

Annexure 4 to nbn letter to ACCC – March 2023

Other changes to November SAU Variation

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;
- the replacement module process and pricing regulation provisions – Annexure 2;
- service performance and improvements – Annexure 3; and
- WAPC simplification and clarifications – Annexure 5.

In the table column headed 'Change', **nbn** has shown changes in track / mark-up against extracts of the November Variation, or otherwise described the change.

Provision of November Variation	Change	Explanation
SAU Dictionary – Definition of 'Personnel'	<p><u>Change to the following definition as shown in track:</u></p> <p>Personnel means officers, employees, agents, contractors, subcontractors and consultants. References in this Special Access Undertaking to Personnel of NBN Co do not include Access Seeker, its Related Bodies Corporate or their respective officers, employees, agents, contractors, subcontractors or consultants when performing any activities as a contractor of NBN Co in connection with the supply of a Product.</p>	<p>In response to concerns raised in an RSP's submission to the ACCC's January consultation paper, nbn will amend the SAU Dictionary definition of 'Personnel' in the manner shown.</p> <p>For completeness, nbn considers that with or without this change, the concerns raised with this definition should not arise, given the limited use of this definition in the SAU (and noting that in the Benchmark Service Standards context, clause 4A.3.1(b)(i) incorporates the full WBA definition, which already appropriately excludes nbn's liability to a specific Access Seeker in situations where that Access Seeker is acting as a contractor to nbn (eg, to perform an RSP self-installation by jumpering a copper service at a node).</p>

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SAU Dictionary – Definition of ‘Remote Area’	<p><u>Change to the following definition as shown in track:</u></p> <p>Remote Area means an area in which the relevant Premises is located which is not an Urban Area, Major Rural Area, or Minor Rural Area, and, if the Premises is located within the footprint of the NBN Co Satellite Network, an area which is also not an Isolated Area or Limited Access Area.</p>	This amendment seeks to align this definition with the corresponding definition set out in the Benchmark Service Standards.
SAU Dictionary – Definition of ‘Telstra Migration Plan’	<p><u>Change to the following definition as shown in track:</u></p> <p>Telstra Migration Plan means the Migration Plan given by Telstra Corporation Limited to the ACCC under section 577BDA of the Telecommunications Act in the form as at the Second SAU Variation Date <u>amended from time to time</u>.</p>	In response to concerns raised in an RSP’s submission to the ACCC’s January consultation paper, nbn will amend the SAU Dictionary definition of ‘Telstra Migration Plan’ in the manner shown.
Attachment D (Initial Products)	<p><u>Insertion of new note 3 below the table which applies to the Enhanced Service Levels and Additional Enhanced Service Levels product features described in the table, as follows:</u></p> <p><u>3. Not available in Isolated Areas or Limited Access Areas.</u></p>	<p>This clarification change is contemplated because the definitions of Isolated Area and Limited Access Area were introduced in the WBA at a time when the NBN Co Satellite Network was the only NBN Co Network available in these areas. However, given recent announcements about investments to deploy NBN Co Networks other than the NBN Co Satellite Network further into regional areas, nbn expects those networks will be used to supply nbn™ Ethernet services in these areas during the first regulatory cycle.</p> <p>Enhanced Service Levels are not, and have not, been supplied in Isolated Areas and Limited Access Areas. This is because enhanced Service Levels have only been offered on nbn’s fixed-line networks (i.e. FTTP/B/C/N and</p>

