

## ANNEXURE 5

### Annexure 5 to nbn letter to ACCC – March 2023 Changes to November SAU Variation: WAPC simplification and clarifications

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
- other contemplated changes – Annexure 4.

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

- clarifying the definition of 'WAPC Factor Change Year', including to make clear that the WAPC Factor Change Year will always be determined through an ACCC Replacement Module Determination (**RMD**);
- clarifying the provisions regarding the X-factor that will apply under the WAPC in particular scenarios, based on whether **nbn** is in the second phase of the WAPC, and on whether the ACCC has issued an RMD by the time **nbn** must prepare and publish a Tariff List for the upcoming Financial Year;
- clarifying how the X-factor is calculated for a Regulatory Cycle that is forecast to include some years in the first phase of the WAPC and some years in the second phase of the WAPC.

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**Changes:**

[...]

**5.3 Building Block Model Proposal for a Regulatory Cycle within the Subsequent Regulatory Period**

(a) A Building Block Model Proposal for a Regulatory Cycle within the Subsequent Regulatory Period must include:

[...]

(iii) if the WAPC Factor Change Year has occurred ~~(or is forecast to have occurred)~~ in a previous Regulatory Cycle or is forecast to occur in the proposed Regulatory Cycle, the Nominal Annual Drawdown of ICRA for the forecast WAPC Factor Change Year (if the WAPC Factor Change Year is forecast to occur in the proposed Regulatory Cycle) and each Financial Year in the proposed Regulatory Cycle occurring after the WAPC Factor Change Year has occurred or is forecast to occur;

[...]

(vi) a statement as to whether the WAPC Factor Change Year is forecast to occur during the proposed Regulatory Cycle (and, if so, the Financial Year in the proposed Regulatory Cycle that is forecast to be the WAPC Factor Change Year); and

(vii) if the WAPC Factor Change Year has occurred ~~(or is forecast to have occurred)~~ in a previous Regulatory Cycle or is forecast to occur in the proposed Regulatory Cycle, an X-factor which will apply in respect of the forecast WAPC Factor Change Year (if the WAPC Factor Change Year is forecast to occur in the proposed Regulatory Cycle) and those Financial Years in the proposed Regulatory Cycle occurring after the WAPC Factor Change Year has occurred or is forecast to occur, determined in accordance with clause 2D.2.4.

[...]

**Commented [A1]: Explanatory note:** this rider shows minor changes to this clause 5.3 to ensure it reflects:

- the clarified definition of WAPC Factor Change Year (see below);
- that if an RMD for a Regulatory Cycle (in this example, 'Cycle 1') does not forecast that **nbn** will meet the relevant ABBRR threshold in that Regulatory Cycle, but the Replacement Module Determination for the next Regulatory Cycle ('Cycle 2') determines that **nbn** in fact met the relevant ABBRR threshold in Cycle 1, then the WAPC Factor Change Year would be the first year of the next Regulatory Cycle ('Cycle 2'); and
- that when **nbn** submits a Replacement Module Application (RMA) (or the ACCC makes an RMD) in respect of an upcoming Regulatory Cycle, the WAPC Factor Change Year will either have occurred in a previous Regulatory Cycle, be forecast to occur in the coming Regulatory Cycle, or not be forecast to occur in the coming Regulatory Cycle. There is not a scenario in which the WAPC Factor Change Year would be *forecast* to have occurred in a *previous* cycle.

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[...]

### Attachment C Dictionary

#### 1 Definitions

[...]

