directly attributed to each EPS and linked Service Provided
b) the amounts that have been allocated to each EPSs and linked service provided
c) a description of the allocation basis

The basis of attribution of provisions to each EPSs or linked services provided should follow the attribution of the expenses to which they relate.

Taxation, interest and dividend provisions should be attributed to the Not Allocated Segment.

Financial Statistics

The following financial performance statistics shall be included in the form of a table in the annual Regulatory Accounting Statements package:
- Average Berth Services Revenue per vessel for the Regulatory Accounting Year, by port
- Average Navigation Services Revenue per vessel for the Regulatory Accounting Year, by port
- Average Costs for Berth Services per vessel for the Regulatory Accounting Year, by port
- Average Costs for Navigation Services Revenue per vessel for the Regulatory Accounting Year, by port
SCHEDULE 6– Mid Term Review

At the mid-term review, the Regulator will review PNG Ports’ spending using the following process:

a) Identify whether PNG Ports has spent 50% of the total forecasted capital expenditure by 30 June 2017. If PNG Ports spent less than 50% of the total forecast capital expenditure, the underspent amount will be removed from the forecast capital expenditure in the building block model.
b) Identify capital projects which have not been carried out and remove these from the RAB.
c) Identify imprudent and inefficient capital spending and remove this from the RAB.
d) Identify capital projects that have been delayed, but are still budgeted.
e) Identify capital projects which have been delivered earlier than planned.
f) Leave capital costs for prudent spending as budgeted even if actual costs were higher or lower.
g) Recalculate RAB for the contract period based upon the actual timing of projects and after removing undelivered projects or imprudent or inefficient spending.
h) Recalculate the return of capital amounts.
i) Identify imprudent and inefficient operational spending and remove this from the revenue requirement.
j) Inflate all costs to 2017 values.
k) Recalculate the Maximum Allowable Revenue for the full five year period.
l) Recalculate the X factor for years 2018 and 2019 so that the NPV of the forecast revenue for the full contract period will be equal to the NPV of the Maximum Allowable Revenue as it would have been assessed using the assessed efficient capital spend.

For the avoidance of doubt:
a) The cost of budgeted capital projects is left unchanged, regardless of whether or not the actual cost of these projects is higher or lower than the amount budgeted.
b) Only capital projects where PNG Ports has either failed to build the proposed infrastructure, or where PNG Ports is determined by the Regulator to have spent capital imprudently and inefficiently, are removed from the Regulated Asset Base.
c) The timing of projects will also be adjusted for, because the Regulator recognises that higher or lower demand may require a change in timing. The Regulator also wishes to allow PNG Ports some flexibility in its capital spending to ensure that PNG Ports can deliver the required service levels specified by the Contract.
d) For the purpose of clarification, the Regulator determines any capital projects which are funded by grants, budgetary subventions will not be included in the RAB and appropriate adjustments will be made to the X factor to fairly reflect the economic benefit of the financial value differential between concessional loans and market priced loans.
PNG Ports will maintain a list of capital assets which are listed in PNG Ports’ asset register but will be excluded from future RAB calculations. This must be provided to the Regulator, upon request.
SCHEDULE 7 – Regulated Services

The Regulated Services include but are not limited to the following services connected to the Essential Port Services:

Part A:

<table>
<thead>
<tr>
<th>Essential Port Services</th>
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<tbody>
<tr>
<td>Wharfage Services</td>
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<tr>
<td>Berthage Services</td>
</tr>
<tr>
<td>Berth Reservation Services</td>
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<tr>
<td>Stevedoring Access Services</td>
</tr>
</tbody>
</table>

Utilities and/or Other Services supplied in connection with Essential Port Services

<table>
<thead>
<tr>
<th>Utilities and/or Other Services supplied in connection with Essential Port Services</th>
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</thead>
<tbody>
<tr>
<td>Storage Services</td>
</tr>
<tr>
<td>Pilotage services</td>
</tr>
<tr>
<td>Mobile Harbour Cranes and Rubber Tyred Gantry services in connection with Stevedoring Access Services</td>
</tr>
<tr>
<td>Gate passes service for all commercial vehicles and Equipment passes.</td>
</tr>
<tr>
<td>Anchorage Services</td>
</tr>
<tr>
<td>Mooring Gang and associate charges</td>
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<tr>
<td>Gangway Hire.</td>
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<tr>
<td>Cleaning of Wharf</td>
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<tr>
<td>Fumigation services.</td>
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<tr>
<td>Provision of Water Services</td>
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<tr>
<td>Provision of Electricity Services</td>
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<tr>
<td>Generator, Casual Labour, Yard Maintenance and Ash Levy Removal Services</td>
</tr>
</tbody>
</table>
Part B:

All other services must be based on rental charging system except the following services.

<table>
<thead>
<tr>
<th>Essential Port Services</th>
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<tbody>
<tr>
<td>Berth Reservation Services</td>
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</table>

<table>
<thead>
<tr>
<th>Utilities and/or Other Services supplied in connection with Essential Port Services</th>
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<tbody>
<tr>
<td>Gate passes service for all commercial vehicles and Equipment passes.</td>
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<tr>
<td>Mooring Gang and associate charges</td>
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<tr>
<td>Cleaning of Wharf</td>
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<tr>
<td>*Provision of Water Services</td>
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<tr>
<td>*Provision of Electricity Services</td>
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</table>

*charges must be consistent with rates approved by the Regulator

Part C:

The charging system for pilotage services shall remain the same as at 2014.
**SCHEDULE 8 – Statutory Declaration**

Part A ĭ Template for Chief Executive Officer or Chief Financial Officer.

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

Note ĭ 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 ŷ Template for External Auditor to be accompanied by the INDEPENDENT AUDIT REPORT.

PAPUA NEW GUINEA

STATUTORY DECLARATION

I, (a)é .. 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 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 Contract 2015-2019. 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

... 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 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):é é é é é é é é é é é é é .

Before me- theé é é é é .. 201é

(d)é é é é é é é é é é é é é ..

(e)é é é é é é é é é é é é é é é é é

(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 i 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.
Executed by the Independent Consumer and Competition Commission

Dr Omuru
Associate Commissioner (Resident)