

PNG PORTS REGULATORY CONTRACT

FOR REGULATORY PERIOD

from

1 January 2025

to

31 December 2029

Table of Contents

1.	General	2
1.1	Definitions	2
1.2	Principles of interpretation	7
1.3	Revoking or altering decisions	8
1.4	Notices	9
1.5	Modification of time periods	9
1.6	Term	9
2.	Tariffs	9
2.1	Maximum tariffs for First Regulatory Year: Supply of Regulated Services	9
2.2	Maximum Tariffs for Subsequent Regulatory Years: Supply of Regulated Services	10
2.3	Annual Regulatory Reporting Requirements	10
2.4	Funding from Third Parties	11
2.5	Introduction for new Levies or Fees	11
2.6	Leisure craft, vessels of primitive build and warships	11
3.	Altering Tariffs	12
3.1	Annual variation	12
3.2	Maximum tariffs	13
3.3	Rebalancing tariffs	13
3.4	Discovered Stevedoring Access Charge	14
4.	Regulated Pass Through	14
4.1	Force Majeure Event Pass Through	14
4.2	Tax Pass Through	17
4.3	Harbours Licence Pass Through	20
5.	Service Standards, Key Performance Indicators, Compliance and Enforcement	23
5.1	Minimum Service Standards	23
5.2	Minimum Service Standards Price Discounts	24
5.3	Key Performance Indicators	26
5.4	Dispute Resolution Process between PNG Ports and Customers or Stevedores	26
5.5	Reporting on and managing cross subsidies between declared ports	26
6.	Regulatory and Statutory Accounts	27
7.	Competition Policy	27
7.1	Ring Fencing	27
7.2	Strategic Capital Plan	28
7.3	Stevedoring Access	29

7.4	Review of competition in the market	29
8.	Obligation to Supply Regulated Services	30
8.1	Approved Port Closure	30
8.2	Forced Port Closure	32
9.	Non Discrimination	32
10.	Subsequent Regulatory Contract	33
10.1	Process for issuance of the Subsequent Regulatory Contract	33
10.2	Cost of Funding Subsequent Regulatory Contract	35
10.3	Regulatory Process for Issuance of the Subsequent Regulatory Contract	35
11.	Information and Documents	36
12.	Confidentiality	36
13.	Amendment of Regulatory Contract	37
13.1	Agreed Amendments	37
13.2	Amendments made by virtue of the operation of the Independent Consumer and Competition Commission Act 2002	37
14.	Termination of Regulatory Contract	37
14.1	Termination	37
14.2	Termination by virtue of the operation of the Independent Consumer and Competition Commission Act 2002	38
14.3	Termination of specific clauses by agreement.	38
	SCHEDULE 1A – Maximum Tariffs for First Regulatory Year	39
	SCHEDULE 2 – Tariff Formulae	43
	SCHEDULE 3 - Minimum Service Standards	48
	SCHEDULE 4 - Regulatory Principles	53
	SCHEDULE 5 – Regulatory Accounts	54
	SCHEDULE 6 – Dispute Resolution Process	58
	SCHEDULE 7 – Building block forecasts	60
	SCHEDULE 8 – Recovery of Capital Costs	61
	SCHEDULE 9 – Components of the Strategic Plan	62

Parties	
1.	PNG PORTS CORPORATION Limited (company number 1-46339) ("PNG Ports").
2.	The Independent Consumer and Competition Commission , a body corporate established under the <i>Independent Consumer and Competition Commission Act 2002</i> (the "Regulator").
Recitals	
A	PNG Ports has been declared by the Minister to be a regulated entity under section 32 of the <i>Independent Consumer and Competition Commission Act 2002</i> (the "ICCC Act").
B	The Supply of Regulated Services, the subject of this Contract, have been declared by the Minister to be Regulated Services under section 32 of the <i>ICCC Act</i> .
C	PNG Ports is licensed under the <i>Harbours Act Chapter 240</i> (the "Harbours Act") to provide port facilities for loading and unloading vessels at a Declared Port and to provide berths and berth reservation services for vessels at a Declared Port.
D	PNG Ports and the Regulator intend for this Contract to replace the previous Regulatory Contract and to apply on and from the commencement date.
E	This Contract regulates the prices that PNG Ports may charge for the supply of the Regulated Services.
F	This Contract is a Regulatory Contract that is binding on PNG Ports and the Regulator pursuant to the provisions of the <i>ICCC Act</i> and the <i>Harbours Act</i> .

It is agreed as follows;

1. General

1.1 Definitions

Agency refers to an Government Agency or Instrumentality, Department or a Statutory Authority.

Approved FM Pass Through Amount has the meaning given to it in clause 4.1(e)(ii).

Approved Harbours Licence Pass Through Amount has the meaning given to it in clause 4.3(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 8.1

Approved Tax Pass Through Amount has the meaning given to it in clause 4.2(c)(ii).

Approved Annual Plan refers to the annual plan of PNG Ports as approved by the Kumul Consolidated Holdings Limited pursuant to Section 46E of the *Kumul Consolidated Holdings Authorisation Act*.

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 and includes working days.

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

- a) the expenditure relates to the purchase, development or construction of a new non-current asset of PNG Ports;
- b) the expenditure will increase the capacity or functionality of PNG Ports' non-current assets;
- c) the expenditure will significantly reduce the ongoing maintenance of PNG Ports' non-current assets;
- d) the expenditure will extend the service life of PNG Ports' non-current assets beyond that expected when the assets were originally installed;
- e) the expenditure will increase the efficiency, accessibility and/or reliability of Regulated Services provided by PNG Ports or port access seekers;
- f) the expenditure will lead to an outcome that is consistent with the Regulator's objectives under the *ICCC Act*

and PNG Ports has contracted unconditionally to undertake.

Commencement Date means 1 January 2025.

Contract means this PNG Ports Regulatory Contract.

Customer means a person to whom Regulated Services are supplied by PNG Ports or a person who is seeking to have Regulated Services supplied to by PNG Ports.

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 5.2(b)

Discovered Stevedoring Access Charge means a payment received by PNG Ports for Stevedoring access that was not recognised as a stevedoring access charge prior to 31st October 2024, but subsequently gets redefined as a stevedoring access charge during the regulatory contract period.

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

First Regulatory Year means the period from the commencement date to 31 December 2025 (both dates inclusive).

FM Pass Through Amount has the meaning given to it in clause 4.1(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 a Regulated 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 4.1(b)(ii).

Force Majeure Event Notice means a notice given to the Regulator by PNG Ports under clause 4.1(b)(i).

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 4.3(a).

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

Minister means the Minister responsible for the *ICCC Act*.

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

Negative Tax Pass Through Amount has the meaning given to it in clause 4.2(e).

Non-Regulated Service refers to a service other than a Regulated Service.

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 4.1(a) or by the Regulator under clause 4.1(e), as appropriate):

- a) in supplying a Regulated Service; and
- b) in complying with the provisions of any legislation, or of any codes or guidelines made or published by the Regulator under the *ICCC 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_t) calculated as follows:

$$PHL_t = LF_t - K420,000 \times \left(\frac{PNGCPI_{t-1}}{PNGCPI_{2025}} \right)$$

where:

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

PNGCPI_{t-1} is the Adjusted PNGCPI for the 12 month period ending 30 June in Regulatory Year_{t-1} and is calculated in accordance with Part 4 of Schedule 2; and

PNG CPI₂₀₂₅ is the Adjusted PNGCPI for the 12 month period ending 30 June 2025 and is calculated in accordance with Part 4 of Schedule 2.

Permitted Tax Pass Through Amount, in respect of a Tax Change Event, means the increase in costs that PNG Ports has incurred or is likely to incur over the term of this Contract (as calculated by PNG Ports under clause 4.2(a) or by the Regulator under clause 4.2(c), as appropriate) in supplying a Regulated Service as a result of the occurrence of the Tax Change Event.

PNG Ports means PNG Ports Corporation Ltd (company number 1-46339), or its successors in law, 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 to be used in connection with the provision of Regulated Services; and
- b) all assets which PNG Ports has contractually undertaken to acquire in Papua New Guinea and which are intended to be used in connection with the provision of Regulated Services.

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 4.2(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 Accounts means the information provided in accordance with Table 5 of Schedule 5.

Regulatory Principles means the principles set out in Schedule 4.

Regulated Services means the essential port services declared under the Harbours Act and includes any services that are supplied in connection to these essential services.

Regulatory Year means the first regulatory year or if not the first regulatory year, 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, or by any Provincial or Local level Government or any other local authority;
- 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 clause (a) to (f),

(except where any such Tax referred to in (a) to (h) above is applied only to PNG Ports or is applied to PNG Ports in a discriminatory way).

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

Required Harbours Licence Pass Through Amount has the meaning given to it in clause 4.3(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 4.2(e)) in supplying a Regulated 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 5.1(b).

Stevedoring Access means the right of stevedores to enter upon the port and associated facilities operated by PNG Ports for the purposes of loading and unloading ships and other vessels and moving these cargos to a stacking area. This does not include the right to move cargo directly between ships and other vessels and, does not include the right to move cargo between stacking areas, or to store, sort, stack or deliver cargo 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.

Subsequent Regulatory Period means the regulatory period determined by the Regulator from 2030 onwards.

Subsidiary has the meaning given in the *Companies Act 1997*.