**WAPC Factor Change Year** means the Financial Year immediately following the first Financial Year ~~in~~for which an ACCC Replacement Module Determination forecasts that the sum of:

- (a) NBN Co's Annual Core Services Forecast Revenue; and
- (b) the Forecast Annual RBS Amount,

~~first~~will exceeds or equals the Forecast Nominal Core Services ABBRR for that Financial Year, ~~as forecast in an ACCC Replacement Module Determination~~, except that:

- (c) if the ACCC Replacement Module Determination for the Second Regulatory Cycle identifies (or forecasts) that the sum of NBN Co's Core Services Revenue and the Forecast Annual RBS Amount for a Financial Year in the First Regulatory Cycle has exceededs or equalleds (or ~~is forecast in the ACCC Replacement Module Determination for the Second Regulatory Cycle to~~will exceed or equal) the Forecast Nominal Core Services ABBRR for that Financial Year, then the WAPC Factor Change Year will be the first Financial Year of the Second Regulatory Cycle; or
- (d) if:
  - (i) the ACCC Replacement Module Determination for a Regulatory Cycle (for the purposes of this definition, the Given Regulatory Cycle) identifies (or forecasts) that the sum of NBN Co's Core Services Revenue and the Forecast Annual RBS Amount for a Financial Year in a previous Regulatory Cycle (~~for the purposes of this definition, the Given Regulatory Cycle~~) has exceededs or equalleds (or ~~is forecast in the ACCC Replacement Module Determination for the next Regulatory Cycle to~~will exceed or equal) the Forecast Nominal Core Services ABBRR for that Financial Year; and
  - (ii) the ACCC Replacement Module Determination for any Regulatory Cycle prior to the Given Regulatory Cycle does not identify a Financial Year in which the sum of NBN Co's Annual Core Services Forecast Revenue and the Forecast Annual RBS Amount ~~first~~ exceeds or equals the Nominal Core Services ABBRR ~~in the applicable for that~~ Financial Year,

then the WAPC Factor Change Year will be the first Financial Year of the ~~next Regulatory Cycle after the~~ Given Regulatory Cycle.

[...]

## Schedule 2D Weighted average price control

### 2D.1 General

#### 2D.1.1 Scope

This Schedule 2D applies for the Subsequent Regulatory Period.

**Commented [A2]: Explanatory note:** These drafting amendments seek to provide further clarity to this definition and in particular, make it clear that the WAPC Factor Change Year will always be determined through an ACCC RMD.

In the November variation, this definition refers to the WAPC Factor Change Year being determined:

- according to forecasts in an RMD (as to whether and when **nbn** will meet a particular ABBRR threshold); or
- by reference to whether and when **nbn** has in fact met that particular ABBRR threshold.

While that position reflects the intent to transition to the 'X-factor' phase of the WAPC after meeting the relevant ABBRR threshold, there is a conceivable (perhaps unlikely) edge-case scenario in which there is a conflict between those different aspects of this definition.

In particular, consider a scenario in which the ACCC has issued an RMD which forecasts that **nbn** will first meet the relevant ABBRR threshold in the first year of the upcoming Regulatory Cycle, and accordingly determines that the WAPC Factor Change Year will occur in the second year of that upcoming cycle. However, after that RMD is made (and before the new cycle starts), **nbn** may achieve the relevant ABBRR threshold in the last year of the then-current Regulatory Cycle. In that unlikely scenario, there may be a conflict between the different limbs of this definition.

The changes to this definition address that issue and clarify that the WAPC Factor Change Year will always be determined through an RMD.

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### 2D.2 Weighted average price control

#### 2D.2.1 Scope of WAPC Charge Components

A **WAPC Charge Component** means each component or element of a product or service supplied by NBN Co to which a Price applies (including a \$0.00 Price), except to the extent such Price is:

- (a) a Non-WAPC Core Service Charge; or
- (b) a Price for a Competitive Service.

#### 2D.2.2 WAPC formula

The WAPC formula is as follows:

$$(1 + CPI_t)(1 - X_t)(1 + PT_t)(1 + EM_t) \geq \frac{\sum_{m=1}^M p_t^m q_{t-1.25}^m}{\sum_{m=1}^M p_{t-1}^m q_{t-1.25}^m}$$

where:

