

[Annexure 2 to nbn letter to ACCC – March 2023](#)  
[Changes to November SAU Variation: replacement module process and pricing regulation provisions](#)

This document sets out particular changes to **nbn**'s SAU variation of November 2022 being contemplated by **nbn**, with explanatory notes on those changes.

These changes are in addition to the changes identified in the separate draft riders related to:

- the ICRA draw down and stand-alone credit rating principles – Annexure 1;
- service performance and improvements – Annexure 3;
- other contemplated changes – Annexure 4; and
- WAPC simplifications and clarifications – Annexure 5.

Changes are shown in track / mark-up, against extracts of the November Variation. The changes relate to:

- extending the timeframe in which the ACCC may make an ACCC Replacement Module Determination (**RMD**) for a Regulatory Cycle (including transitional provisions to govern particular matters in the interim between a Regulatory Cycle starting and the ACCC making an RMD for that cycle);
- providing for the ACCC to request that **nbn** provide particular information with a Replacement Module Application (**RMA**);
- updating the 'Statement of Approach' provisions for the Post-2032 Regulatory Period to remove duplication with the new provisions regarding requesting information to be provided with an RMA, and to align the timing of the Statement of Approach with the broader replacement module process;
- allowing for key pricing documents to be updated if they are issued before the ACCC has made an RMD for an upcoming Regulatory Cycle;
- clarifying the discounting restriction provisions in response to an RSP submission regarding the interpretation of those provisions; and
- other minor clarifications and improvements to the replacement module process and pricing regulation provisions.

**Changes:**

**5.2 Commitment to submit a Replacement Module Application**

- (a) NBN Co will provide applications to the ACCC in accordance with this clause 5.2 (**Replacement Module Applications**).
- (b) The ACCC will provide NBN Co with no less than 12 months' written notice requiring NBN Co to provide a Replacement Module Application.
- (c) In a written notice given by the ACCC under clause 5.2(b), the ACCC:
- (i) must specify the due date for NBN Co to provide a Replacement Module Application to the ACCC, which must be no less than 9 months and no more than 18 months prior to the end of the then-current Regulatory Cycle; and
  - (ii) may request that NBN Co provide particular information and documents to the ACCC in support of NBN Co's Replacement Module Application.

**Commented [A1]: Explanatory note:** concerns have been raised regarding the ACCC's ability to make an upfront request regarding the information that **nbn** would provide to the ACCC with a Replacement Module Application (**RMA**).

In response, the rider shows changes to clause 5.2 to provide that the ACCC may request information and documents from **nbn** as part of giving **nbn** the standard 12 months' notice of the requirement to submit an RMA, which **nbn** must then provide when submitting the RMA. This is in addition to the previously proposed general provisions regarding ACCC information requests in clause 6.3 (which are amended slightly in this rider for consistency with this clause 5.2 – see below), and in addition to the ACCC's statutory information gathering and record-keeping powers.

Further, the November Variation included similar provisions in relation to the replacement module process for the *Post-2032 Regulatory Period*, by providing that the ACCC may issue a 'Statement of Approach' for a Regulatory Cycle in that period, and that in submitting an RMA for that cycle, **nbn** must provide such proposals and information as requested in the Statement of Approach. As a consequence of making these adjustments to clause 5.2 (which provide for the ACCC to request that **nbn** provide information with its RMA, for both the Subsequent Regulatory Period and the Post-2032 Regulatory Period), **nbn** has also amended the 'Statement of Approach' provisions to avoid duplication (see below) – so that any such information request will be made under clause 5.2 rather than made in a Statement of Approach.

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(d) NBN Co must:

(i) give a Replacement Module Application to the ACCC no later than the due date specified by the ACCC in accordance with clause 5.2(c); and

~~(ii) give any such information and documents requested under clause 5.2(c)(ii) to the ACCC on the same day that NBN Co gives the relevant Replacement Module Application to the ACCC (except to the extent the ACCC has, in writing, withdrawn or waived any such requirement).~~

[...]

(f) A Replacement Module Application given to the ACCC by NBN Co for a proposed Regulatory Cycle within the Post-2032 Regulatory Period:

[...]

(v) must include such proposals, ~~and be accompanied by such information,~~ as requested in any applicable ACCC Statement of Approach in accordance with clause 3A.1.3 (except to the extent the ACCC has, in writing, withdrawn or waived any such requirement).

(g) The ACCC may publish any Replacement Module Application, and information and documents provided to the ACCC by NBN Co in support of any Replacement Module Application, subject to clause ~~6.3~~ 6.4.

[...]