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

Tax Change Event means:

- a) a change in (or change in application or official interpretation of) a Relevant Tax or the way in which a Relevant Tax is calculated;
- b) the removal of a Relevant Tax; or
- c) the imposition of a Relevant Tax,

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

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

Vessel means a ship, boat or other vessels 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, such services include but are not limited to, Gate passes, Cleaning of wharf, Yard maintenance, Ash levy removal, Casual labour pool maintenance, Commercial vehicle and tourist bus passes, Stevedoring tonnage fee, 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 in which PNG Ports receives monies or receives applications for gate passes and issues gate passes, that facilitate customers to receive cargo by PNG Ports, the delivery and removal of cargo at the gate, and includes days 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) words denoting persons include corporations, unincorporated associations, firms, governments and any governmental agencies;
 - (ii) a reference to a person includes a person's agents, successors and permitted assigns, persons who have control over any assets of a person and receivers, managers, trustees, administrators and liquidators and similar persons appointed over:
 - (A) a person; or
 - (B) any assets of a person;
 - (iii) headings are only included for convenience and do not affect the interpretation of this Contract;
 - (iv) a reference to a clause or Schedule is a reference to a clause or Schedule in this Contract;
 - (v) a reference to an agreement, document or regulatory instrument (including this Contract) is a reference to that agreement, document or regulatory instrument as varied, notated or replaced from time to time (whether or not the parties thereto remain the same);
 - (vi) a reference to legislation is a reference to legislation in force in Papua New Guinea; and
 - (vii) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- b) All calculations made under or for the purposes of this Contract must be rounded to four significant digits.

- c) When a calculation is required under this Contract:
 - (i) Regulatory Year “t”, Current Regulatory Year “t” or calendar year “t” is the Regulatory Year, Current Regulatory Year or calendar year (as the case may be) in respect of which the calculation is being made;
 - (ii) Regulatory Year “t-1”, Preceding Regulatory Year “t-1” or calendar year “t-1” is the Regulatory Year, Preceding Regulatory Year or calendar year (as the case may be) immediately preceding Regulatory Year “t”, Subsequent Regulatory Year “t” or calendar year “t”; and
 - (iii) Regulatory Year “t-2”, Preceding 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”, Preceding Regulatory Year “t-1” or calendar year “t-1”.

1.3 Revoking or altering decisions

- a) If the Regulator has made a decision under this Contract and later concludes that the decision was made on the basis of information provided to the Regulator that was false or misleading in a material particular, then subject to clause 1.3(b), the Regulator may revoke the decision and make a new decision in substitution for the revoked decision.
- b) Before the Regulator revokes and substitutes a decision pursuant to clause 1.3(a) the Regulator must first:
 - (i) notify PNG Ports of the proposed revocation and of the proposed new decision (including the proposed date of effect of the revocation and new decision), and allow PNG Ports a reasonable opportunity to make submissions to the Regulator regarding the proposed revocation and the proposed new decision (including submissions as to whether the original decision was based on information that was false or misleading in a material particular); and
 - (ii) take into account any matters contained in a submission made by PNG Ports pursuant to sub-clause (i).
- c) A new decision made under clause 1.3(a) applies from:
 - (i) if notice of the new decision is required to be published under clause 1.4(a)(ii) – the later of the date on which that notice is so published and any date specified by the Regulator in that notice as the date from which the new decision is to apply; and
 - (ii) if notice of the new decision is not required to be published under clause 1.4(a)(ii) - the later of the date the new decision is made and any date specified by the Regulator in making that new decision as the date from which the new decision is to apply.
- d) A new decision made under clause 1.3(a) must only differ from the revoked decision to the extent necessary to correct for:

- (i) the false or misleading information on which the revoked decision was based; and
- (ii) the application of the revoked decision during the period in respect of which that decision was in effect.

1.4 Notices

- a) The Regulator must ensure that a notice of each decision made by the Regulator under this Contract (other than a decision made pursuant to clause 1.5) is:
 - (i) sent to the Ministers responsible for the *Harbours Act* and the *ICCC Act*;
 - (ii) published in the National Gazette and a newspaper circulating nationally; and
 - (iii) sent to PNG Ports.
- b) The Regulator must ensure that a copy of each decision made by the Regulator under this Contract, together with a copy of its reasons for that decision, is:
 - (i) sent to the Ministers responsible for the *Harbours Act* and the *ICCC Act*;
 - (ii) sent to PNG Ports; and
 - (iii) made available to the members of the public.

1.5 Modification of time periods

- (a) The Regulator or PNG Ports may, after written request by the other party, agree to extend, by written notice to the other party:
 - (i) the time by which a thing required to be done by PNG Ports or the Regulator must be done; or
 - (ii) the period within which a thing required to be done by PNG Ports or the Regulator must be done.
- (b) Agreement to the written request by either PNG Ports or the Regulator under clause 1.5 (a) must not be unreasonably withheld.

1.6 Term

The term of this Contract commences on the commencement date and ends on 31 December 2029 (both dates inclusive).

2. Tariffs

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

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

- b) In so far as the supply of Regulated Services during the First Regulatory Year is concerned, PNG Ports must not charge a Customer more than the tariff amount as set out in Schedule 1, plus the amount of any Goods and Services Tax (GST) payable by PNG Ports in relation to that supply of Regulated Services.
- c) PNG Ports must not charge a tariff for the supply of Regulated Service during the First Regulatory Year that is not set out in Schedule 1, and the tariffs set out in Schedule 1 cannot be varied for the First Regulatory Year (save that PNG Ports may allow any Customer a discount to such a tariff).
- d) Nothing in this clause 2.1 affects the operation of clauses 4 and 14.

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

- a) PNG Ports may, in accordance with this clause 2.2 and clause 3, change the tariffs it charges for the supply of a Regulated Service during a Subsequent Regulatory Year to any Customer. For the avoidance of doubt, except as provided in clauses 2.2(c), 4, 5, 6, 7, 8 or 13, PNG Ports may not change an existing tariff, cease to offer an existing tariff or introduce a new tariff for such supply of a Regulated Service otherwise than in accordance with the procedure set out in clause 3.
- b) The tariffs for the supply of Regulated Services in a Subsequent Regulatory Year *t* that are provided to the Regulator by PNG Ports pursuant to clause 3.1(a) must be calculated according to the calculations in Schedule 2. The calculations described in Schedule 2 are the maximum amounts that PNG Ports may charge in any subsequent year.
- c) In so far as the supply of a Regulated Service during a Subsequent Regulatory Year *t* is concerned, and subject to clauses 3, 4, 5, 6, 7, 8 and 13 PNG Ports must not charge a Customer more, for a tariff for the supply of a Regulated Service *i* for the Declared Port or group of Declared Ports *j* (as defined in Schedule 1), during Subsequent Regulatory Year *t*, than the amounts calculated in accordance with Schedule 2.
- d) The tariffs for the supply of Regulated Services that are set out in the statement for the Declared Port or group of Declared Ports *j* (as defined in Schedule 1), for that Subsequent Regulatory Year *t* that are provided to the Regulator by PNG Ports pursuant to clause 3.1(a) must be consistent with the requirements of clause 2.2(c).

2.3 Annual Regulatory Reporting Requirements

- a) PNG Ports must provide information to the Regulator using the Reporting Templates as set out in Schedule 5.
- b) PNG Ports must provide to the Regulator the information referred to under clause 2.3 (a) for each calendar year by 30 June of the following year.
- c) The information contained in the Reporting Templates set out in Schedule 5 will be also taken into consideration by the Regulator when determining the prices for Regulated Services for Subsequent Regulatory Years.

- d) PNG Ports must report to the Regulator annually on the performance of the port terminal operator of any of its Declared Ports in relation to the agreed Performance Monitoring and Reporting Framework within three months of the reporting period.

2.4 Funding from Third Parties

- a) Any assets acquired or capital projects carried out using funds from third parties in the form of gifts, donations, funded by the Government of Papua New Guinea or other parties, ('funding from third parties') and not repayable by PNG Ports must be identified separately in PNG Ports' asset register. For the purposes of clarity funding from third parties means that the third party has gifted, donated or made available funding which does not need to be paid back by PNG Ports.
- b) The portion of any assets acquired or capital projects carried out using funds as described in clause 2.4(a) will not be considered to be part of PNG Ports' Capital Expenditure.
- c) When the Regulator is required to set tariffs for Regulated Services for PNG Ports for the beginning of the next regulatory period commencing from 1 January 2030, the portion of any assets or capital spending which were funded using funds as described in clause 2.4(a) will be excluded from the Regulatory Asset Base and PNG Ports will not be entitled to a return on these portions of assets or to recover depreciation on these portions of assets through tariffs for Regulated Services.
- 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.

2.5 Introduction for new Levies or Fees

- a) The principles for introducing new fees and levies are as follows:
 - (i) When a service is tied to a regulated service, then PNG Ports must get the Regulator's approval before introducing any charge for the service.
 - (ii) When a service utilises regulated assets PNG Ports must consult with the Regulator before introducing new charges.
 - (iii) When PNG Ports introduces charges for services which it can only provide because of its position as the operator of a declared port, then PNG Ports must consult with the Regulator before introducing new charges.

2.6 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 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.

3. Altering Tariffs

3.1 Annual variation

- a) PNG Ports must, for each Subsequent Regulatory Year, give the Regulator a Statement in accordance with clause 3.1(b) that:
 - (i) sets out PNG Ports' proposed tariffs for the supply of Regulated Services for the Declared Port or group of Declared Ports j (as defined in Schedule 1), for that Subsequent Regulatory Year; and
 - (ii) demonstrates compliance of those proposed tariffs with the relevant requirements set out in clause 2.2 and Schedule 2.
- b) A statement referred to in clause 3.1(a) must be given to the Regulator by the last day in September of the Regulatory Year immediately preceding the relevant Subsequent Regulatory Year.
- c) The Regulator must not approve a statement given by PNG Ports under clause 3.1(a) if the statement does not demonstrate compliance of the proposed tariffs with the relevant requirements set out in clause 2.2 and Schedule 2.
- d) The Regulator must approve a statement given by PNG Ports under clause 3.1(a) if the statement demonstrates compliance of the proposed tariffs with the relevant requirements set out in clause 2.2 and Schedule 2.
- e) If the Regulator does not notify PNG Ports of the Regulator's decision regarding a statement given by PNG Ports under clause 3.1(a) by the last day in November of the Regulatory Year immediately preceding the relevant Subsequent Regulatory Year, the Regulator is deemed to have approved the statement with effect from that day.
- f) The tariffs in any statement given by PNG Ports under clause 3.1(a), being a statement, which is approved or deemed to have been approved by the Regulator, apply from the later of:
 - (i) the date on which the Regulator approves or is deemed to have approved the statement; and
 - (ii) the start of the Subsequent Regulatory Year in respect of which the tariffs are to apply.
- g) If PNG Ports does not provide a statement to the Regulator as required by and in accordance with clause 3.1(a), or such a statement is provided but (by the last day in November of the Regulatory Year immediately preceding the relevant Subsequent Regulatory Year) the Regulator notifies PNG Ports of the Regulator's decision not to approve that statement, then the Regulator may reset the relevant tariffs for the Declared Port or group of Declared Ports j (as defined in Schedule 1), for the relevant Subsequent Regulatory Year in a manner in which the Regulator could have approved the tariffs if they were included in a statement given by PNG Ports in accordance with clause 3.1(a). The Regulator must notify PNG Ports in writing of the tariffs so set by the Regulator. The tariffs set by the Regulator apply from the later of:

- (i) the date on which the Regulator notifies PNG Ports of the tariffs; or
- (ii) the start of the Subsequent Regulatory Year in respect of which the tariffs are to apply.