- (a)  $CPI_t$  means the December Quarter CPI published in Financial Year  $t - 1$ ;
- (b)  $EM_t$  means the excess adjustment factor for Financial Year  $t$ , calculated in accordance with clause 2D.2.6;
- (c)  $m$  means, in respect of each Financial Year  $t$ , each WAPC Charge Component supplied by NBN Co as at 31 March of Financial Year  $t - 1$  (excluding Connectivity Virtual Circuit Offers (TC-4) in respect of all NBN Co Networks other than the NBN Co Satellite Network), where there are  $M$  such charge components in total;
- (d)  $p_t^m$  means:
  - (i) for each charge component  $m$  that is a Bundled TC-4 Offer, the Forecast Average Combined Charge during Financial Year  $t$ ; and
  - (ii) for each other charge component  $m$ , the Price in the Tariff List to apply from 1 July of Financial Year  $t$ ;
- (e)  $p_{t-1}^m$  means:
  - (i) for each charge component  $m$  that is a Bundled TC-4 Offer, the weighted average of:
    - (A) the Average Combined Charge during the period from 1 July to 31 March of Financial Year  $t - 1$ ; and
    - (B) the Forecast Average Combined Charge for the period from 1 April to 30 June of Financial Year  $t - 1$ ,weighted by the number of days in each of the periods in paragraphs (A) and (B); and
  - (ii) for each other charge component  $m$ , the average of the Price in the Tariff List in respect of Financial Year  $t - 1$ , calculated as the sum of:
    - (A) the Price in the Tariff List that applied on each day from 1 July to 31 March of Financial Year  $t - 1$ ; and

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(B) the Price in the Tariff List that is forecast to apply on each day from 1 April to 30 June of Financial Year  $t - 1$ ,

divided by the number of days in Financial Year  $t - 1$ ;

**Exception 1:** If Financial Year  $t$  is the second Financial Year of the Subsequent Regulatory Period, the period referred to in clause 2D.2.2(e)(i)(A) or clause 2D.2.2(e)(ii)(A) (as applicable) will commence on the Price Transition Date, rather than 1 July of Financial Year  $t - 1$ , and the “number of days in Financial Year  $t - 1$ ” for the purposes of paragraph 2D.2.2(e)(ii) will mean the number of days from the Price Transition Date to 30 June of Financial Year  $t - 1$ , inclusive.

**Exception 2:** Where a charge component  $m$  has been introduced between 1 July and 31 March of Financial Year  $t - 1$ , the period referred to in clause 2D.2.2(e)(i)(A) or clause 2D.2.2(e)(ii)(A) (as applicable) will commence on the date that NBN Co first supplies that charge component  $m$  rather than 1 July of Financial Year  $t - 1$ , and the “number of days in Financial Year  $t - 1$ ” for the purposes of paragraph 2D.2.2(e)(ii) will mean the number of days from the date that NBN Co first supplies that charge component  $m$  to 30 June of Financial Year  $t - 1$ , inclusive.

(f)  $PT_t$  means the cost pass-through adjustment factor for Financial Year  $t$ , calculated in accordance with clause 2D.2.5;

(g)  $q_{t-1.25}^m$  means:

- (i) for each charge component  $m$  that has a recurring charge, the average quantity supplied on each day from the Price Transition Date or 1 April of Financial Year  $t - 2$  (whichever is later) to 31 March of Financial Year  $t - 1$ , and then multiplied by the number of times such charge component is charged per Financial Year (e.g. if the recurring charge is a monthly recurring charge, it will be multiplied by 12, and if it is a quarterly charge, it will be multiplied by 4, as it is charged four times per Financial Year); and
- (ii) for each charge component  $m$  that has a non-recurring charge, the aggregate quantity of the charge component to which the non-recurring charge applies supplied in the period from 1 April of Financial Year  $t - 2$  to 31 March of Financial Year  $t - 1$ ;

**Exception:** If Financial Year  $t$  is the second Financial Year of the Subsequent Regulatory Period,  $q_{t-1.25}^m$  for each charge component  $m$  that has a non-recurring charge means the aggregate quantity of the charge component to which the non-recurring charge applies supplied in the period from the Price Transition Date to 31 March of Financial Year  $t - 1$ , multiplied by a factor calculated by:

- taking the number of days from 1 April of Financial Year  $t - 2$  to 31 March of Financial Year  $t - 1$ , inclusive; and
- dividing that number by the number of days from the Price Transition Date to 31 March of Financial Year  $t - 1$ , inclusive.