### 5.8 ACCC Replacement Module Determination

(a) The ACCC may issue a determination (an **ACCC Replacement Module Determination**) in respect of any Regulatory Cycle which is after the First Regulatory Cycle, and may only do so:

- (i) where that Regulatory Cycle is within the Subsequent Regulatory Period:
- (A) after the date by which NBN Co must give the ACCC a Replacement Module Application in respect of that Regulatory Cycle, as specified by the ACCC in accordance with clause 5.2(c); and
- (B) at least 20 Business Days before the last day of the Regulatory Cycle immediately before that Regulatory Cycle (the last day of such period being the **Cycle Expiry Date**), unless this timeframe is extended under clause 5.8(e); and
- (ii) where that Regulatory Cycle is within the Post-2032 Regulatory Period, at any time after the date by which NBN Co must give the ACCC a Replacement Module Application in respect of that Regulatory Cycle, as specified by the ACCC in accordance with clause 5.2(c).

[...]

(e) The ACCC may extend or further extend the timeframe referred to in clause 5.8(a)(i)(B) by a period of up to three months per extension by giving written notice to NBN Co and publishing that notice on the ACCC's website, provided that:

- (i) only two such extensions may be made in respect of each ACCC Replacement Module Determination;  
and
- (ii) the written notice states the reason(s) for the extension.

**Commented [A2]: Explanatory note:** this is a consequential change to the provisions related to ACCC 'Statements of Approach' for the post-2032 period – which is made to avoid duplication with the new ACCC information request provision above. See also the changes to clause 3A.1.3(b) at the end of this rider.

**Commented [A3]: Explanatory note:** Amended to correct a cross-referencing error. This correction will ensure that this clause reflects the other instances in the SAU variation where, for completeness and clarity, particular clauses are expressed to be subject to clause 6.4 (Confidentiality).

**Commented [A4]: Explanatory note:** concerns have been raised regarding the timeframe for the ACCC to make RMDs. In response, this rider amends the replacement module provisions to allow the ACCC to extend that timeframe by up to six months (including, for example, if such an extension was required to continue to collect relevant information from nbn or RSPs). This change (together with other changes below) would give effect to that position. A limited number of transitional provisions will also be required to govern particular matters in the interim between a Regulatory Cycle starting and the ACCC making an RMD for that cycle (see below).

**Commented [A5]: Explanatory note:** this new clause (e) gives effect to the position stated above – to allow the ACCC to extend the timeframe for making an RMD. The clause is similar to the provisions in Part XIX of the CCA which provide for the ACCC to extend the statutory period for assessing an SAU variation (see s152CBG(9) and (10)).

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[...]

### 5.9 ACCC Replacement Module Determinations for the Subsequent Regulatory Period

[...]

- (d) If the ACCC has not issued an ACCC Replacement Module Determination under clause 5.8(a) in respect of a Regulatory Cycle in the Subsequent Regulatory Period within the timeframe referred to in that clause [\(as may be extended under clause 5.8\(e\), as relevant\)](#), then for the purposes of applying this Special Access Undertaking, an ACCC Replacement Module Determination will be taken to be in effect during that Regulatory Cycle, in which the matters for each Financial Year of that Regulatory Cycle which the ACCC would otherwise have been required to determine under clauses 5.9(a)(i) and 5.9(a)(ii) are as stated in NBN Co's Replacement Module Application for that Regulatory Cycle.

[...]

#### Transitional provisions for the Subsequent Regulatory Period

(h) If the timeframe referred to in clause 5.8(a)(i)(B) for issuing an ACCC Replacement Module Determination is extended under clause 5.8(e), then:

(i) the Regulatory Cycle to which that ACCC Replacement Module Determination relates will:

(A) start immediately after the Cycle Expiry Date of the previous Regulatory Cycle; and

(B) otherwise have a length determined by the ACCC Replacement Module Determination for that Regulatory Cycle in accordance with clause 5.9(a); and

(ii) from the start of the Regulatory Cycle to which that ACCC Replacement Module Determination relates until that determination is issued under clause 5.8(a) or taken to be in effect under clause 5.9(d):

(A) NBN Co will continue to include in the SFAA published in accordance with clause 8, an obligation to meet or exceed Service Standards which are no less favourable to Access Seekers than the Benchmark Service Standards as they apply on the Cycle Expiry Date of the previous Regulatory Cycle; and

(B) for the purposes of clause 2D.4.2 only (regarding the materiality of costs for Cost Pass-Through Events), the Forecast Nominal Core Services ABBRR for the first Financial Year of that Regulatory Cycle will be taken to be the Forecast Nominal Core Services ABBRR for the last Financial Year of the previous Regulatory Cycle (as set in the ACCC Replacement Module Determination for that previous Regulatory Cycle).