3.2 Maximum tariffs

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

3.3 Rebalancing tariffs

- a) Where PNG Ports forms the view that a change in tariffs is necessary to better achieve the objectives of the Regulator under the ICCA Act, with respect to the provision of Regulated Services, it may submit to the Regulator a proposal to rebalance tariffs either between declared ports or between tariff categories or both, in accordance with the process outlined in clause 2.2 and this clause 3 and the requirements of Schedule 2.
- b) Subject to clause 3.3(c), if the Regulator forms the view that a proposal by PNG Ports to rebalance tariffs would better achieve the objectives of the Regulator under the ICCA Act, with respect to the provision of Regulated Services, it may approve PNG Ports' application to rebalance tariffs.
- c) PNG Ports must provide the Regulator with information to enable the Regulator to assess whether the proposed rebalancing of tariffs would better achieve the objectives of the Regulator under the ICCA Act. This should include but not be limited to PNG Ports demonstrating that it has had regard to the impact of the proposed rebalancing on economic efficiency and the impact on customers. The deadline to submit a proposal to rebalance tariffs under clause 3.3(a) and approve a proposal under clause 3.3(b) is as follows:
 - (i) PNG Ports may submit a proposal to rebalance tariffs to the Regulator by the last day in September prior to the new annual tariffs taking effect. A submission must include complete information necessary for the Regulator to adequately assess the proposal in accordance with clause 3.3(a) and 3.3(b). If no submission is received by the Regulator by this time it will be deemed that the existing tariffs adjusted as per Schedule 2 will apply.
 - (ii) The Regulator may approve, request amendment, or reject a proposal before the last day in November. If no decision is supplied by this time and the proposal is compliant with the requirements of Schedule 2 it will be deemed to be approved.

3.4 Discovered Stevedoring Access Charge

- a) If during the regulatory period a Discovered Stevedoring Access Charge is found as defined in clause 1.1, then the ICCC shall adjust PNG Ports price as described in Schedule 1B.
- b) The new prices that will apply after this adjustment will apply from the 1st of the month of the beginning of following regulatory year.

4. Regulated Pass Through

4.1 Force Majeure Event Pass Through

Application by PNG Ports

- a) If a Force Majeure Event occurs, PNG Ports shall seek the Regulator's approval to charge Customers, in addition to the tariffs that PNG Ports is otherwise permitted to charge for the supply of Regulated Services pursuant to clauses 2 and 3, an amount (**FM Pass Through Amount**) that is not greater than the Permitted FM Pass Through Amount (as calculated by PNG Ports) in respect of that Force Majeure Event as at the date of the Force Majeure Event Claim (if any) given to the Regulator pursuant to clause 4.1(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 4.1(a), PNG Ports must give to the Regulator:
 - (i) a Force Majeure Event Notice pursuant to clause 4.1(c) within 3 months of the Force Majeure Event occurring; and
 - (ii) a Force Majeure Event Claim pursuant to clause 4.1(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 clause 4.1(d)(iii).

Approval by Regulator

- e) If the Regulator receives a Force Majeure Event Claim under clause 4.1(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 4.1(e) within 20 working days of receiving:

- (i) a Force Majeure Event Claim from PNG Ports under clause 4.1(d); and
- (ii) such evidence of the increase in costs referred to in clause 4.1(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 4.1(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 4.1(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 4.1 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 4.1; and
- (viii) any other factors the Regulator considers relevant.

Application of Approved FM Pass Through Amount

- h) PNG Ports may, after:
 - (i) receipt or deemed receipt of a notice under clause 4.1(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:
- (i) shown on the bill of each affected Customer; or
 - (ii) otherwise notified to such Customers in a manner approved by the Regulator.

Relevance of Approved FM Pass Through Amount

- j) An Approved FM Pass Through Amount applied by PNG Ports under this clause 4.1 is not to be taken into account in the application of clauses 2 and 3.

4.2 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 4.2(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 clause 4.2 (b)(iii).
- c) If the Regulator receives a statement under clause 4.2(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 4.2(c) within 20 Business Days of receiving:
- (i) a statement from PNG Ports under clause 4.2(b); and
 - (ii) such evidence of the actual and likely increase in costs referred to in clause 4.2(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 4.2(e).

Relevant Factors

- g) In making a decision under clause 4.2(c) or 4.2(e), the Regulator must (in the case of a decision under clause 4.2(c)) take into account the matters and proposals set out in PNG Ports' statement and:
- (i) in the case of a decision under clause 4.2(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 4.2(b)(iii); and
 - (ii) in the case of a decision under clause 4.2(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 4.2 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 4.2;
- (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 4.2 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 4.2(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 4.2(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.

4.3 Harbours Licence Pass Through

- a) Subject to clause 4.3(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 4.3(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 clause 4.3 (b)(ii).

- c) If the Regulator receives a statement under clause 4.3(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 4.3(c) within 20 Business Days of receiving:

- (i) a statement from PNG Ports under clause 4.3(b); and
- (ii) such evidence of the payments referred to in clause 4.3(b)(ii) as is required by the Regulator,

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

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

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

- f) If the Regulator requires PNG Ports to pass through to Customers or otherwise apply for the benefit of Customers or potential Customers, a Permitted Harbours Licence Pass Through Amount as referred to in clause 4.3(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 4.3(f).
- h) PNG Ports may, after:
 - (i) receipt or deemed receipt of a notice under clause 4.3(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 4.3(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.

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

5.1 Minimum Service Standards

- a) PNG Ports must ensure that the Minimum Service Standards specified in Schedule 3, including the minimum wharf standards and the other minimum service standards, are satisfied in respect of each declared port at all times.
- b) Subject to clause 5.1(h), PNG Ports must submit to the Regulator no later than 1st March each regulatory year, a Minimum Service Standards report that demonstrates PNG Ports' compliance with Clause 5.1(a) and contains evidence of that compliance. The Minimum Service Standards report must be in such form (if any) as is required by the Regulator.
- c) The Regulator may at any time audit PNG Ports' compliance with clause 5.1(a). Without limiting the steps which the Regulator may take when conducting such an audit, the Regulator may:
 - (i) require PNG Ports to provide information relevant to its compliance with the Minimum Service Standards in Schedule 3; and
 - (ii) inspect any assets, premises, property or records of PNG Ports relevant to its compliance with Schedule 3.
- d) The Regulator must notify PNG Ports within 10 business days of commencing an audit under clause 5.1(c).
- e) The Regulator may give written notice to PNG Ports that it requires the appointment of an appropriately qualified independent consultant to conduct an audit and verification of the Minimum Service Standards report by PNG Ports, for each Declared Port. As soon as possible, and after consulting with PNG Ports, the Regulator must appoint an appropriately qualified consultant to report to the Regulator and PNG Ports within three months as to:
 - (i) whether PNG Ports is in compliance with clause 5.1(a);
 - (ii) if PNG Ports is not in compliance with clause 5.1(a), the relevant Minimum Service Standards that have not been complied with and the nature and extent of the non-compliance.
- f) The Regulator must not exercise its power under clause 5.1(c) or 5.1(e) more than once per calendar year.
- g) The reasonable cost of the consultant appointed in clause 5.1(e) shall be met by PNG Ports.
- h) The Minimum Service Standards report shall provide details and evidence of PNG Ports' compliance or otherwise with the Minimum Service Standards specified in Schedule 3 for the relevant Regulatory Year. If PNG Ports is not in compliance with any element of Schedule 3, the Minimum Service Standards report must provide details of PNG Ports' explanations and reasons for any failure to achieve those Minimum Service Standards, and details of how PNG Ports intends to improve its

performance so as to achieve the relevant Minimum Service Standards for the Subsequent Regulatory Year.

- i) PNG Ports must, at its expense provide the consultant appointed under clause 5.1(e) and the Regulator with such access to PNG Ports' assets, premises, property, records, employees and contractors as the consultant or the Regulator requires for the purpose of this clause 5.
- j) PNG Ports must provide to the Regulator within the time specified by the Regulator, any additional information and documents that the Regulator requires in connection with Schedule 3.
- k) The Regulator shall publish the Minimum Service Standards report in clause 5.1(b) subject to any confidentiality assessment under the *ICCC Act*.
- l) The Regulator, after considering:
 - (i) the service standards report submitted by PNG Ports to the Regulator in accordance with clause 5.1(b); or
 - (ii) any report provided in accordance with clause 5.1(e) by a consultant (if any) appointed pursuant to that clause; and any further information obtained by the Regulator pursuant to clauses 5.1(c) or (i) or otherwise, or
 - (iii) information provided to the ICCC by Port Users or
 - (iv) other information available to the ICCC

must determine whether or not PNG Ports is in compliance with clause 5.1(a) and must give PNG Ports a Compliance Notice informing PNG Ports of that determination as soon as practicable after making its determination. If the Regulator has determined that PNG Ports is not in compliance with clause 5.1(a), the Regulator must specify in its Compliance Notice the relevant Minimum Service Standards that have not been complied with and must provide details of the non-compliance, including the Declared Port at which the Minimum Service Standards have not been satisfied. The Regulator shall publish the Compliance notice generally.