(h)  $t$  means the Financial Year in the Subsequent Regulatory Period for which NBN Co is publishing a Tariff List under clause 2B.2.3(a) or updating a Tariff List pursuant to clause 2B.2.3(d)(iii), 2B.2.3(d)(iv) or 2B.2.3(d)(v); and

(i)  ~~$X_t$  means:~~ is determined in accordance with clause 2D.2.3.

~~(i) where Financial Year  $t$  precedes the WAPC Factor Change Year (including for each Financial Year in the First Regulatory Cycle), 0; and~~

~~(ii) where Financial Year  $t$  is, or occurs after, the WAPC Factor Change Year, the X factor applicable to Financial Year  $t$ , as set out in the relevant document referred to in clause 2D.2.3 taken to specify the X factor.~~

**Commented [A3]:** Explanatory note: a minor typographical correction.

**Commented [A4]:** Explanatory note: For further simplification and clarity, this rider defines the X-factor that applies in any given Financial Year in a consolidated clause below (clause 2D.2.3).

That clause 2D.2.3 sets out several scenarios in respect of the X-factor. The first four scenarios (in clauses 2D.2.3(b)-(e)) relate to the X-factor in the first Financial Year of a Regulatory Cycle, while the last two scenarios (in clauses 2D.2.3(g)-(h)) relate to the X-factor in subsequent Financial Years in a Regulatory Cycle.

The X-factor that will apply in any given Financial Year in a Regulatory Cycle will depend on whether the WAPC Factor Change Year has occurred and whether an ACCC RMD for that cycle is in place by 31 March of the last Financial Year of the previous Regulatory Cycle.

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### 2D.2.3 X-factor

#### X-factor for the first Financial Year of a Regulatory Cycle

(a) Clauses 2D.2.3(b) to 2D.2.3(e) apply where Financial Year  $t$  is the first Financial Year of a Regulatory Cycle.

(b) If:

(i) the WAPC Factor Change Year has not occurred prior to Financial Year  $t$ ; and

(ii) by 31 March of Financial Year  $t - 1$ :

(A) the ACCC has made an ACCC Replacement Module Determination for the Regulatory Cycle in which Financial Year  $t$  falls that does not identify Financial Year  $t$  to be the WAPC Factor Change Year; or

(B) the ACCC has not made an ACCC Replacement Module Determination for the Regulatory Cycle in which Financial Year  $t$  falls.

the X-factor for Financial Year  $t$  ( $X_t$ ) will be zero.

(c) If:

(i) the WAPC Factor Change Year has not occurred prior to Financial Year  $t$ ; and

(ii) by 31 March of Financial Year  $t - 1$ , the ACCC has made an ACCC Replacement Module Determination for the Regulatory Cycle in which Financial Year  $t$  falls identifying Financial Year  $t$  to be the WAPC Factor Change Year.

the X-factor for Financial Year  $t$  ( $X_t$ ) will be the X-factor set out in the ACCC Replacement Module Determination for the Regulatory Cycle in which Financial Year  $t$  falls, calculated in accordance with clause 2D.2.4.

(d) If:

(i) the WAPC Factor Change Year has occurred prior to Financial Year  $t$ ; and

(ii) by 31 March of Financial Year  $t - 1$ , the ACCC has made an ACCC Replacement Module Determination for the Regulatory Cycle in which Financial Year  $t$  falls.

the X-factor for Financial Year  $t$  ( $X_t$ ) will be the X-factor set out in the ACCC Replacement Module Determination for the Regulatory Cycle in which Financial Year  $t$  falls, calculated in accordance with clause 2D.2.4.