[...]

**Commented [A6]: Explanatory note:** this new clause 5.9(h) sets out transitional provisions to govern particular matters in any interim period between a Regulatory Cycle in the Subsequent Regulatory Period starting and the ACCC making an RMD for that cycle. **nbn** does not consider it is necessary in this context to set transitional provisions relating to the ABBRR or WAPC (noting that there are separate WAPC provisions which are intended to cover the first year of a Regulatory Cycle even if an RMD is not made before the cycle starts).

In particular, in this new clause 5.9(h):

- sub-clause (i) provides in effect (and for completeness), that the Regulatory Cycle would still start when it normally would (i.e., 1 July) and will have a total length as set in the RMD (once made). This is to avoid any doubt that a Regulatory Cycle has started despite the RMD for that cycle having not yet been made (noting that various other SAU clauses are based on the concept of **nbn** being in a 'Regulatory Cycle');

- sub-clause (ii)(A) provides in effect that the Benchmark Service Standards from the previous Regulatory Cycle will carry over in the interim period; and

- sub-clause (ii)(B) recognises that, in the interim period, there would not be a Forecast ABBRR for the first year of the Regulatory Cycle, and that the 'materiality of costs' provisions in respect of cost pass-through events are based on the Forecast ABBRR for the relevant year. Accordingly, sub-clause (ii)(B) provides in effect that, only for the purposes of those materiality provisions in the interim period, the relevant ABBRR will be the ABBRR from the last year of the previous cycle. This clause closes a small, unlikely gap which may arise if **nbn** needed to determine whether it may or must submit a cost pass-through application for a particular event that occurs in the interim period between a Regulatory Cycle starting and the ACCC making an RMD for that cycle.

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### 5.10 ACCC Replacement Module Determinations for the Post-2032 Regulatory Period

[...]

#### Transitional provisions for the Post-2032 Regulatory Period

- (g) If the ACCC has not issued a first ACCC Replacement Module Determination under clause 5.8(a) in respect of a regulatory cycle in the Post-2032 Regulatory Period by 31 March 2032:
- (i) NBN Co will, by no later than 1 May 2032, publish a tariff list in respect of the Financial Year commencing on 1 July 2032 containing information equivalent to information to be set out in a Tariff List published in accordance with clause 2B.2.3(a). The Price for the supply of an NBN Offer and the Price of an Other Charge at any point in time during that Financial Year must not be higher than the relevant Price in the tariff list;
  - (ii) the Prices stated in the tariff list published by NBN Co under clause 5.10(g)(i) must:
    - (A) for WAPC Charge Components, comply with the WAPC formula in clause 2D.2.2, where:
      - (I) ~~the~~  $X_t$  will be the same as the  $X_t$  that applied in Financial Year 2031/32;
      - (II) EM<sub>t</sub> will be calculated in accordance with clause 2D.2.6(b), except that this clause will be read by replacing the words “for each subsequent Financial Year t in the Subsequent Regulatory Period” with “for each Financial Year t in the Post-2032 Regulatory Period”;
      - (III) t will be the Financial Year in the Post-2032 Regulatory Period in respect of which the tariff list under clause 5.10(g)(i) is published;
    - ~~(A)~~ (B) if subject to Individual Price Controls in clauses 2E.2.2 to 2E.2.4 at the end of the Subsequent Regulatory Period, comply with those Individual Price Controls; and
    - ~~(B)~~ (C) if subject to the TC-4 Price Relativity Restriction at the end of the Subsequent Regulatory Period, comply with the TC-4 Price Relativity Restriction;
  - (iii) NBN Co may only update the tariff list published by NBN Co under clause 5.10(g)(i) throughout the Financial Year to reflect:
    - (A) a change to the Price of a previously Zero-Priced NBN Offer or Other Charge;
    - (B) the Price on introduction of any new NBN Offer, Other Charge or other WAPC Charge Components; or
    - (C) any determination by NBN Co to reduce a Price in the tariff list;
  - (iv) NBN Co will, by no later than 1 May 2032, publish a pricing roadmap for the next three Financial Years containing the same information set out in clause ~~2B.2.4(a)~~ 2B.2.4(a)(i)-(iii), in accordance with the same conditions as set out in clause 2B.2.4(b);
  - (v) NBN Co will continue to include in the SFAA published in accordance with clause 8, an obligation to meet or exceed Service Standards which are no less favourable to Access Seekers than the Benchmark Service Standards as they apply at the end of the last Regulatory Cycle in the Subsequent Regulatory Period; and
  - (vi) NBN Co will comply with Schedule 2H (Product Development and Withdrawal), notwithstanding clause 2H.1.1.

