

**ESSENTIAL PORT SERVICE LICENCE**

**PNG Harbours Limited**

**Independent Consumer and Competition  
Commission**

# ESSENTIAL PORT SERVICE LICENCE

## 1. Definitions and interpretation

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- 1.1 Words appearing in bold type, like **this**, are defined in Part 1 of the Schedule.
- 1.2 This licence must be interpreted in accordance with the rules set out in Part 2 of the Schedule.

## 2. Grant of licence

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By order of the Minister responsible for treasury matters under subsection 25I(1) of the **Act**, the **Commission** licenses the **Licensee** under Division 2 of Part IIIA of the **Act**, and subject to the conditions set out in this licence, to carry on operations in the **essential port service industry** at each of the **declared ports** identified in Annexure A.

## 3. Term

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This licence commences on the date it is issued and continues until:

- (a) it is surrendered by the **Licensee** under section 25R of the **Act**; or
- (b) it is cancelled by the **Commission** under section 25T of the **Act**,
- whichever first occurs.

## 4. Obligation to provide essential port services

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- 4.1 Subject to clauses 4.2 and 4.3, the **Licensee** must offer to provide **essential port services** to customers at each **declared port** identified in Annexure A.
- 4.2 The **Licensee** may not cease to provide an **essential port service** at a **declared port** identified in Annexure A unless it first obtains the approval of the **Commission** to do so. In order to obtain such approval, the **Licensee** must satisfy the **Commission** of the availability of alternative port facilities for loading and unloading vessels, and for the provision of berths and berth reservation services, at the **declared port**.
- 4.3 The **Licensee** may refuse to supply an **essential port service** to a person who is in default of their payment obligation for the provision of such services supplied previously by the **Licensee** to that person.
- 4.4 The **Licensee** may sub-lease to another person its property at one or more **declared ports** and may authorise that person to provide **essential port services** in that port (subject to that person being licensed to provide **essential port services** under the **Act**). However, where the **Licensee** enters into such an arrangement, the **Licensee** will remain liable for compliance with the conditions of this licence, any **Regulatory Contract** that is binding on it and all applicable laws insofar as they relate to that port.

- 4.5 The **Licensee** must make available the **essential port services** provided by it to persons seeking access to such services in accordance with all applicable laws, **codes** and **rules**.
- 4.6 A dispute relating to the availability of an **essential port service** must be resolved in accordance with any applicable **code** which establishes a scheme for the resolution of disputes in relation to the access to **essential port services**.

## 5. Compliance with codes and rules

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The **Licensee** must:

- (a) comply with all applicable provisions of any **codes** and **rules** made by the **Commission** from time to time; and
- (b) notify the **Commission** if it commits a material breach of any such provision within 3 days after becoming aware of that breach.

## 6. Compliance with Regulatory Contract

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The **Licensee** must:

- (a) comply with any **Regulatory Contract** that applies to it; and
- (b) notify the **Commission** if it commits a material breach of any provision of any such **Regulatory Contract** within 3 days after becoming aware of that breach.

## 7. Information to be provided

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- 7.1 The **Licensee** must inform each person who seeks, or is in receipt of, **essential port services** provided by the **Licensee** under this licence of the terms on which those services are provided (including the charges for those services) and of any changes in those terms. Such notice must be given in a manner and form that is approved by the **Commission**.
- 7.2 The **Licensee** must, from time to time, provide to the **Commission**, in a manner and form determined by the **Commission**:
- (a) details of the **Licensee's** financial, technical and other capacity to continue the operations authorised by this licence; and
  - (b) such other information (including under or for the purposes of a **Regulatory Contract** that applies to the **Licensee**) as the **Commission** may require from time to time.
- Such details and other information must be accurate and not misleading.
- 7.3 The **Licensee** must notify the **Commission** of any changes to its **officers** and, if applicable, major shareholders within 5 days of that change.
- 7.4 Within 12 months of the commencement of this licence the **Licensee** must have compiled a register which accurately sets out, in a manner and form that is approved by the **Commission**, all of the fixed assets used by the **Licensee** for the purpose of conducting

the operations authorised by this licence and the written down value of each of those assets as at 31 December 2002.

- 7.5 The **Licensee** must make the register referred to in clause 7.4 available for inspection by the **Commission** on request from time to time by the **Commission**.

## 8. Asset Management Plan

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The **Licensee** must:

- (a) within 6 months of the commencement of this licence, prepare an asset management plan dealing with the matters prescribed by regulation under the **Act** and submit the plan to the **Commission** for approval;
- (b) comply with the approved plan (as updated from time to time);
- (c) not amend the plan without the approval of the **Commission**; and
- (d) undertake annual audits of its compliance with its obligations under the plan, and report the results of those audits to the **Commission**, in a manner approved by the **Commission**.

## 9. Enquiries

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The **Licensee** must, within a period set by the **Commission**, establish and comply with procedures, approved by the **Commission**, to deal with enquiries made in connection with the provision of **essential port services** by the **Licensee**.