~~(j) Subject to clause 2D.2.3(b), the X-factor ( $X$ ) in any given Financial Year  $t$  that is, or occurs after, the WAPC Factor Change Year will be the X-factor set out in the ACCC Replacement Module Determination applicable to the Regulatory Cycle in which Financial Year  $t$  falls, calculated in accordance with clause 2D.2.4.~~

**Commented [A5]:** Explanatory note: Clauses 2D.2.2 and 2D.2.3 of the November Variation, taken together, provided that:

- the X-factor is 0 in the initial glidepath phase of the WAPC (before the 'WAPC Factor Change Year'); and
- in the second phase of the WAPC (ie, in and after the WAPC Factor Change Year), the X-factor will be set by the relevant ACCC RMD, except that if the RMD has not been made by 31 March immediately preceding a new Regulatory Cycle, **nbn** may use the X-factor in the ACCC's draft RMD (or if no draft was issued, the X-factor in **nbn**'s RMA) when applying the WAPC for the first year of that Regulatory Cycle as an interim measure – where the ACCC's RMD for that cycle (when issued) could true-up for that interim measure when setting the X-factor for the second and later years of that cycle (per clause 2D.2.4).

This position reflects the broad position in the November variation that all relevant parameters for the first year of a coming Regulatory Cycle should be known by 31 March before that cycle starts, regardless of whether the ACCC has made an RMD by that point in time – to allow **nbn** the period between 1 April and 1 May to apply the WAPC and publish a Tariff List for the first year of the upcoming cycle, etc.

Those provisions assume that it will be known, by 31 March before the upcoming cycle starts, whether **nbn** will be in the second phase of the WAPC. Further, clause 2D.2.3(b) of the November variation – which provides for the X-factor to be the X stated in the ACCC's draft RMD (or **nbn**'s RMA) in certain circumstances – is intended to only operate when **nbn** has clearly moved into the second phase of the WAPC.

However, when viewed in isolation, clause 2D.2.3(b) of the November variation could be interpreted to read that, if the ACCC has not made an RMD by 31 March before the upcoming cycle starts, then the X-factor will be the X stated in the ACCC's draft RMD (or **nbn**'s RMA) even when **nbn** remains in the initial glidepath phase and the WAPC Factor Change Year has not yet occurred.

To clarify these provisions, this rider amends clause 2D.2.3 to draw out how the X-factor is set for:

- the first year of an upcoming Regulatory Cycle, based on whether **nbn** is in the second phase of the WAPC and whether the ACCC has made an RMD by 31 March before that cycle starts; and
- the second and later years of a Regulatory Cycle.

In doing so, **nbn** would simplify the definition of  $X_t$  in the earlier clause 2D.2.2.

The result of those changes is described in the comment on the next page.

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(e) If:

(i) the WAPC Factor Change Year has occurred prior to Financial Year  $t$ ; and,

(ii) by 31 March of Financial Year  $t - 1$ , the ACCC has not made an ACCC Replacement Module Determination for the Regulatory Cycle in which ~~relating to~~ Financial Year  $t$  falls, and

then:

~~(+)(iii)~~ if the ACCC has issued a Draft Replacement Module Determination Decision relating to Financial Year  $t$  by 31 March of Financial Year  $t - 1$ , ~~X~~ the X-factor for the first Financial Year of the relevant Regulatory Cycle ( $X_t$ ) will be the X-factor set out in such Draft Replacement Module Determination Decision, calculated in accordance with clause 2D.2.4; or

~~(+)(iv)~~ if the ACCC has not issued a Draft Replacement Module Determination Decision relating to Financial Year  $t$  by 31 March of Financial Year  $t - 1$ , ~~X~~ the X-factor for the first Financial Year of the relevant Regulatory Cycle ( $X_t$ ) will be the X-factor set out in NBN Co's Replacement Module Application relating to Financial Year  $t$ , calculated in accordance with clause 2D.2.4.

*Note: The operation of the clauses in Schedule 2D is such that, once the ACCC has made an ACCC Replacement Module Determination in respect of a Regulatory Cycle, clause 2D.2.3(a) will apply.*

X-factor for the second and later Financial Years of a Regulatory Cycle

(f) Clauses 2D.2.3(g) and 2D.2.3(h) apply where Financial Year  $t$  is the second or later Financial Year of a Regulatory Cycle.