5.2 Minimum Service Standards Price Discounts

- a) If the Regulator gives PNG Ports a Compliance Notice in accordance with clause 5.1 stating that PNG Ports is not in compliance with clause 5.1(a), the Regulator may give PNG Ports a Remedial Notice requiring PNG Ports to remedy the non-compliance with clause 5.1(a) within a reasonable period specified by the Regulator in the notice.
- b) If PNG Ports fails to:
 - (i) remedy its non-compliance with clause 5.1(a) within the period specified in a Remedial Notice; and
 - (ii) provide the Regulator with evidence to the satisfaction of the Regulator demonstrating PNG Ports' compliance with clause 5.1(a), within the period

specified in a Remedial 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 the Declared Port at which the Minimum Service Standards have not been satisfied. A separate Default Notice must be issued for each Declared Port.

- c) From the day immediately following the day on which PNG Ports receives a Default Notice in accordance with clause 5.2(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 5.1(a), the maximum amount that PNG Ports may charge for the supply of a Regulated Service at the relevant Port the subject of the Default Notice is an amount equal to 80% of the price determined in accordance with clause 2.2(c) and approved, deemed to be approved or set by the Regulator pursuant to clause 3.1 for the declared port or group of declared ports j (as defined in the Schedule 1), for each regulatory year during which the Default Notice remains on foot.
- d) For the avoidance of doubt Clause 5.2(a) does not apply in respect of the Key Performance Indicators in Schedule 3.
- e) PNG Ports may at any time after service of the Default Notice take steps to rectify its non-compliance and notify the Regulator that it considers that it is in compliance with Schedule 3(a) and 3(b).
- f) Within 20 business days of receiving such a compliance report from PNG Ports under clause 5.2(c) from PNG Ports, the Regulator must notify PNG Ports in writing whether or not the Regulator is satisfied that PNG Ports is in compliance with the service standards, and
- g) For the avoidance of doubt:
 - (i) a reduction in a maximum amount that may be charged by PNG Ports for the supply of a Regulated Service during Regulatory Year t as a result of clause 5.2(a) is not to be taken into account in any calculation made under clause 2.2(b) or (c), whether during that Regulatory Year t or during any subsequent Regulatory Year; and
 - (ii) if a Default Notice is given in Regulatory Year t and the Regulator has not notified PNG Ports that the Regulator is satisfied that PNG Ports is in compliance with clause 5.1(a) by the commencement of Regulatory Year t+1 or any Subsequent Regulatory Year, then from the commencement of that Regulatory Year t+1 (and each Subsequent Regulatory Year) the maximum amount that PNG Ports may charge for the supply of a Regulated Service i at the Declared Port specified in that Default Notice becomes an amount equal to 80% of the new tariff calculated for the Declared Port or group of Declared Ports j (as defined in Schedule 1), for Regulatory Year t+1 (or the Subsequent Regulatory Year, as the case may be) in accordance with

clause 2.2(c) and approved, deemed to be approved or set by the Regulator (as the case may be) pursuant to clause 3.1.

5.3 Key Performance Indicators

PNG Ports shall report to the Regulator at the same time it provides its Minimum Service Standards Report on its performance against the Key Performance Indicators outlined in Schedule 3.

5.4 Dispute Resolution Process between PNG Ports and Customers or Stevedores

- a) The Dispute Resolution Process between PNG Ports and Customers or Stevedores shall be as follows:
 - i). In the event of a dispute (Dispute) between PNG Ports and a Customer or Stevedore or other port user (in this Clause 5.4, each a party), relating to the provision, or proposed provision, of Regulated Services provided by PNG Ports, each party shall use its best endeavours to resolve the Dispute in accordance with the dispute resolution process set out in Schedule 6.
 - ii). A party to the Dispute may give the other party a notice in writing (Dispute Notice) specifying the nature of the Dispute and requiring the Dispute to be dealt with in the manner set out in Schedule 6.
 - iii). The parties to the Dispute must use reasonable endeavours acting in good faith to settle the Dispute as soon as is practicable.
- b) Schedule 6 may be varied from time to time in accordance with the following process:
 - i). PNG Ports may make a proposal to the Regulator to vary the approved Dispute Resolution process. The Regulator may also notify PNG Ports of its intention to vary the Dispute Resolution process
 - ii). Any proposal from either PNG Ports or the Regulator must set out the nature of the proposed changes and the reasons for the changes.
 - iii). The Regulator will decide whether to approve the proposed variation to the approved Dispute Resolution process.
 - iv). If the Regulator proposes to make a decision on the proposed variation, it must consult with PNG Ports prior to making its final decision.
 - v). If the Regulator fails to make a decision within two (2) months on whether to approve PNG Ports' proposed variation to the approved Dispute Resolution process, then the proposed Dispute Resolution will be deemed to be approved.

5.5 Reporting on and managing cross subsidies between declared ports

- (a) PNG Ports shall endeavour to provide reports and other information to the Regulator concerning the profitability of individual declared ports, which may include information on the nature and level of cross subsidies between ports.
- (b) Information on the revenue and costs of individual declared ports shall be reported annually in accordance with Table 1 and Table 5 of Schedule 5 and in compliance with Clause 2.3. Any other reports and information referred to in clause 5.5(a) may be provided at such time and in such form decided by PNG Ports.

6. Regulatory and Statutory Accounts

- (a) Where the Regulator reasonably believes the information held by PNG Ports will assist in the performance of the Regulator, the Regulator may request PNG Ports to submit to the Regulator in accordance with this clause, within a reasonable period as determined by the Regulator, all of its respective unaudited and audited financial statements in respect of its regulatory and statutory accounts.
- (b) All regulatory and statutory accounts submitted to the Regulator shall 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, a professional auditor is required to be a registered company auditor as defined under the *Accountants Act 1996*.
- (c) The professional auditor must certify that the regulatory accounts 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 professional auditor must certify that the regulatory accounts 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 for audit, the professional auditor must certify that the statutory accounts are consistent with generally accepted accounting principles and proper accounting records.
- (f) The reasonable cost of the professional auditor in compliance with clause 8 shall be borne by PNG Ports.

7. Competition Policy

7.1 Ring Fencing

- a) If the Regulator, after making appropriate investigations consistent with the competitive market conduct provisions in the ICC Act, decides that it is necessary or desirable to do so in order to promote competition in a market for Contestable Services, it may make a recommendation to the Minister that PNG Ports should separate its Regulated Services business from a Contestable Services business or businesses operated by PNG Ports or Relevant Interest Holder in PNG Ports.
- b) PNG Ports shall provide to the Regulator a description of any new non-regulated service it intends to provide in connection with a Regulated Service, 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 provided in Table 6 of Schedule 5 required by the Regulator by 30th June of each Regulatory Year.

- 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) Without limiting what may be required by the Regulator under clause 7.1, the Regulator may require:
 - (i) that PNG Ports shall not provide non-regulated services (although a Relevant Interest Holder in PNG Ports or a Subsidiary of PNG Ports shall 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 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.

7.2 Strategic Capital Plan

- a) For the Subsequent Regulatory Years' tariffs to be approved, the Regulator must be provided by PNG Ports with a Strategic Capital Plan for Subsequent Regulatory Years' by 30 October 2026.
- b) The components to be included in the strategic plan are listed in Schedule 9 of this contract.
- c) Should the Strategic Capital Plan not be provided in accordance with clause 7.1(c) by 30 October 2026, the Regulator will deem that PNG Ports is in breach of the Contract and will not approve the subsequent annual tariffs and may issue an order consistent with Section 38 of the ICCA Act.

7.3 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 for Stevedoring Access facilities, PNG Ports shall charge such amount for Stevedoring Access as the Regulator determines to be fair and reasonable.
- c) PNG Ports shall assist the Regulator by providing the information requested by the Regulator to determine the fair and reasonable charge for Stevedoring Access.

7.4 Review of competition in the market

- (a) PNG Ports may submit to the Regulator a written statement which makes an assessment of the need for and extent of regulation for the provision of ports infrastructure services in PNG.
- (b) The submission referred to under clause 7.3 (a) must be given by PNG Ports to the Regulator by 30 April 2027.
- (c) The Regulator may consider the appointment of an appropriately qualified independent consultant to review the PNG Ports' submissions and provide a report to the Commission by the 30 July 2027. The reasonable cost of this consultant shall be borne by PNG Ports.
- (d) After considering:
 - (i) the submission made by PNG Ports;
 - (ii) any report provided by the Consultant appointed under clause 7.3(c).
 - (iii) any submissions made by any other person in relation to the review; and
 - (iv) 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:
 - (v) 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
 - (vi) 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*).
- (e) 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; and
 - (vi) any other factors the Regulator considers to be relevant.
- (f) The Regulator must publish the draft report referred to in clause 7.3(e) by 30 August 2027.
- (g) Submissions to the draft report must be given to the Regulator by 30 September 2027.
- (h) 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*).
- (i) The final report referred to in clause 7.3(h) must be published by 30 October 2027.

8. Obligation to Supply Regulated Services

8.1 Approved Port Closure

- a) Subject to clause 8.1(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;
 - (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 8.1(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 8.1(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;
 - (ii) may require PNG Ports to provide to the Regulator further information, explanations or other materials within the time specified by the Regulator; 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 8.1(b), give written notice to the other of them that it requires the appointment of an appropriately qualified independent consultant for the purposes of this clause 8.1. 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 consultant to report to the Regulator and PNG Ports whether PNG Ports' application satisfies the criteria for closure specified in clause 8.1(c).
- f) After considering:
 - (i) any information, explanations or other material provided by PNG Ports under clause 8.1(b) or 8.1(d)(ii);
 - (ii) any information, data or other material obtained by the Regulator under clause 8.1(d)(i) or (iii);
 - (iii) any report provided in accordance with clause 8.1(e) by a consultant (if any) appointed pursuant to that clause; and
 - (iv) the criteria for closure specified in clause 8.1(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 either approve or not to approve the closure of a Declared Port under clause 8.1(f) within three months. If the Regulator does not 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 9.1(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 a Regulated Service in respect of that closed Declared Port.
- j) PNG Ports must, at its expense, provide the Regulator and any qualified independent consultant appointed pursuant to clause 8.1(e) with such access to PNG Ports' assets, premises, property, accounts, records, other information or material, employees and contractors as the Regulator or the consultant requires for the purposes of this clause 8.1.
- k) The reasonable costs of any qualified independent consultant appointed pursuant to clause 8.1(e) must be borne by PNG Ports.