**Commented [A7]: Explanatory note:** These clauses 5.10(g), (h) and (i) set out transitional provisions for the event that there is a delay in making the RMD for the first Regulatory Cycle in the Post-2032 Regulatory Period – including the continued application of the WAPC.

This rider shows minor changes to clause 5.10(g) to add an interpretive rule regarding particular elements of the WAPC – being the terms “EM” and “t”, which otherwise are defined in Module 2 by reference to the ‘Subsequent Regulatory Period’ rather than the ‘Post-2032 Regulatory Period’. The amendments give those terms a different meaning in this context, so that they may be effectively used in the Post-2032 Regulatory Period under these transitional rules.

**Commented [A8]: Explanatory note:** in the November Variation, this was a reference to clause 2B.2.4(a), which included each subsection of that clause i.e., subsections (i) to (iv). As a minor change, this reference has been amended so that it no longer includes a reference to 2B.2.4(a)(iv), which relates to the ‘Forecast Average Combined Charge of each Bundled TC-4 Offer’. This change reflects that nbn will transition its TC-4 services to AVC-only by 1 July 2026 (and therefore that clause 2B.2.4(a)(iv) will have no relevance to these transitional provisions for the Post-2032 Regulatory Period).

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Any defined term used, and any provision referred to, in this clause 5.10(g) which is defined or appears in Module 2 will have the same meaning or operative effect (as applicable) when used in this clause 5.10(g), except that references in such definitions or provisions to the Subsequent Regulatory Period will be read as being references to the Post-2032 Regulatory Period, unless expressly provided otherwise in this clause 5.10(g). Any provisions referred to in this clause 5.10(g) that apply during the Subsequent Regulatory Period will be read as applying during the Post-2032 Regulatory Period for the purposes of this clause 5.10(g).

- (h) If by 31 March 2033 or by 31 March of any subsequent year, the ACCC has not issued a first ACCC Replacement Module Determination under clause 5.8(a) in respect of a regulatory cycle in the Post-2032 Regulatory Period, then clause 5.10(g) will apply as though each reference to 2032 in clause 5.10(g)(i) and clause 5.10(g)(iv) is a reference to 2033 or the relevant subsequent year, where the relevant Pricing Roadmap for the purposes of the TC-4 Price Relativity Restriction will be the pricing roadmap published by NBN Co pursuant to clause 5.10(g)(iv).
- (i) Clauses 5.10(g) and 5.10(h) will have no further effect on and from the date on which the ACCC issues the first ACCC Replacement Module Determination made in respect of a regulatory cycle in the Post-2032 Regulatory Period.

### 5.11 Draft Replacement Module Determination Decision

By 31 March of the last Financial Year of each Regulatory Cycle, except for the last Regulatory Cycle of the SAU Term, the ACCC may publish on its website the ACCC's preliminary view regarding:

- (a) the matters to be determined pursuant to clauses 5.9(a) and 5.9(b) as part of any such ACCC Replacement Module Determination (for an upcoming Regulatory Cycle within the Subsequent Regulatory Period); or
- (b) the matters to be determined pursuant to clause 5.10(a) and clause 5.10(b) (for an upcoming Regulatory Cycle within the Post-2032 Regulatory Period),

(Draft Replacement Module Determination Decision), subject to clause 6.4.

[...]

### 6.2 Manner in which functions and powers are performed or exercised

In the course of performing or exercising the following functions and powers conferred on the ACCC by this Special Access Undertaking pursuant to section 152CBA(10A) of the CCA:

- (a) requesting that NBN Co provide particular information in support of a Replacement Module Application under clause 5.2(c)(ii);

~~(b)~~ issuing an ACCC Replacement Module Determination under clauses 5.8, 5.10(f) or 5.12, or a Draft Replacement Module Determination under clause 5.11;

[...]

the ACCC will give NBN Co a reasonable opportunity to make submissions in respect of material issues relevant to the relevant request, determination, decision or statement before it is issued or made.

**Commented [A9]: Explanatory note:** these amendments expand this interpretive rule to apply to the *operative* provisions referred to in this clause 5.10(g), rather than just the defined terms. This is to ensure that the mechanism works as intended and has operative effect during the Post-2032 Regulatory Period within the scope of these transitional provisions.