(g) Where Financial Year  $t$  precedes the WAPC Factor Change Year, the X-factor for Financial Year  $t$  ( $X_t$ ) will be zero.

(h) Where Financial Year  $t$  is, or occurs after, the WAPC Factor Change Year, the X-factor for Financial Year  $t$  ( $X_t$ ) will be the X-factor set out in the ACCC Replacement Module Determination for the Regulatory Cycle in which Financial Year  $t$  falls, calculated in accordance with clause 2D.2.4.

**Commented [A6]:** The result of the changes described in the previous comment is that:

- clause 2D.2.3 sets out the rules for what the X-factor will be when applying the WAPC in all cases – including the instances in which the X-factor is set by reference to the RMD for the relevant cycle;

- clause 2D.2.4 will continue to set out how the X-factor must be calculated for the purposes of the ACCC making an RMD – including the instances where the RMD will calculate the X-factor for the second and later years of a cycle by trueing up for **nbn** using a particular X-factor for the first year of a regulatory cycle. The instances in which such a true-up occurs (pursuant to clause 2D.2.4(i)(ii) below) are where the ACCC has not made an RMD by 31 March before a Regulatory Cycle starts and:

- it is already known that **nbn** is in the second phase of the WAPC, such that for the first year of the cycle, **nbn** will use the X-factor stated in the ACCC's draft RMD (or **nbn**'s RMA), and the RMD (when made) will true up for that fact in setting the X-factor for the second and later years of the cycle; or

- it is not yet known that **nbn** is in the second phase of the WAPC (because the ACCC has not confirmed that to be the case in an RMD), such that for the first year of the cycle, **nbn** will continue to apply an X-factor of 0 – and if the RMD (when made) later determines that **nbn** is in the second phase of the WAPC and that the X-factor for the first year should have instead been a non-zero value, the RMD will set the X-factor for the second and later years of the cycle to true up for the fact that **nbn** used an X-factor of 0 for the first year.

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2D.2.4 Calculation of X-factor

The X-factor set out in ~~any of the documents referred to in clause 2D.2.3~~ a Replacement Module Application, Draft Replacement Module Determination Decision and ACCC Replacement Module Determination for a Regulatory Cycle will be calculated by solving for the value of  $X$  in the formula below:

$$\sum_{t=u}^T \sum_{m=1}^M (1 + CPI_t)(1 - X_t)p_{t-1}^m q_t^m \cdot \text{Cumulative Discount Factor}_t$$

$$= \sum_{t=u}^T \text{Annual WAPC Revenue Requirement}_t \cdot \text{Cumulative Discount Factor}_t$$

where:

(a)  $t$  is each Financial Year in the Regulatory Cycle from Financial Year  $u$  to Financial Year  $T$  (inclusive), with  $t = 1$  being the first Financial Year in the Regulatory Cycle and  $t = T$  being the last Financial Year in the Regulatory Cycle;

(b)  $u$  means:

- (i) if the WAPC Factor Change Year has occurred in a previous Regulatory Cycle, the first Financial Year in the Regulatory Cycle for which the formula above is being applied (in this clause 2D.2.4(b), the Given Regulatory Cycle); or
- (ii) if the WAPC Factor Change Year is (or is forecast to be) a Financial Year in the Given Regulatory Cycle, that Financial Year;

~~(c)~~  $T$  means the last Financial Year in the Regulatory Cycle;

~~(d)~~  $\text{Cumulative Discount Factor}_t$  for each Financial Year  $t$  of the Regulatory Cycle is equal to  $\prod_{s=1}^t \frac{1}{(1+WACC_s)}$ , where the nominal WACC for each Financial Year  $s$  in the Regulatory Cycle is as set out, or proposed to be set out, in the Replacement Module Application or ACCC Replacement Module Determination (as applicable) for the Regulatory Cycle;