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		HFC) as Attachment D notes. To date, the Isolated Areas or Limited Access Areas definitions have only been relevant to the NBN Co Satellite Network.
Voice-Only Bundled Offer	<p><u>Change to the SAU Dictionary as shown in track:</u></p> <p>Voice-OnlyBasic Bundled Offer has the meaning given to that term in clause 2B.3.1(b)</p> <p><u>Change to Note 1 in clause 2B.3.1(b) as shown in track:</u></p> <p>The Voice-OnlyBasic Bundled Offer is offered if an Access Seeker uses an AVC with the relevant bandwidth profile as an input into an voice-only Access Seeker Product or Downstream Product <u>which is a broadband service which includes a voice component</u> and utilises 0.1 Mbps of TC-4 (PIR) or less of capacity. It applies for each day in which these conditions are satisfied. On each other day on which a bandwidth profile of 12 Mbps PIR (TC-4) downlink and 1 Mbps PIR (TC-4) uplink is selected, the Bundled TC-4 Offer with that bandwidth profile which is not the Voice-OnlyBasic Bundled Offer will apply.</p> <p><u>Change to Note 2 in clause 1.2 of Attachment E as shown in track:</u></p> <p>The Voice-OnlyBasic Bundled Offer and \$12.00 Monthly Recurring Charge will apply for each day of a billing</p>	<p>In response to RSP feedback, nbn is proposing to change the Voice-Only Bundled Offer to a Basic Bundled Offer. This change will expand the availability of this NBN Offer to some basic broadband usage (in addition to its availability for voice services).</p> <p>This change is given effect principally by removing the ‘voice-only’ requirement and replacing it with the requirement that the service be a broadband service which includes a voice component (as shown in the tracked changes) (in addition to the requirement regarding utilising 0.1 Mbps of TC-4 (PIR) or less of capacity). In addition to the tracked changes shown here, nbn would amend other references in the SAU to the term ‘Voice-Only Bundled Offer’ so that they instead refer to the term ‘Basic Bundled Offer’.</p>

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	<p>period on which an AVC with the relevant bandwidth profile is used as an input into an Access Seeker Product or Downstream Product which is a voice-only broadband service <u>which includes a voice component</u> and utilises 0.1 Mbps of TC-4 (PIR) or less of capacity. On other days, the \$24.40 Monthly Recurring Charge will apply on a pro-rated daily basis.</p>	
Attachment I (Benchmark Service Standards for the First Regulatory Cycle)	Drafting to be provided to the ACCC to extend the dropout threshold criteria in clause 23(a) of the Benchmark Service Standards to the NBN Co FTTC Network – to be applicable once FTTC is captured under the performance incident framework as part of WBA5.	See section 3.4 of nbn's submission to ACCC Consultation Paper - Proposed Variation to the NBN Co Special Access Undertaking (February 2023)
2B.7 (Low Income Forum)	<p><u>Changes to this clause as shown in track:</u></p> <p>(a) NBN Co will establish a multilateral working group to identify possible targeted initiatives to improve access to the NBN Co Network for low-income End Users, vulnerable End Users and unconnected End Users (Low-Income Forum).</p>	<p>A submission to the ACCC's January consultation paper suggested that the phrase 'low income, vulnerable and unconnected end users' in clause 2B.7 could be interpreted as only referring to end users which meet all three of those descriptions, rather than meeting any one of those descriptions. This change would address that concern and clarify nbn's intention.</p> <p>nbn would make equivalent changes to the other instances in clause 2B.7 where that phrase is used.</p>
2G.6.3 (Cost Allocation Manual)	<p><u>Insertion of new clause (d) as shown in track:</u></p> <p><u>(d) Once the ACCC has approved a Cost Allocation Manual in accordance with clause 2G.6.3(b) or a Proposed CAM submitted by NBN Co becomes the applicable Cost Allocation Manual in accordance with</u></p>	<p>nbn would add this new sub-clause (d) to clause 2G.6.3 to clarify that the <u>most recent</u> Cost Allocation Manual approved by the ACCC (under 2G.6.3(b)) or otherwise in effect (under 2G.6.3(c)) is the applicable Cost Allocation Manual.</p>