**Commented [A10]: Explanatory note:** the addition of the word "upcoming" is intended to clarify that the preliminary views to be published by the ACCC in a Draft RMD Decision relate to the matters for the *upcoming* cycle, as distinguished from the Regulatory Cycle referred to in the first line of this clause 5.11 which relates to the Regulatory Cycle *prior* to the cycle to which the Draft RMD Decision relates.

**Commented [A11]: Explanatory note:** clause 6.2 of the November Variation provides that in the course of performing or exercising particular functions and powers, the ACCC will give **nbn** a reasonable opportunity to make submissions.

Given the proposed changes above which provide for the ACCC to request that **nbn** provide particular information with its RMA, and the value and importance of **nbn** liaising with the ACCC about the nature of that request, this rider shows amendments to this clause 6.2 so that it also applies to the ACCC making such an information request.

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### 6.3 ACCC information and document request

- (a) At any time, the ACCC may request information and documents from NBN Co that the ACCC considers reasonably necessary for it to:
- (i) administer, and assess NBN Co's compliance with, this Special Access Undertaking; or
  - (ii) perform or exercise the functions and powers conferred on the ACCC by this Special Access Undertaking pursuant to section 152CBA(10A) of the CCA.

(b) NBN Co must give any such information and documents requested under ~~comply with a request made by the ACCC under this~~ clause 6.3(a) to the ACCC within any reasonable timeframe specified by the ACCC.

~~(b)(c)~~ Nothing in this Special Access Undertaking requires NBN Co to produce a document that would disclose information that is the subject of legal professional privilege.

[...]

### 2B.2.1 Pricing Principles

In changing Prices or setting new Prices in the Tariff List and Pricing Roadmap for NBN Offers and Other Charges during the Subsequent Regulatory Period (including in connection with a new product or service introduction), NBN Co must have regard to the following:

- (a) the efficient costs of NBN Co supplying products and services;

[...]

### 2B.2.2 Statement of Pricing Intent

(a) By no later than 1 May preceding the first Financial Year of each Regulatory Cycle in the Subsequent Regulatory Period, NBN Co will publish a statement in respect of the Prices for NBN Offers in respect of the NBN Access Service ... **(Statement of Pricing Intent)**.

(b) Subject to clause 2B.2.2(d), NBN Co may only update the Statement of Pricing Intent for a Regulatory Cycle after publishing it under clause 2B.2.2(a) if there has been a material change in circumstances which...

[...]

(d) If the ACCC has not issued an ACCC Replacement Module Determination by 31 March preceding the first Financial Year of a Regulatory Cycle in the Subsequent Regulatory Period, then:

(i) in publishing a Statement of Pricing Intent for that Regulatory Cycle under clause 2B.2.2(a), NBN Co must:

(A) assume that Regulatory Cycle will be at least 3 years in duration (unless fewer than 3 years remain in the Subsequent Regulatory Period, in which case, the Statement of Pricing Intent must be for the number of years remaining in the Subsequent Regulatory Period);

(B) assume the Entry Level Offers that will be determined in the ACCC Replacement Module Determination for that Regulatory Cycle; and

(C) state those assumptions in the Statement of Pricing Intent;

**Commented [A12]: Explanatory note:** clause 6.3 of the November Variation is a general provision relating to ACCC information requests. This rider shows minor amendments to sub-clause (b) to make it consistent with the new ACCC information request provision set out in clause 5.2 above, and for completeness, has added sub-clause (c) to clarify that nothing in the SAU requires nbn to produce documents that would disclose information that is subject to legal professional privilege.

**Commented [A13]: Explanatory note:** this is a minor change to clarify that the word "changing" applies to Prices, while "setting" applies to new Prices.

**Commented [A14]: Explanatory note:** the November Variation provides for nbn to publish a 'Statement of Pricing Intent' for an upcoming Regulatory Cycle, and to do so by 1 May before that cycle starts. However, at that point in time, the RMD which sets the length of that Regulatory Cycle (and relevant Entry Level Offers) may not have been made – and that prospect increases with the changes set out above which provide for the ACCC to extend the timeframe for making an RMD.