For example, for a 5-year Regulatory Cycle, the *Cumulative Discount Factor* for each of Financial Years 1 to 5 of the Regulatory Cycle is:

$$\text{Cumulative Discount Factor}_1 = \frac{1}{(1 + WACC_1)}$$

$$\text{Cumulative Discount Factor}_2 = \frac{1}{(1 + WACC_1)(1 + WACC_2)}$$

$$\text{Cumulative Discount Factor}_3 = \frac{1}{(1 + WACC_1)(1 + WACC_2)(1 + WACC_3)}$$

$$\text{Cumulative Discount Factor}_4 = \frac{1}{(1 + WACC_1)(1 + WACC_2)(1 + WACC_3)(1 + WACC_4)}$$

$$\text{Cumulative Discount Factor}_5 = \frac{1}{(1 + WACC_1)(1 + WACC_2)(1 + WACC_3)(1 + WACC_4)(1 + WACC_5)}$$

**Commented [A7]: Explanatory note:** The changes in this opening sentence are minor consequential changes flowing from the amendments to clause 2D.2.3. In particular, due to the new structure of clause 2D.2.3, this rider states the relevant documents here, rather than relying on a cross-reference to clause 2D.2.3.

**Commented [A8]: Explanatory note:** In the November variation, the formula for calculating the X-factor included all financial years in the Regulatory Cycle even if some of those years were before the WAPC Factor Change Year. The formula therefore did not account for the fact that an X-factor of zero would be applied (under clause 2D.2.3) up to the WAPC Factor Change Year – such that the X-factor (for the WAPC Factor Change Year and afterwards) would be calculated by reference to the WAPC Revenue Requirement for all years in the Regulatory Cycle (rather than just the WAPC Revenue Requirement for the WAPC Factor Change Year and later years in that cycle).

To address this:

- the formula in clause 2D.2.4 has been slightly amended so that the X-factor is calculated with respect to only those years on or after the WAPC Factor Change Year within a Regulatory Cycle; and
- a small number of consequential changes have been made to ensure clarity in respect of the X-factor to apply in each financial year of a Regulatory Cycle.

**Commented [A9]: Explanatory note:** While the WAPC Factor Change Year will be determined by an RMD in all cases, this rider includes the words 'or is forecast to be', to reflect that this clause also applies when calculating the X-factor in an RMA/draft RMD (which would forecast, but not determine, when the WAPC Factor Change Year would occur).



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(e)  $p_{t-1}^m$  means:

(i) where  $t$  is the first Financial Year in the Regulatory Cycle,  $p_0^m$  then:

(A) for each charge component  $m$  that is a Bundled TC-4 Offer, the Forecast Average Combined Charge during Financial Year  $t-1$ ; and

(B) for each other charge component  $m$ , the average Price in the Tariff List forecast to apply in Financial Year  $t-1$ ; and

**Exception:** Where a charge component  $m$  has been introduced, or is forecast to be introduced, between 1 July and 30 June of Financial Year  $t-1$ ,  $p_{t-1}^m$  means:

- where that charge component  $m$  that is a Bundled TC-4 Offer, the Forecast Average Combined Charge during the period from the date that NBN Co first supplies (or the forecast date that NBN Co will first supply) that charge component  $m$  to 30 June of Financial Year  $t-1$ ; and
- where that charge component  $m$  is not a Bundled TC-4 Offer, the average Price in the Tariff List forecast to apply during the period from the date that NBN Co first supplies (or the forecast date that NBN Co will first supply) that charge component  $m$  to 30 June of Financial Year  $t-1$  (calculated on an average daily basis).

(ii) where  $t$  is a Financial Year other than the first Financial Year in the Regulatory Cycle,

$p_{t-2}^m(1 + CPI_{t-1})(1 - X_{t-1})$ , where:

$$p_0^m \prod_{s=1}^{t-1} (1 + CPI_s)(1 - X_s)$$

(iii) and where, in clauses 2D.2.4(e)(i)-(ii):

(A)  $p_0^m$  means:

(i) for each charge component  $m$  that is a Bundled TC-4 Offer,  $p_{t-2}^m$  is the Forecast Average Combined Charge during Financial Year  $0-t-2$  (which is the last Financial Year of the previous Regulatory Cycle); and