8.2 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) then PNG Ports shall;
 - (i) notify the Regulator for approval within 24 hours of the Declared Port closure, and recommend 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 clause (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 the closure of a Declared Port 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 the Minimum Service Standards, in respect of that closed Declared Port from the last day of the Regulatory Year in which that approval or deemed approval has been given.
- c) An approval or deemed approval by the Regulator for the closure of a Declared Port is automatically revoked if, at any time after that approval, PNG Ports provides any customer with a Regulated Service in respect of that closed Declared Port.

9. Non Discrimination

- a) The charges and fees PNG Ports charges for the supply of a Regulated Service and all the services supplied in connection with the supply of a Regulated Service (including any discounts allowed in respect of those charges) 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 on the Commencement date, 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) for the supply of Regulated Services and all services supplied in connection with the supply of a Regulated Service which PNG Ports is charging do 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.

10. Subsequent Regulatory Contract

10.1 Process for issuance of the Subsequent Regulatory Contract

- a) PNG Ports may, in accordance with clause 10.1(b), submit to the Regulator a draft Contract which PNG Ports considers should bind PNG Ports for a period of 5 years commencing with effect from (and including) **1 January 2030** 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 10.1(a), must be given to the Regulator by **31 January 2029**.
- c) After considering:
 - (i) the draft Contract and any submissions made by PNG Ports under clause 10.1(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 10.1(d) and (e)

the Regulator must publish its draft Contract that is proposed to bind PNG Ports for a period of 5 years commencing with effect from (and including) **1 January 2030**. For the avoidance of doubt, where PNG Ports does not submit a draft Contract under clause 10.1(a) by the date provided in clause 10.1(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 10.

- d) In preparing the draft Contract referred to in clause 10.1(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 which 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 Regulated Services in Papua New Guinea;
 - (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 PNG Ports Contract (if it were to come into force) for PNG Ports and the Regulated Services industry in Papua New Guinea;
 - (ix) any other factors specified in or under relevant legislation;
 - (x) any Government policy regarding the Regulated Services in Papua New Guinea;
 - (xi) any under or over recovery of revenue provided for in the capital cost recovery provision in schedule 11;
 - (xii) any other factors the Regulator considers relevant.
- e) In addition, the draft Contract referred to in clause 10.1(c):
- (i) must not be inconsistent with, and must be prepared in accordance with, the Regulatory Principles in Schedule 4; and
 - (ii) must comply with the requirements of the *ICCC Act*.
- f) For the avoidance of doubt, the subsequent regulatory Contract shall not be treated as a continuation of the current Contract and the subsequent Contract is not bound to the current Contract except in respect of decisions and obligations as per clause 1.6.
- g) The Regulator must publish its draft Contract referred to in clause 10.1(c) by **30 June 2029**.
- h) PNG Ports may, in accordance with clause 10.1(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 10.1(c).
- i) The submissions referred to in clause 10.1(h) must be received by the Regulator by **31 July 2029**.
- j) After considering:

- (i) any submissions made by PNG Ports under clause 10.1(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 10.1(c),

the Regulator must publish a final draft of the Contract by not later than **30 November 2029**.

- k) In preparing the final draft of the Contract referred to in clause 10.1(j), the Regulator must also take into account the matters referred to in clause 10.1(e).
- l) In addition, the final draft of the Contract referred to in clause 10.1(j):
 - (i) must not be inconsistent with, and must be prepared in accordance with, the regulatory principles in Schedule 4;
 - (ii) must comply with the requirements of the *ICCC Act*;
 - (iii) must take into account any under recovery or over recovery of revenue arising in the event of a delay in the new Contract taking effect from 1 January 2026, and
 - (iv) must be for a period of 5 years commencing with effect from (and including) **1 January 2026**.
- m) The Regulator may issue statements of regulatory intent which elaborate on how the Regulator will exercise its power under this clause 10.

10.2 Cost of Funding Subsequent 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 Subsequent Regulatory Contract;
 - (i) The Regulator may advise PNG Ports up to 60 days prior to 31 January 2024, that it shall appoint an appropriately qualified independent consultant ("consultant") for the purposes of clause 10.1
 - (ii) The reasonable costs of engaging the consultant in clause 10.2(b)(i) must be borne by PNG Ports.
- c) The cost incurred by PNG Ports to fund the review of the Subsequent Regulatory Contract will be taken into account when determining the tariffs for Regulated Services in the Subsequent Regulatory Period.

10.3 Regulatory Process for Issuance of the Subsequent Regulatory Contract

- a) The Regulator and PNG Ports shall comply with the provisions of this Contract and the *ICCC Act* in relation to the release of the Subsequent Contract, irrespective of the lodgement of any appeal with the Appeals Panel in accordance with Part V of the *ICCC Act*, unless restrained by order of the National and Supreme Courts of Papua New Guinea.

- b) If the Regulator fails to issue a Contract referred to in clause 10.1(j) by 30 November 2029, the current Contract shall be deemed to be a Regulatory Contract issued by the Regulator and shall apply until such time as the Regulator issues a final Contract referred to in clause 10.1(j).

11. Information and Documents

- a) All information or reports required under this contract must be provided in accordance with this clause 11.
- b) Where the Regulator, or an officer authorised in writing for the purposes of the Regulator, reasonably believes information held by PNG Ports will assist in the performance of the Regulator's functions, it may give written notice requiring PNG Ports to provide information and/or documents regarding any aspect of this Regulatory Contract. The information must be provided by PNG Ports and received by the Regulator within a maximum of 10 business days, unless specified otherwise.
- c) Where the Regulator, or an officer authorised in writing for the purposes of the Regulator, considers it necessary or desirable, it may give written notice requiring PNG Ports to provide information and/or documents regarding any aspect of this Regulatory Contract and any previous Regulatory Contract that it deems necessary to determine the current tariffs and service standards or to establish whether any information or documents previously provided was false or misleading and PNG Ports shall provide the information and/or documents requested within such time specified by the Regulator. Where a time is not specified by the Regulator, the information must be provided by PNG Ports and received by the Regulator within a maximum of 10 business days.
- d) PNG Ports is required to provide the information and/or documents referred to in clause 11 (a), (b) or (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.

12. Confidentiality

- a) Subject to clause 12 (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 parties providing information to the ICCC.

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

13. Amendment of Regulatory Contract

13.1 Agreed Amendments

- a) Subject to clause 13.1(c), this Contract may be varied from time to time by written agreement between the Regulator and PNG Ports but any such variation must not be inconsistent with the Regulatory Principles described in Schedule 4 or the requirements of the *ICCC Act*.
- b) PNG Ports may make a submission to the Regulator proposing an amendment to the Regulatory Contract under clause 13.1(a).
- c) No variation may be made to this Contract unless:
 - (i) at least 20 Business Days prior to any such variation taking effect:
 - (A) the Regulator has made available to the public copies of the precise form of the proposed variation, and any submission made by PNG Ports under clause 13.1(b);
 - (B) the Regulator has published a notice describing the proposed variation in both the National Gazette and a daily newspaper circulating nationally and inviting submissions in relation to the proposed variation not less than 20 Business Days after the date of publication of that notice;
 - (C) the Regulator has provided a notice to the Minister responsible for the *Harbours Act* describing the proposed variation; and
 - (D) the Regulator has made available, for inspection or purchase by the public, copies of the precise form of the proposed variation; and the reasons that it proposes to make the variation.
 - (ii) the Regulator has considered such submissions in relation to the proposed variation as it receives under clause 13.1(c)(i)(A).

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

If, with the consent of PNG Ports, any 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 services as have ceased to be Regulated Services.

14. Termination of Regulatory Contract

14.1 Termination

This Contract may be terminated at any time by written agreement between the Regulator and PNG Ports.

14.2 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 and ceases to provide Regulated Services (as the terms are defined in the *ICCC Act*).

14.3 Termination of specific clauses by agreement.

Any specific clause or subclause of the Regulatory Contract may be terminated by agreement between the Regulator and PNG Ports. Termination of one or more specific clauses or subclauses will not effect the remainder of the Regulatory Contract which will continue on its terms.