In that context, this rider adds a new clause (d), which provides that if an RMD for the relevant cycle has not been made by 31 March before the cycle starts:

- nbn must make assumptions in its Statement of Pricing Intent to be published by 1 May regarding the length of the Regulatory Cycle and the Entry Level Offers to be set in the RMD for that cycle;
- if the RMD for that cycle ultimately sets a different length cycle than what nbn assumed, nbn must update the Statement of Pricing Intent to account for that difference (i.e., to cover the cycle length set by the ACCC); and
- if the RMD for that cycle ultimately sets different Entry Level Offers to what nbn assumed, nbn may update the Statement of Pricing Intent to account for that difference (noting that Entry Level Offers are subject to a stricter individual price control, and therefore that nbn's pricing intentions for a cycle may change if the Entry Level Offers are different to what nbn assumed).

nbn considers this is a reasonable change to address an unlikely edge-case scenario – noting that:

- it will be in nbn's interests to publish its initial Statement of Pricing Intent on the assumption of what it considers to be the cycle length and Entry Level Offers most likely to be set in the upcoming RMD – to avoid any need to change plans and publish an updated document;
- the sooner the RMD is made, the sooner nbn will publish an updated Statement of Pricing Intent.

nbn has made similar changes below to the Pricing Roadmap provisions.

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- (ii) if the ACCC Replacement Module Determination for that Regulatory Cycle determines a different length Regulatory Cycle than that assumed by NBN Co pursuant to clause 2B.2.2(d)(i)(A), NBN Co must publish an updated Statement of Pricing Intent to account for that difference;
- (iii) if the ACCC Replacement Module Determination for that Regulatory Cycle determines different Entry Level Offers to those assumed by NBN Co pursuant to clause 2B.2.2(d)(i)(B), NBN Co may publish an updated Statement of Pricing Intent to account for that difference;
- (iv) any update to a Statement of Pricing Intent pursuant to clauses 2B.2.2(d)(ii) and (iii) must be published by NBN Co within 40 Business Days of the ACCC Replacement Module Determination for the relevant Regulatory Cycle being issued under clause 5.8(a) (or being taken to be in effect under clause 5.9(d)).

[...]

### 2B.2.4 Pricing Roadmap

- (a) By no later than 1 May preceding each Financial Year of the Subsequent Regulatory Period, NBN Co will publish a roadmap (**Pricing Roadmap**) which sets out, for each of the next three Financial Years:
  - (i) the Price for each NBN Offer and Other Charge;
  - (ii) the Price for each other WAPC Charge Component;
  - (iii) CVC inclusions for each Bundled TC-4 Offer and Bundled TC-2 Offer; and
  - (iv) the Forecast Average Combined Charge for each Bundled TC-4 Offer.

[...]

- (d) If NBN Co updates a Tariff List under clause 2B.2.3(d), or such update to a Tariff List is otherwise approved by the ACCC pursuant to clause 2B.2.3(e), NBN Co must update the corresponding Pricing Roadmap to maintain consistency.
- (e) NBN Co may update the Pricing Roadmap to change a Price or CVC TC-4 inclusion in respect of an NBN Offer or Other Charge as approved by the ACCC in writing.
- (f) If the ACCC has not issued an ACCC Replacement Module Determination by 31 March preceding the first Financial Year of a Regulatory Cycle in the Subsequent Regulatory Period, then:
  - (i) in publishing a Pricing Roadmap by 1 May preceding that Financial Year under clause 2B.2.4(a), NBN Co must assume the Entry Level Offers that will be determined in the ACCC Replacement Module Determination for that Regulatory Cycle and state that assumption in the Pricing Roadmap; and
  - (ii) if the ACCC Replacement Module Determination for that Regulatory Cycle determines different Entry Level Offers to those assumed by NBN Co pursuant to clause 2B.2.4(f)(i), NBN Co may update the Pricing Roadmap within 40 Business Days of the ACCC Replacement Module Determination for that Regulatory Cycle being issued under clause 5.8(a) (or being taken to be in effect under clause 5.9(d)) to account for that difference.

[...]

**Commented [A15]: Explanatory note:** this is a minor change to ensure that all circumstances under which **nbn** is permitted to update the Tariff List are captured within this obligation to update the corresponding Pricing Roadmap.

Without this amendment, this clause had the unintended consequence of allowing **nbn** to update the Tariff List following ACCC approval under clause 2B.2.3(e) without being required to update the corresponding Pricing Roadmap.

**Commented [A16]: Explanatory note:** the November Variation provides for **nbn** to publish a three-year 'Pricing Roadmap' by 1 May each year in the Subsequent Regulatory Period.

However, when doing so shortly before a new Regulatory Cycle starts, the RMD which sets relevant Entry Level Offers may not have been made – and that prospect increases with the changes set out above which provide for the ACCC to extend the timeframe for making an RMD.

In that context, this rider adds a new clause (f), which provides that if an RMD has not been made by 31 March before a Regulatory Cycle starts:

- **nbn** must make assumptions in its Pricing Roadmap regarding the Entry Level Offers to be set in the RMD for that cycle; and
- if the RMD for that cycle ultimately sets different Entry Level Offers to what **nbn** assumed, **nbn** may update the Pricing Roadmap to account for that difference (noting that Entry Level Offers are subject to a stricter individual price control, and therefore that **nbn**'s pricing intentions for a cycle may change if the Entry Level Offers are different to what **nbn** assumed).