## 10. Operation and compliance audits

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- 10.1 The **Licensee** must undertake annual audits of its operations in the **essential port service industry** as authorised by this licence and of its compliance with its obligations under this licence, under the **Regulatory Contract** and under any applicable **codes** and **rules**.
- 10.2 The audits must be conducted by an independent expert nominated by the **Licensee** and approved by the **Commission**.
- 10.3 The results of each such audit must be reported to the **Commission** in a manner approved by the **Commission**.

## 11. Accounts

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- 11.1 With effect from the date of this licence the **Licensee** must prepare separate annual accounts for the operations authorised by this licence.

- 11.2 The accounts referred to in clause 11.1 must:
- (a) subject to clause 11.2(b), be fairly and accurately presented;
  - (b) be separate from those of any other business operated by the **Licensee** and from those of any business operated by any other person; and
  - (c) be prepared using an accounting system in a manner and form approved by the **Commission**.
- 11.3 Without limiting clause 11.2(c), the accounts referred to in clause 11.1 must be prepared in accordance with the following principles:
- (a) In general, revenue and cost items should be allocated on a causation basis by identifying one of the following relationships:
    - (i) a directly traceable cause and effect relationship with the provision of the product or service;
    - (ii) a verifiable relationship between the item and the output of the individual product or service;
    - (iii) a direct causal relationship associated with a pool of common costs (or revenue) and the allocation of that pool using a relevant, reliable and verifiable factor such as relative use.
  - (b) In general, cost and asset items that are directly attributable to the operations authorised by this licence should be assigned accordingly. Items directly attributable to such operations should be allocated to those operations using an appropriate allocator.
  - (c) Indirect costs (ie. costs, such as overheads, that are not directly attributable to the operations authorised by this licence) should be allocated on an activity costing basis, but if a causal relationship cannot be cost effectively established for such an item then the **Licensee** may allocate the item on a non-causal but defensible basis.

## 12. Service standards

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- 12.1 The **Licensee** must use its best endeavours to achieve the minimum service standards identified in Annexure B for each calendar year and must keep sufficient records to monitor its achievement or otherwise of those minimum service standards and to provide the information required by clause 12.2.
- 12.2 The **Licensee** must report to the **Commission** by 31 March each year, in such manner and form as is required by the **Commission**, on:
- (a) its achievement or otherwise of the minimum service standards identified in Annexure B for the preceding year ending 31 December;
  - (b) an explanation of the reasons for any failure to achieve those minimum service standards; and

- (c) how the **Licensee** intends to improve its performance so as to achieve the relevant minimum service standards for the calendar year in which the report is made.

### 13. Separation of businesses

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- 13.1 The **Licensee** must comply with any notice in writing served on it by the **Commission**, where the **Commission** considers it necessary or desirable to do so in order to promote competition in a market for **contestable services**, specifying steps the **Licensee** must take in order to separate its **essential port services** business from a **contestable services** business or businesses operated by the **Licensee**, a **relevant interest holder in the Licensee** or a **subsidiary** of the **Licensee**.
- 13.2 Without limiting what the **Licensee** may be required to do in a notice served on it in accordance with clause 13.1, the **Licensee** may be required:
  - (a) not to provide **contestable services** (although a **relevant interest holder in the Licensee** or a **subsidiary** of the **Licensee** would be free to do so);
  - (b) not to enter into any contract, arrangement or understanding with a **relevant interest holder in the Licensee** or a **subsidiary** of the **Licensee** providing **contestable services** in relation to the provision of **essential port services** by the **Licensee** to the **relevant interest holder in the Licensee** or the **subsidiary** of the **Licensee** unless first approved by the **Commission**; or
  - (c) not to disclose confidential information provided to the **Licensee** by a user of **essential port services** to employees, contractors or advisers of the **Licensee**, a **relevant interest holder in the Licensee** or a **subsidiary** of the **Licensee** involved in the provision of **contestable services**.
- 13.3 The **Licensee** must comply with a notice served on it in accordance with clause 13.1 within 20 **business days** of service of the notice or within such longer period as the **Commission** may allow.

### 14. Obligation not to discriminate

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The **Licensee** must not, in connection with the supply of an **essential port service** or **stevedoring access**, discriminate unreasonably between **customers** who are in substantially the same circumstances.

### 15. Confidentiality

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The **Licensee** must, unless otherwise required by law, this licence, or any applicable **code** or **rule**, comply with any **rules** made by the **Commission** from time to time relating to the use or disclosure of information acquired by the **Licensee** in the course of conducting the operations authorised by this licence.

**16. Dispute resolution**

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The **Licensee** must, within the period set by the **Commission**, develop and implement procedures, on terms approved by the **Commission**, to deal with disputes relating to the provision of, or refusal to provide, **essential port services** by the **Licensee**.