Revised Draft

SCHEDULE 1 – Maximum Tariffs for First Regulatory Year

A. Maximum Tariffs for Wharfage Services

All Ports

Cargo	Unit	Overseas cargo (rate per unit)		Coastal cargo (rate per unit)	
		Inward K	Outward K	Inward K	Outward K
Livestock (Horse, Cattle, Dogs, Sheep, Goats, Pigs)	Each animal	7.24	9.05	10.86	7.24
Oils / Petroleum (in bulk)	Tonne of 1,000 litres	14.50	14.50	7.24	7.24
Palm Oil	Tonne of 1,000 litres	0.00	12.51	7.24	7.24
Fabrication (Boats, Iron Tanks (Empty))	Meter Length	54.28	54.26	14.50	14.50
Charcoal, Coal Coke, Road Metal, Sand, Soil	Tonne/Weight	36.21	21.71	10.87	10.87
Cement	Tonne/Weight	35.37	22.47	11.32	10.87
Agriculture Products (Copra, Cocoa, Coffee, Bagged Agriculture Produce)	Tonne/Weight	36.19	21.71	7.24	7.24
Goods not enumerated above and containerised cargo (FCL & LCL)	Tonne Weight or cubic meter whichever is greater	36.21	22.47	10.87	10.87
Containers (FCL/LCL/MT)	Per Forty Foot Equivalent Units (40ft)	1805.95	1120.32	487.63	487.63
Containers (FCL/LCL/MT)	Per Twenty Foot Equivalent Units (20ft)	902.97	560.16	243.82	243.82
	Per 10/9m3	451.49	280.08	121.91	121.91
	Per 4m3/Box	180.59	112.03	48.76	48.76
Container (Empty)	Tonne/Weight	36.92	22.47	10.87	10.87
Containers Off/On				Rate per Unit/Activity	
Overseas - 40ft				522.12	
Overseas - 20ft				261.06	
Overseas - Other (9m3, 10m3, "D" Box)				130.53	
Coastal - 40ft				522.12	
Coastal - 20ft				261.06	
Coastal - Others (9m,10m3,"D" Box)				130.53	
Overseas - General Break Bulk				121.80	
Coastal - General Break Bulk				45.61	

PASSENGER FEES

All Ports

Cargo	Unit	Rate
Passenger Fees - Adult	Per Adult	9.81
Passenger Fees - Children	Per Child	4.92

B. Maximum Tariffs for Berth Reservation Services

All Ports

Type of Vessel	Unit	Rate
Overseas Vessels - cargo and passenger vessels at the ports of Rabaul and Madang	Per Occasion	1650.45
Overseas Vessels - cargo and passenger vessels - at remaining ports	Per Occasion	825.20
Overseas Tankers - Large	Per Occasion	2499.94
Overseas Tankers - Small	Per Occasion	1254.00
Overseas Vessel of any type at any port - each alteration to arrival time	Per Occasion	420.74
Coastal Vessels - Port Moresby and Lae	Per Occasion	829.28
Coastal Vessels - at other ports	Per Occasion	420.74
Coastal Vessel - any, port each alteration to arrival time	Per Occasion	165.83

C. Maximum Tariffs for Berthing Services

All ports

Type of Vessel	Unit	Rate
Overseas vessels (including cargo, passenger and tankers)	Metre LOA per hour alongside	5.29
Coastal Vessels - under 20 metres (or part thereof)	Metre LOA per hour alongside	0.68
Coastal Vessel - 20 metres ≤ LOA ≤ 49 metres	Metre LOA per hour alongside	0.98
Coastal Vessels - above/over 49 meters LOA	Metre LOA per hour alongside	37.21
Workboats (Quarterly Fee)	Alongside PNGPNG Ports wharf	242.70
Tugs	Per Tug/Day	5.29

E. Utilities and Other Services

Utilities and Other Services	Rates (Kina Excl GST)	Formula
Commercial Vehicle and Tourist Bus Pass Annual Pass- New or Renewal	29.40	Year x Rate

Commercial Vehicle One Time Pass	29.40	Per Occasion
Stevedoring Tonnage Fee (All Ports)	0.37	Tonne x Rate
Security Passes - Personal - New or Renewal	89.46	Year x Rate
Equipment Passes - Forklift and Crane Equipment - New or Renewal	961.47	Year x Rate
Surcharge Yard Maintenance (Port Moresby)	0.00	No Charge
Surcharge - Casual Labour Pool Maintenance (Port Moresby Only)	2.49	Tonne x Rate
Surcharge - Ash Levy (Rabaul)	0.00	No Charge
Cleaning of Wharf (Compulsory after wheat and rice cargo operation)	0.00	No Charge
Surcharge Generator	0.00	No Charge
Security Levy	0.00	No Charge

SCHEDULE 1B Discovered Stevedoring Access Charge

If during the regulatory period a Discovered Stevedoring Access Charge is found, then all regulated prices defined by this contract should be multiplied by the DSAF and these prices will then become the new maximum prices which PNG Ports may charge. If the Discovered Stevedoring Access Charge is found in the first regulatory year, then the prices shown in Schedule 1 should be multiplied by the DSAF. If it is found in a subsequent regulatory year, then all the prices applying in that subsequent year should be multiplied by the DSAF and these prices will become the maximum prices which PNG Ports may charge.

DSAF is defined as

$$DSAF = \left(1 - \frac{\text{Sum of DSA}}{\text{Sum of forecast demand}} \times \frac{1}{475} \right)$$

Where

- Sum of DSA is the total discovered stevedoring access revenue which PNG Ports will receive during the regulatory period 2025 to 2029 which was not previously identified as Stevedoring Access.
- Sum of forecast demand is the total forecast demand used in the building block over the regulatory period 2025 to 2029 and expressed as TEU which equals 2,924,161 TEU.
- 475 is equal to the average regulatory revenue per TEU over the regulatory period 2025 to 2029.

The provision will apply to all prices listed in Schedule 1A, if a "Discovered Stevedoring Access is Found and the sum of the fee for the years including 2025 to 2029 is greater than K2 million.

SCHEDULE 2 – Tariff Formulae

Part 1. Weighted Average Revenue Change (No Port Closures)

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

$$WAR^j_t \leq ESPC^j_t$$

Where

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

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

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

$$AR_t = \frac{\sum_{i=1}^n p^i_t * q^i_{t-1}}{\sum_{i=1}^n p^i_{t-1} * q^i_{t-1}}$$

where

there are n tariffs;

p^i_t is the rate for tariff i proposed to apply in Regulatory Year t in a statement given under clause 3.1;

p^i_{t-1} is the rate for tariff i that applied in Regulatory Year $t-1$; and

q^i_{t-1} is the actual chargeable quantity in relation to tariff i that was supplied by PNG Ports in the 12 months between 30 June of Regulatory Year $t-1$ and 30 June of Regulatory Year $t-2$.

Part 2. Essential Services Price Control

The Essential Services Price Control for a Declared Port j for Regulatory Year t ($ESPC_t^j$) is calculated as follows:

$$ESPC_t = \frac{PNGCPI_{t-1}}{PNGCPI_{t-2}} \times OP + X_t + 1$$

where:

$PNGCPI_{t-1}$ is the Adjusted PNGCPI for the 12 month period ending 30 June in Regulatory Year $t-1$ and is calculated in accordance with Part 5 of this Schedule 2; and

$PNGCPI_{t-2}$ is the Adjusted PNGCPI for the 12 month period ending 30 June in Regulatory Year $t-2$ and is calculated in accordance with Part 5 of this Schedule 2.

X_t is the Price Control Factor for Regulatory Year t and equals 0% for the regulatory period.

OP = Operating Cost Percentage and in regulatory year has the value shown in this table.

Regulatory Year	OP (Operating Cost Percentage)
2026	30.92%
2027	29.64%
2028	28.29%
2029	27.36%

Part 3. Weighted Average Revenue Change (Approved Port Closures)

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

$$WAR(APC)_t^j \leq ESPC_t^j$$

Where

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

$ESPC_t^j$ is the Essential Services Price Control for the Declared Port or group of Declared Ports j (as defined in Schedule 1), for that Subsequent Regulatory Year t , calculated in accordance with Part 2 of Schedule 2.

The change in forecast weighted average revenue for Subsequent Regulatory Year t [$WAR(APC)_t^j$], adjusted to allow for one or more Approved Port Closure, is calculated as follows:

$$\text{WAR(APC)}_t = \frac{\sum_{i=1}^n p^i_t * \{ q^i_{t-1} - \text{cpq}^i_{t-1} \}}{\sum_{i=1}^n \{ p^i_{t-1} * q^i_{t-1} \} - \{ \text{doc} + \text{ahoc} \}}$$

where

there are n tariffs;

p^i_t is the rate for tariff i proposed to apply in Regulatory Year t in a statement given under clause 3.1;

p^i_{t-1} is the rate for tariff i that applied in Regulatory Year t-1;

q^i_{t-1} is the actual chargeable quantity in relation to tariff i that was supplied by PNG Ports in the 12 months between 30 June of Regulatory Year t-1 and 30 June of Regulatory Year t-2;

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

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

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

Part 4. Calculation of change in CPI

PNGCPI adj in any year t is calculated as

$$\text{CPI}_{\text{adj year } t} = (\text{PNGCPI}_{t-1} - \text{PNGCPI}_{t-2}) \div \text{PNGCPI}_{t-2}$$

Where

PNGCPI_{t-1} is the Adjusted PNGCPI for the 12 month period ending 30 June in Regulatory Year t-1 as described in Part 2 of Schedule 2; and

PNGCPI_{t-2} is the Adjusted PNGCPI for the 12 month period ending 30 June in Regulatory Year t-2. As described in Part 2 of Schedule 2.

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:

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

where:

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

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

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

PNGCPI_(q4, t-2) is the PNGCPI for the Quarter ending on 31 December in Regulatory Year t or calendar year t; and

PNGCPI_(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 PNGCPI for the 12 month period ending on 30 June in Regulatory Year t-2 is calculated as follows:

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

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 2 above shall be made using instead the most recent eight quarterly CPI figures then publicly available.

Part 5. Maximum Prices and Rebalancing control

In so far as the supply of a Regulated Service during a Subsequent Regulatory Year t is concerned, and subject to clauses 3, 4, 5, 6 and 7, PNG Ports must not charge a Customer more for a tariff for the supply of A Regulated Service i for the Declared Port or group of Declared Ports j (as defined in Schedule 1), during Subsequent Regulatory Year t than an amount (MP_{ij t}) calculated as follows (expressed in Kina and rounded to two decimal places):

$$\text{MP}_{ij t} \leq \text{AP}_{ij t-1} * \text{RC}_{j t}$$

where:

AP_{ij t-1} is the amount of that tariff (if any) for the supply of an Essential Port Service i that was approved, deemed to be approved or set by the Regulator (as the case may be) pursuant to clause 3.1 for the Regulatory Year immediately preceding the relevant Subsequent Regulatory Year for the Declared Port or group of Declared Ports j (as defined in Schedule 1). Where the

Regulatory Year immediately preceding the relevant Subsequent Regulatory Year is the First Regulatory Year, $AP_{ij,t-1}$ is the amount of the tariff (if any) that is set out in Schedule 1 (as varied, if at all, in accordance with this Contract)

RC_{jt} means the Rebalancing Control for the Declared Port or group of Declared Ports j (as defined in Schedule 1), for Subsequent Regulatory Year t (as set out below).