**nbn** considers this is a reasonable change to address an unlikely edge-case scenario – noting that:

- it will be in **nbn**'s interests to publish its initial Pricing Roadmap on the assumption of what it considers to be the Entry Level Offers most likely to be set in the upcoming RMD – to avoid any need to change plans and publish an updated document; and
- the sooner the RMD is made, the sooner **nbn** will publish any updated Pricing Roadmap.

Similar provisions are not required to allow **nbn** to publish an updated Tariff List in that instance, since the Entry Level Offers for the first year of an upcoming Regulatory Cycle will already be known when **nbn** is preparing the Tariff List for that year (since those Entry Level Offers are set by the RMD for the previous cycle – see further below).

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### 2C.4 TC-4 Discount restrictions and ACCC power for Pricing Review Events

#### 2C.4.1 Restriction on TC-4 Discounts

- (a) Subject to clauses 2C.4.1(d) and 2C.4.3, if NBN Co's Notional Undiscounted TC-4 Revenue is greater than its Discount-Adjusted TC-4 Revenue by more than 5% in any Financial Year (the **Discounting Threshold**), NBN Co must:
- (i) notify the ACCC; and
  - (ii) reduce TC-4 Prices for the following Financial Year in accordance with clause 2C.4.1(b).
- [...]
- (c) For the purposes of this clause 2C.4.1:
- (i) **Discount-Adjusted TC-4 Revenue** means the amount of revenue earned by NBN Co in a Financial Year from all TC-4 Related Charges, having regard to any Discounts applied to any TC-4 Related Charge;
  - (ii) **Notional Undiscounted TC-4 Revenue** means the amount of revenue that would have been earned by NBN Co in a Financial Year from all services subject to a TC-4 Related Charge, had ~~no Discounts applied to any~~ NBN Co supplied the same quantity of those services but charged TC-4 Prices throughout the Financial Year instead of those TC-4 Related Charges;
  - (iii) **TC-4 Price** means the Price in the Tariff List for an NBN Offer for, or including, an AVC TC-4 or CVC TC-4 Product Component; and
  - (iv) **TC-4 Related Charge** means:
    - (A) each charge for an NBN Offer for, or including, an AVC TC-4 or CVC TC-4 Product Component; and
    - (B) any combined charge ~~under a discount~~ for a bundle of two or more NBN Offers, at least one of which is for, or includes, an AVC TC-4 or CVC TC-4 Product Component.
- (d) For the Financial Year in which the Price Transition Date occurs, Notional Undiscounted TC-4 Revenue, Discount-Adjusted TC-4 Revenue and the effect of any reduced TC-4 Prices had they applied in that Financial Year will be assessed only on and from the Price Transition Date.

#### 2C.4.2 ACCC power for Pricing Review Events

- (a) In this clause 2C.4.2, **Pricing Review Event** means:
- (i) NBN Co including a Price in the Tariff List for an NBN Offer which the ACCC reasonably considers is inconsistent with NBN Co's then-current Statement of Pricing Intent; or
  - (ii) ~~subject to clause 2C.4.3, in respect of a TC-4 Offer Group, that on average throughout a Financial Year, a Discount applied to more than 50% of AVC TC-4s that were supplied under NBN Offers within that TC-4 Offer Group~~ were supplied at an effective charge lower than the corresponding Price in the Tariff List, having regard to any Discounts applied to those AVC-TC-4s.
- (b) If an event described in clause 2C.4.2(a)(ii) occurs for any Financial Year, NBN Co must notify the ACCC within 30 Business Days after the end of that Financial Year.
- (c) If a Pricing Review Event occurs...

**Commented [A17]: Explanatory note:** one of the discounting restrictions in the November Variation involves comparing nbn's actual revenue from TC-4 services (after accounting for any discounts) with the notional TC-4 revenue nbn would have received without discounts (the 'Notional Undiscounted TC-4 Revenue').

An RSP's submission to the ACCC's January consultation paper suggested that the term 'Notional Undiscounted TC-4 Revenue' in clause 2C.4.1(c) could be interpreted to say that if nbn did not provide a discount, then 'it would not have earned the revenue in any event'.

In response, this rider clarifies that term to put beyond doubt that it is referring to the notional revenue nbn would have earned had it supplied the *same quantity* of TC-4 services but without any discounts (i.e., at Tariff List prices). This rider also makes other minor clarifications to these provisions, as shown.