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	<p>clause 2G.6.3(c), any prior Cost Allocation Manual will have no effect.</p>	<p>This reflects that clause 2G.6.3 contemplates that the Cost Allocation Manual will be updated over time.</p> <p>nbn would also update the subsequent cross-referencing in clause 2G.6.3 accordingly (as a consequence of this new sub-clause being inserted).</p>
<p>2G.6.4(e), (f) 2G.7.1</p>	<p><u>Changes to these clauses as shown in track:</u></p> <p>2G.6.4 Categorisation and cost allocation for products and services [...] (e) An ACCC Replacement Module Determination in respect of a Regulatory Cycle (for the purposes of this clause 2G.6.4(e) and clause 2G.6.4(f), the Given Regulatory Cycle) may re-categorise a product or service as a Core Regulated Service or Competitive Service, in which event:</p> <ul style="list-style-type: none"> (i) the Forecast Nominal Core Services ABBRR for each Financial Year of the Given Regulatory Cycle; and (ii) the forecast Nominal Core Services RAB Portion at the start of each Financial Year of the Given Regulatory Cycle; and (iii) the Real Core Services RAB Portion at the start and end of each Financial Year of the Regulatory Cycle immediately preceding the Given Regulatory Cycle, 	<p>Clause 2G.6.3(g) of the November Variation:</p> <ul style="list-style-type: none"> • notes that the SAU provides for costs to be allocated in accordance with the Cost Allocation Principles in particular circumstances; and • provides that when allocating costs in accordance with the Cost Allocation Principles in those circumstances, NBN Co will apply, and the ACCC may have regard to, the Cost Allocation Manual. <p>A submission to the ACCC’s January consultation paper stated that the general principle in clause 2G.6.3(g) is inconsistent with clause 2G.6.4, which refers to certain cost allocations being made by the ACCC ‘in accordance with’ the Cost Allocation Manual.</p> <p>In response, nbn would make the minor changes shown, to ensure the general principle in clause 2G.6.3(g) has a general application – such that where a cost allocation must be made in accordance with the Cost Allocation Principles, nbn will apply the Cost Allocation Manual, and the ACCC may have regard to the Cost Allocation Manual.</p>

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	<p>determined in the ACCC Replacement Module Determination must reflect an allocation of building block model costs which:</p> <p>(iv) accounts for the proposed re-categorisation of the relevant product or service; and</p> <p>(v) is in accordance with the Cost Allocation Principles and the Cost Allocation Manual, and otherwise must be determined in accordance with the other clauses of this Schedule 2G.</p> <p>(f) An ACCC Replacement Module Determination which re-categorises an existing product or service as a Core Regulated Service or Competitive Service may also determine an updated value of the Real Module 2 Core Services ICRA, measured in Financial Year 2013/14 dollar terms, that accounts for the re-categorisation of the relevant product or service in accordance with the Cost Allocation Principles and the Cost Allocation Manual.</p> <p>[...]</p>	
	<p>2G.7.1 Nominal Tax Depreciation Forecasts</p> <p>[...]</p> <p>(b)(ii) the forecast nominal tax depreciation, determined on a straight line basis, of the value of Net Nominal Capital Expenditure (of each Asset Class) forecast to be incurred in connection with the design, engineering, construction, replacement and</p>	

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	<p>augmentation of Relevant Assets in each previous Financial Year of that Regulatory Cycle, allocated to the Core Services RAB Portion in accordance with the Cost Allocation Principles and the Cost Allocation Manual, using the Standard Asset Lifetime...</p>	
<p>MINOR TYPOGRAPHICAL CHANGES</p>		
<p>2G.2.4(d)</p>	<p><u>Change to clause numbering as shown in track:</u></p> <p>(d) For the purposes of clauses 2G.2.1(a)(iii) and 2G.2.2(a)(iii), the rate of return will be determined by estimating a nominal vanilla WACC for Financial Year (t) which is:</p> <p>(i) commensurate with the efficient... having regard to:</p> <p style="padding-left: 40px;">(A) the objective of producing reliable estimates of the market cost of capital in a wide range of plausible market conditions; <u>and</u></p> <p style="padding-left: 40px;">(B) the objective of promoting stability in the rate of return over time; and</p> <p>(ii)(C) calculated in accordance with the following formula...</p>	<p>Previous clause 2G.2.4(d)(i)(C) would be converted to a new clause 2G.2.4(d)(ii), to give effect to the intended meaning and ensure this clause flows from the chapeau of (d).</p>