$MP_{ij,t}$ must be the same amount for each Declared Port or group of Declared Ports j such that the maximum price that may be charged for the supply of an Essential Port Service is a single rate applicable to all Declared Ports in group j

The Rebalancing Control for Regulatory Year t (RC_t) is calculated as follows:

$$RC_{jt} = ESPC_{jt} + 0.05$$

where:

$ESPC_{jt}$ means the Essential Services Price Control for the Declared Port or group of Declared Ports j (as defined in Schedule 1) for Regulatory Year t as determined in accordance with Part 2 of Schedule 2.

SCHEDULE 3 - Minimum Service Standards

(a) Minimum Wharf Standards for vessel sizes

Wharves must be maintained in a condition that:

- is suitable for safely berthing a vessel with a maximum size as set out in the table below
- enables the safe carriage of a fully loaded standard 40 foot container for Motukea and Lae Ports and 20 foot container for all other Ports, placed onto a standard tractor-drawn 4 wheel container-trailer.

		Length	Beam	Draft
Lae and Motukea - international		200m	20m	10m
Lae and Motukea - coastal		150m	10m	5m
Aitape	Berth 1	18m	6.2m	4.3m
	Berth 2&3	8m	4.4m	2.5m
Buka	Berth 1	60m	7m	7m
	Berth 2	31.4m	5.7m	4.7m
Daru		34m	15.5m	7.7m
Lorengau		40m	20.2m	1.5m
Vanimo		28.6m	10m	4.5m
All other ports		57m	9.8m	3.3m

(b) Minimum Wharf Loading Standard

- Each wharf must be maintained in a condition that meets the Current AS 4997 standard shown in the table below.
- Where a future AS 4997 standard is shown, the wharf must be upgraded to meet this standard by the close of year shown in the table.
- AS 4997 refers to the Australian Standard for Maritime Structures (AS 4997 – 2005).
- The values shown in this table may be updated prior to 2030, provided that PNG Ports provides an adequate alternative which is agreed to by the ICCC.

Port	Wharf	Current AS 4997 Standard Class	Future AS 4997 Standard Class	Year new standard achieved
Aitape	Berth 1	10	Nil	
Alotau	International Berth	25	40	2030
	Coastal Berth	25	Not specified	2030

Buka	International Berth	5	Nil	
	Coastal Berth		Nil	
Daru	Berth 1	10	40	2030
	Barge Ramp			
Kavieng	Main Wharf	15	25	2030
	Small Ships Wharf	5	Nil	
Kieta	Overseas Berth	25	25	2028
	Coastal Berth	15	Nil	
	Feeder Berth	10	Nil	
	Barge Ramp	Not specified	40	2030
Kimbe	Berth 1 International	15	40	2030
	Berth 2 Coastal	15	40	2030
Lae	Berth 1 Coastal	25	40	2030
	Berth 2 Coastal	25	40	2030
	Berth 3 Coastal	15	40	2030
	Berth 4 Coastal	15	40	2030
	Berth 5 Coastal	25	25	2028
	Berth 6 Coastal	25	25	2028
	LT Basin International	50	50	2028
Madang	International Berth	15	40	2030
	Small Ships Wharf	5	?	
Motukea	Berth 1 Coastal	40	40	2028
	Berth 2 Coastal	40	40	2028
	Berth 3 Coastal	40	40	2028
	Berth 4 International	40	40	2028
Oro Bay	International Berth	25	25	2028
	Coastal Berth	25	25	2028
Rabaul	Berth 1 Coastal	15	40	2030

	Berth 2 International	15	40	2030
Wewak	Overseas Wharf	15	25	2030
	Coastal 2&3	15	25	2030
Vanimo	Main Wharf	10	25	2030

(c) Minimum container stacking areas

- a. Space must be provided to allow the temporary stacking of a minimum of number containers when loading or unloading a ship. The minimum number defined as TEU is shown in the following table.
- b. The values shown in this table may be updated prior to 2030, provided that PNG Ports provides an adequate alternative which is agreed to by the ICCC.

Ports	Current Minimum Container stacking area (TEU)	Future Minimum Container stacking area (TEU)	Year by which Future Container storage area must be available
Lae International	Not specified	1000	2030
Lae coastal	Not specified	500	2030
Motukea International	Not specified	1000	2030
Motukea Coastal	Not specified	300	2030
Alotau, Madang, Kavieng, Kimbe, Rabaul, Wewak	Not specified	150	2030
Oro Bay, Vanimo	Not specified	100	2030
Buka, Daru, Kieta, Lorengau	Not specified	30	2030

(d) Other Minimum Service Standards

1. A suitable hardstand area must be maintained at each wharf or end of causeway to allow for the manoeuvring of a tractor and container-trailer without the requirement to drive on and reverse off.
2. As a minimum, the hardstand must be reasonably smooth with a level gravel, paved or concreted surface that is free draining and free from sudden level changes. The gravel surface should be maintained to a degree that dust is contained otherwise a suitable dust suppression system shall be deployed.
3. Storage of at least 30 containers in smaller ports (eg Vanimo), 100 containers for medium ports (eg Kavieng, Madang). Container stacking areas to be free from potholes or significant variations in surface levels to ensure stable stacking is achievable.

4. 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.
5. Security must include a robust fence (in accordance with ISPS code) maintained around each wharf area, with lockable access gates which are a minimum of 4.2m wide. The fence must not have holes or gaps which would allow an unauthorised person to enter.
6. Security standards for international vessels must comply with International Ship and Port Facility Security Code (ISPS Code) requirements.
7. Adequate and efficient reefer points must be installed at all ports that handle reefer containers, except at the ports of Aitape, Daru, Kieta, Lorengau, Oro Bay and Vanimo.
8. Adequate lighting of a Minimum 60 LUX must be provided to support night operations at Motukea and Lae international and coastal wharves and as and when required to support night operations at all other ports.
9. Male and Female toilets and washrooms are available 24hrs when facility is open.
10. 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.
11. Water must be available to reprovision vessels.
12. Full telecommunications service must be supplied to the port office.
13. Backup power (Reefer 3ph 415 v and Office and amenity Single phase 240 v) must be available and connected via automatic change over switch (ATS) supported by a functioning back-up generator of suitable capacity.
14. Firefighting equipment must be available in appropriate size and quantity for that port size.

Key Performance Indicators

The following key performance indicators (KPIs) are to be reported annually to the ICCC for each port over the 2025-29 regulatory period.

KPI name	KPI definition	KPI calculation
Berth availability-	% of vessels waiting more than 2 hours	Total number of vessels that waited more than 2 hours to berth divided by total number of ships that berthed.
Berth availability	Average wait time	Total amount of time that vessels waited at anchor to berth divided by the total number of vessels that berthed.
Berth occupancy	% of berth time occupied	Billed LOA divided by total LOA – calculated on the basis of: Total time at berth multiplied by length of vessels that berthed, <i>divided by</i> the total length of berths multiplied by 365 days and 24 hours per day.
Berth utilisation	% of berth time worked	Total vessel gross working time <i>divided by</i> total vessel time at berth.
Security breaches	Number of incidents per annum	Total incidents per year. Report separately for each port. In Port Moresby and Lae report separately for international and coastal

All berth indicators are to be calculated based on the total number of vessels that berthed (i.e. excluding vessels that arrived at the port but did not berth).

SCHEDULE 4 - Regulatory Principles

1. The opening Regulatory Asset Base (RAB) for the next regulatory period is to be calculated using a roll forward approach, based on the following components:
 - a) The 2024 opening RAB will be set at **K829,671,500** million in June 2024 terms.
 - b) Actual prudent capital expenditure incurred by PNG Ports during the regulatory period (2024 to 2029). Consideration must be given as to whether or not any particular capital project was prudent.
 - c) Actual straight line depreciation for each asset based upon its economic life
 - d) Disposals or write downs of regulated assets during the regulatory period.
 - e) No gifted assets should be included in the RAB
 - f) Going forward, assets in the RAB will be valued at historic cost. The opening RAB value will remain at its 2024 value, but all new assets added to the RAB will be added at historic cost. No assets in the RAB will be inflated into Money of the day values using indexation.
2. PNG Ports must be regulated under an incentive regulation approach.
3. A building block approach must be adopted, consisting of the following components:
 - a) opening RAB for the regulatory period;
 - b) forecast new capital expenditure during the regulatory period required to maintain service levels and performance targets;
 - c) return on capital (WACC);
 - d) return of capital - economic depreciation; and
 - e) forecast operating expenditure required to maintain service levels and performance targets, including any efficiency factor to be applied to operating expenditure.
4. Consideration must be given to establishing a glide path adjustment with a sharing of efficiency gains between PNG Ports and consumers of Essential Port Services.
5. Consideration must be given to the number of ports, stand alone costs of each port and subsidies existing between ports.
6. Assets and operating costs must be split between regulated and non-regulated parts of PNG Ports business.
 - a) Where there is a clear driver of cost this should be used to allocate costs.
 - b) Where there is no clear driver of cost then costs should be allocated using the ratio of regulated revenue divided by the total of regulated revenue plus unregulated revenue. Revenue figures used for this purpose should be the last full year of data available.
7. A capital cost recovery adjustment must be done to reflect any under or overspending of the capital allowance in the previous regulatory period. This adjustment must allow for the time value of money and should reflect the NPV of the difference between actual capital spending and forecast capital spending in the 2024 to 2028 regulatory period

SCHEDULE 5 – Regulatory Accounts

These are reporting templates that PNG Ports must follow when preparing and reporting ports information. PNG Ports must provide to the Regulator the information referred to below with respect to each calendar year by 30 June of the following year.