**17. Compliance with laws**

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The **Licensee** must comply with all applicable laws including, but not limited to, the **Act**, the *Independent Consumer and Competition Act 2002*, the *Merchant Shipping Act* and regulations made under those Acts.

**18. Variation**

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This licence may only be varied in accordance with section 25O of the **Act**.

**19. Transfer**

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This licence may only be transferred in accordance with section 25P of the **Act** or, where subsection 25I(3) of the **Act** applies, in accordance with subsection 25I(3) of the **Act**.

This licence was issued on the \_\_\_\_\_ day of July 2002.

**EXECUTED** by **MEKERE** )  
**MORAUTA, Kt MP**, Prime Minister )  
and Treasurer, for and on behalf of )  
**THE INDEPENDENT CONSUMER** )  
**AND COMPETITION COMMISSION** )  
pursuant to Section 17 of the )  
*Independent Consumer and* )  
*Competition Commission Act 2002* )

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**Mekere Morauta Kt MP**  
Prime Minister and Treasurer

## SCHEDULE: DEFINITIONS AND INTERPRETATION

### 1. Definitions

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In this licence:

**Act** means the *Harbours Act* (Chapter No. 240);

**business day** means a day other than a Saturday or Sunday;

**contestable services** means a service other than an **essential port service** that is provided using or that is otherwise related to **essential port services** and includes stevedoring, pilotage and storage services;

**code** means any code, made by the **Commission** under section 40 of the *Independent Consumer and Competition Commission Act 2002*, as in force from time to time;

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

**customer** means a person to whom **essential port services** are supplied by the **Licensee** or a person who is seeking to have **essential port services** supplied by the **Licensee**;

**declared port** means a port declared under section 2 of the **Act**;

**essential port service** has the meaning given to it in section 1 of the **Act**;

**essential port service industry** has the meaning given to it in section 1 of the **Act**;

**Licensee** means PNG Harbours Limited (company number 1-46339);

**officer** means a director or secretary;

**Regulatory Contract** means a regulatory contract issued under section 34 or section 35 of the *Independent Consumer and Competition Commission Act 2002* that applies to the **Licensee**;

**relevant interest** has the meaning given to it in the *Securities Act 1997*;

**relevant interest holder in the Licensee** means a person who has a **relevant interest** in not less than 20% of the shares in the **Licensee** which confer a right to vote at any meeting of members of the **Licensee**;

**rule** means any rule, made by the **Commission** under section 40 of the *Independent Consumer and Competition Commission Act 2002*, as in force from time to time;

**stevedoring access** means the right of stevedores to enter upon the port and associated facilities operated by the **Licensee** for the purposes of loading and unloading ships and other vessels, but does not include the right to move cargo between ships and other vessels and 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**; and

**subsidiary** has the meaning given to it in the *Companies Act 1997*.

## 2. Interpretation

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In this licence, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this licence;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency;
- (e) a reference to any statute or regulation includes all statutes or regulations varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations and orders issued under that statute;
- (f) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement of, that document or that provision of that document; and
- (g) an event which is required under this licence to occur on or by a stipulated day which is not a **business day** may occur on or by the next **business day**.

## **ANNEXURE A**

1. Port Moresby
2. Lae
3. Rabaul
4. Wewak
5. Kimbe
6. Biella
7. Alotau
8. Madang
9. Buka
10. Oro Bay
11. Vanimo
12. Kavieng
13. Samarai
14. Aitape
15. Daru
16. Kieta
17. Lorengau

## ANNEXURE B

### MINIMUM SERVICE STANDARDS

1. Wharves must be maintained:
  - in a condition which is suitable for safely berthing a vessel with a minimum size of Length 57m, Beam 9.8m, Draft 3.3m;
  - with a minimum clearance to draft 0.5m, DWT 875 tonnes;
  - in such condition to enable the safe carriage of a fully loaded standard "20 foot" container, placed onto a standard tractor-drawn 4 wheel container-trailer.
2. A suitable hardstand area must be maintained at each wharf to allow for the manoeuvre of a tractor and container-trailer. As a minimum, the hardstand must be reasonably smooth and level gravel, free draining, and have area allocated for the storage of at least 10 containers, stacked single height.
3. Roads and pavements within a wharf must be maintained in a well graded condition, free of large potholes or failed areas, freely draining and such that container trucks can load, unload and turn without undue hindrance.
4. The minimum security requirement will be a robust 1.8m high chain wire fence maintained around each wharf area, with lockable access gates 4.2m wide. The fence must not have holes or gaps which would allow an unauthorised person to enter.
5. A suitably equipped office must be maintained and must be manned at least during normal office hours, with functioning radio facilities available for communication from, to and with vessels wishing to obtain **essential port services** or requiring any other service.
6. Town water must be available to reprovision vessels.
7. Full telecommunications service must be supplied to the port office.
8. Power (3ph 415 v) must be available, supported by a functioning back-up generator of suitable capacity, if primary power supply is Elcom reticulated supply.