**Commented [A18]: Explanatory note:** drafting clarification, since the possibility of a "combined bundle charge" arising *through a discount* is already addressed in the definition of "Discount-Adjusted TC-4 Revenue".

**Commented [A19]: Explanatory note:** a minor clarification to ensure the meaning of this clause is clear, given the concerns raised in submissions to the ACCC's consultation paper regarding the clarity of the discounting restrictions drafting.



ANNEXURE 2

[...]

2E.2 Individual price controls

2E.2.1 Entry Level Offers

(a) Subject to clause 2E.4, when publishing the Tariff List for Financial Year under clause 2B.2.3(a) (other than for the first Financial Year of the First Regulatory Cycle), the Forecast Average Combined Charge during that Financial Year for each Bundled TC-4 Offer that is an Entry Level Offer must be no greater than...

[...]

(b) For each Financial Year (other than the first Financial Year of the Subsequent Regulatory Period), the Prices included in the Tariff List published under clause 2B.2.3(a) for each Flat-Rate Offer which is an Entry Level Offer when the Tariff List is published must be no greater than...

(c) For the purposes of this clause 2E.2.1, the Bundled TC-4 Offers and Flat-Rate Offers which are Entry Level Offers when publishing the Tariff List under clause 2B.2.3(a) for the first Financial Year of a Regulatory Cycle (other than the First Regulatory Cycle) will be the Entry Level Offers for the last Financial Year of the previous Regulatory Cycle.

[...]

3A.1.3 ACCC Statement of Approach

(a) On or before the date on which the ACCC gives NBN Co written notice under clause 5.2(b) requiring NBN Co to give the ACCC a Replacement Module Application in respect of a Regulatory Cycle within the Post-2032 Regulatory Period (as specified by the ACCC in accordance with clause 5.2(c)), the ACCC may issue a statement setting out the ACCC's proposed approach in relation to the matters set out in clause 3A.1.3(b) in respect of that Regulatory Cycle (ACCC Statement of Approach).

(b) The ACCC Statement of Approach may:

(i) set out proposed approaches in relation to any of the matters referred to in clauses 5.10(a) and 5.10(b); and

(ii) request that NBN Co include proposals in its Replacement Module Application for the upcoming Regulatory Cycle in respect of matters additional to those required by clauses 5.2(f)(i) to 5.2(f)(iii); and

request that NBN Co provide information with its Replacement Module Application for the upcoming Regulatory Cycle.

(c) In relation to the first Regulatory Cycle within the Post-2032 Regulatory Period, the ACCC may issue an ACCC Statement of Approach in accordance with clause 3A.1.3(a) before the Post-2032 Regulatory Period, notwithstanding clause 3A.1.1.

Commented [A20]: Explanatory Note: clause 2E.2.1 of the November Variation sets out the individual pricing controls which apply to Entry Level Offers. Relevantly, the Entry Level Offers for the purposes of the Tariff List for the first year of a Regulatory Cycle are the Entry Level Offers from the previous Regulatory Cycle. As noted above, this allows the Entry Level Offers for that first year to be known with certainty at the time of preparing and publishing the Tariff List for that first year (regardless of whether an RMD has been made for the upcoming cycle).

This is reflected in clause 2E.2.1(a) and (b) of the November Variation, which apply the relevant price control to the offers which are Entry Level Offers at the time when the Tariff List is published (noting the Tariff List for the first Financial Year of a Regulatory Cycle is published by 1 May of the last Financial Year of the previous cycle). However, nbn considers that this could be clearer in clause 2E.2.1 and has added a new sub-clause (c) in this rider to put this beyond doubt.

Commented [A21]: Explanatory note: a consumer body's submission to the ACCC's January consultation paper suggested that the Statement of Approach should be issued a minimum of 180 days before nbn is due to provide its RMA.

nbn considers there is merit in this suggestion, but that it would fit better within the broader replacement module process if the Statement of Approach was made, at the latest, at the time the ACCC gives nbn 12 months' notice of the due date of submitting an RMA (and requests information that nbn must provide with that RMA, pursuant to the updated clause 5.2). nbn has reflected that position in updates to clauses 3A.1.3(a) and (c).

Commented [A22]: Explanatory Note: as noted above, in this rider the 'Statement of Approach' provisions have been amended to remove duplication – given that clause 5.2 above now provides for the ACCC to request nbn to provide particular information with its RMA for Regulatory Cycles in both the Subsequent Regulatory Period and the Post-2032 Regulatory Period.