1. Revenue – by Port

Port	Berthing Services	Wharfage Services	Stevedoring Access	Berth Reservations	Total
Lae					
Motukea					
Kimbe					
Rabaul					
Wewak					
Oro Bay					
Madang					
Alotau					
Kavieng					
Kieta					
Buka					
Lorengau					
Vanimos					
Daru					
Aitape					
Head Office					

2. Twenty-Foot-Equivalent – TEU Volumes by Port

Port	Coastal Inwards	Coastal Outwards	Overseas Inwards	Overseas Outwards
Lae				
Motukea				
Kimbe				
Rabaul				
Wewak				
Oro Bay				

Madang				
Alotau				
Kavieng				
Kieta				
Buka				
Lorengau				
Vanimos				
Daru				
Aitape				

3. Bulk Cargo (Revenue Tonnes) – By Port

Port	Coastal Inwards	Coastal Outwards	Overseas Inwards	Overseas Outwards
Lae				
Motukea				
Kimbe				
Rabaul				
Wewak				
Oro Bay				
Madang				
Alotau				
Kavieng				
Kieta				
Buka				
Lorengau				
Vanimos				
Daru				
Aitape				

4. Vessel Calls – by Port

Port	Coastal	Overseas
Lae		
Motukea		
Kimbe		
Rabaul		

Wewak		
Oro Bay		
Madang		
Alotau		
Kavieng		
Kieta		
Buka		
Lorengau		
Vanimo		
Daru		
Aitape		

5. Regulatory Accounts - Costs associated with providing regulated services – by Port

Port	Total operating costs (direct and indirect)	Total operating and capital costs
Lae		
Motukea		
Kimbe		
Rabaul		
Wewak		
Oro Bay		
Madang		
Alotau		
Kavieng		
Kieta		
Buka		
Lorengau		
Vanimo		
Daru		
Aitape		

6. Ring Fencing

Total Business Revenue	Guide to calculate Revenue	Change from previous year	Comments
Berthing Services	A		
Berth Reservations	B		
Wharfage Services	C		
Other Regulated Services	D		
Total Regulated services	$E=A+B+C+D$		
Total unregulated services	F		
Government Grants [^]	G		
Other Revenue	H		All other revenue to be explained, eg: customer contribution for capital expenditure, aid grant.
Total Revenue*	$I=E+F+G+H$		
Total Business Costs	Guide to calculate Costs	Change from previous year	Comments
Regulated services (direct)	A		
Regulated services (indirect)	B		
Total regulated	$C=A+B$		
Unregulated services (direct)	D		
Unregulated services (indirect)	E		
Total unregulated services	$F= D+E$		
Other Costs	G		All other costs to be explained, eg: interest on loans to support capital expenditure.
Total costs	$K= C+F+G$		

SCHEDULE 6 – Dispute Resolution Process

Negotiation

1. Within ten (10) Business Days of a party giving the other party a Dispute Notice, senior representatives from each party must meet and use reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

Mediation by managing director or chief executive officer

2. If the Dispute is not resolved under paragraph 1, above, within fifteen (15) Business Days after the giving of the Dispute Notice then:

- if the parties agree, they will attempt to resolve the Dispute by mediation pursuant to paragraphs 3, 4 and 5 below; or
- if the parties do not agree to resolve the Dispute by mediation pursuant to paragraphs 3, 4 and 5 below, either party may by notice in writing to the other and the arbitrator, refer the Dispute to be determined by arbitration under paragraphs 6 and 7 below.

3. If the parties to the Dispute agree to attempt to resolve the Dispute by mediation, the Dispute will be referred to the managing director or chief executive officers of both parties who will attempt to resolve the Dispute, including by informal mediation.

Independent mediation

4. If the Dispute is not resolved within ten (10) Business Days after being referred to the managing director(s) or chief executive officer(s) under paragraph 6, the Dispute will be referred to a single independent mediator accredited under the ADR Rules of the National Court appointed by agreement of the parties or if they fail to agree on a mediator within ten (10) Business Days, an independent mediator accredited under the ADR Rules of the National Court appointed by the PNG Law Society acting on the request of either party.

5. Unless the parties agree otherwise:

- (a) each party may appoint a person, including a legally qualified person, to represent it or assist it in the mediation;
- (b) each party will bear its own costs relating to the preparation for and attendance at the mediation; and
- (c) the costs of the mediator will be borne equally by the parties.

Arbitration

6. If the Dispute is not resolved under paragraph 1, or by mediation under paragraph 3, either party may by notice in writing to the other terminate the mediation proceedings and notify the Regulator of a Dispute to be determined by arbitration under paragraph 7.

7. Where a Dispute is referred to the Regulator for arbitration, and unless the parties agree otherwise, the following will apply:

- (a) The arbitrator will be the Regulator or any such other party as appointed by the Regulator for the purposes of arbitrating the dispute. For the purposes of a particular arbitration, the arbitrator is to be constituted by two (2) or more members of the Regulator nominated in writing by the chairperson of the Regulator.
- (b) The Regulator may at any time terminate an arbitration (without making a determination) if it thinks that the notification of the Dispute is vexatious, trivial or lacking in substance; or the party who notified the Dispute has not engaged in negotiations in good faith.

c) The arbitrator may require evidence or argument to be presented in writing, and may elect to hear oral evidence or argument. Oral proceedings will be held in private, unless both parties agree otherwise.

(d) In deciding a Dispute the arbitrator will take into account:

(i) the principles, methodologies and provisions set out in this Contract;

(ii) the objectives and principles enunciated in the ICC Act;

(iii) PNG Ports' legitimate business interests;

(iv) the interests of port users; and

(v) the operational and technical requirements necessary for the safe and reliable operation of the PNG Ports' assets.

(e) The arbitrator may set its own procedure for the determination of the dispute by arbitration.

(f) The arbitrator will publish its determination in writing which includes the reasons for making the determination within 30 business days of receipt of the Dispute.

(g) The determination of the arbitrator will be final and binding subject to any rights of review by a court of law.

(h) The costs of the arbitrator will be borne equally by the parties.

(i) Each party may appoint a person, including a legally qualified person to represent it or assist it in the arbitration.

(j) Each party will bear their own costs relating to the preparation for and the attendance at the arbitration.

SCHEDULE 7 – Building block forecasts

The tables below set out key elements of the building block forecasts approved by the Regulator for the 2020-2024 Regulatory Period.

	2025	2026	2027	2028	2029
Total Regulated Opex	85	84	82	80	79
Return Of Capital	27	28	29	32	34
Return On Assets	157	159	165	171	175
Revenue Requirement	270	270	276	284	287

Revised Draft

SCHEDULE 8 – Recovery of Capital Costs

In 2029, once the amounts of prudent capital spending have been determined, an Annual Capital Cost Adjustment factor shall be calculated to allow for the difference between actual prudent capital spending and the budgeted capital spending allowed for in the determined price path for the regulatory period (2025 to 2029).

The Annual Capital Cost Adjustment factor will be added to or subtracted from each year of the Revenue Requirement, for the next regulatory period from 2030 to 2034.

- a) Actual Prudent Capital Spending may be greater than or less than the budgeted capital spending.
- b) The Return on Capital and Return of Capital will be calculated for the Actual Prudent Capital spending for the period 2024 to 2028, to quantify what these amounts would have been in each year, if Actual Prudent Capital Spending had been used to set the 2025 to 2029 price path.
- c) The Budgeted amounts for new capital spending for Return on Capital and Return of Capital shall be

	Return on Capital	Return of Capital
2024	177,035,314	28,999,832
2025	157,082,888	27,340,363
2026	158,668,608	27,980,018
2027	164,985,002	29,358,141
2028	171,484,894	31,913,959

- d) The difference between Actual values described in b) and those in c) will be calculated for each year.
- e) The adjustment factor will be calculated using a discount factor equivalent to the WACC, so that the net present value of the difference calculated in d) for the years of 2025 to 2029 and the annual adjustment factor from 2030 to 2035 equals zero.
- f) If actual prudent capital spending was greater than the budgeted capital spending then the adjustment factor will be a positive number and consequently the revenue requirement will be higher. If actual prudent capital spending is less than the budgeted capital spending then the adjustment factor will be a negative number and consequently the revenue requirement will be lower.

SCHEDULE 9 – Components of the Strategic Plan

Part 1. The Plan

1. Whole of business context

- Overview of current business and operating environment
- Overall investment drivers

Sections 3 to 5 to be prepared for each port

2. Description of each port

- current facilities
- key services provided – role in the community
- role in the supply chain
- SWOT

3. The service needs of each port over the next 10 years, informed by the socio-economic analysis:

- demand forecast – quantified
 - identify needs for specific wharves if appropriate/necessary
 - key growth opportunities/trends
- service requirements
- capacity requirements
- link to existing KPIs
- level of service/service standards

4. Current capacity and asset condition

5. Gap analysis: having regard to (3) and (4), what are the gaps:

- what are the options to address the gaps (including opex and capex solutions)
- how important is it to address these gaps, i.e. what are the benefits of investment (including the risks of the 'do nothing' option (the base case))
- what is the current investment plan for each port
 - major projects
 - other expenditure
 - current cost estimates

Consolidated/whole of business

6. Consolidated financial analysis

- indicative cashflow analysis – timing and magnitude
- other potential funding sources

- risk assessment, including scenario analysis
7. Consolidated plan: current view of investment plan after considering financial impacts
- Prioritisation
 - Indicative timeframes
 - Delivery strategy

Part 2: Wharf Standards and Container Stacking Areas

“The Strategic Plan submitted under Schedule 13 must contain, for every regulated wharf, the proposed wharf loading standard (including load limit and relevant design standard, such as AS 4997 Class 25, 40, or 50). Each wharf standard must be justified, taking account of current and expected uses, vessel types, and loading equipment. Where PNG Ports proposes an alternative standard to the default (ICCC) standard, detailed supporting analysis must be included to justify the change, including cost-benefit analysis and associated investment plans. Any gaps or staged upgrades should be clearly identified, with timelines and rationale.”

The Strategic Plan must also include planned minimum container stacking areas as described in Schedule 3c.