(ii) for each other charge component  $m$ ,  $p_{t-2}^m$  is the average Price in the Tariff List forecast to apply in Financial Year  $0-t-2$ ; and

**Exception:** Where a charge component  $m$  has been introduced, or is forecast to be introduced, between 1 July and 30 June of Financial Year  $0-t-2$ ,  $p_{t-2}^m$  means:

- where that charge component  $m$  that is a Bundled TC-4 Offer, the Forecast Average Combined Charge during the period from the date that NBN Co first supplies (or the forecast date that NBN Co will first supply) that charge component  $m$  to 30 June of Financial Year  $0-t-2$ ; and
- where that charge component  $m$  is not a Bundled TC-4 Offer, the average Price in the Tariff List forecast to apply during the period from the date that NBN Co first supplies (or the forecast date that NBN Co will first supply) that charge component  $m$  to 30 June of Financial Year  $0-t-2$  (calculated on an average daily basis).

(B)  $s$  means each Financial Year in the Regulatory Cycle from the first Financial Year in the Regulatory Cycle to Financial Year  $t-1$  (inclusive);

(C)  $CPI_s$  means the forecast of inflation expectations for Financial Year  $s$ , determined in accordance with clause 2G.1.4; and

**Commented [A10]: Explanatory note:** Please see comment below explaining this change.

**Commented [A11]: Explanatory note:** The November Variation did not state with complete certainty how  $p_{t-1}^m$  is calculated for Financial Years after the first Financial Year of a Regulatory Cycle. Such drafting simply referred to the average prices 'forecast to apply' for Financial Year  $t-2$ , upon which a CPI/X-factor was then applied. It did not specify the manner in which those prices would be forecast, or expressly state that those prices would be *notional* forecast prices which, for the purposes of this formula, would be based on applying the relevant CPI/X-factors to prices from the prior year.

This rider seeks to remove any ambiguity regarding the prices used for the purposes of this formula, to make certain the intent in the November Variation. It does so by always linking the  $p_{t-1}^m$  for any given Financial Year in the cycle back to the last Financial Year of the previous Regulatory Cycle  $p_0^m$ . In particular, it does so through the formula shown, which ensures that, when  $p_{t-1}^m$  is being applied in respect of Financial Years other than the first Financial Year of the cycle,  $p_{t-1}^m$  is generated by taking the price in the last Financial Year of the previous Regulatory Cycle ( $p_0^m$ ) and then sequentially applying CPI/X-factors to such price for each Financial Year until (and including) Financial Year  $t-1$ .

This reflects the fact that, under the proposed change to the X-factor formula above,  $p_{t-1}^m$  will in some cases need to be calculated only for Financial Years after the first Financial Year of the Regulatory Cycle (e.g. where the WAPC Factor Change Year occurs on the second or later year of the cycle).

**Commented [A12]: Explanatory note:** this is a minor typographical correction.

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~~(C)~~(D)  $X_s$  means the X-factor for Financial Year  $s$ , determined in accordance with clause 2D.2.4(i), except where Financial Year  $s$  is before Financial Year  $u$ , in which case  $X_s$  will be zero;

~~(e)~~(f)  $q_t^m$  means:

- (i) for each charge component  $m$  that has a recurring charge, the average quantity forecast to be supplied on each day of Financial Year  $t$ , and then multiplied by the number of times such charge component is charged per Financial Year (e.g. if the recurring charge is a monthly recurring charge, it will be multiplied by 12, and if it is a quarterly charge, it will be multiplied by 4, as it is charged four times per Financial Year); and
- (ii) for each charge component  $m$  that has a non-recurring charge, the aggregate quantity forecast to be supplied in Financial Year  $t$ ;

~~(e)~~(g)  $m$  means, in respect of Financial Year  $t$ , each WAPC Charge Component that NBN Co forecasts it will supply during Financial Year  $t$  (excluding Connectivity Virtual Circuit Offers (TC-4) for all NBN Co Networks other than the NBN Co Satellite Network), where there are  $M$  such charge components in total;

~~(f)~~(h)  $CPI_t$  means the forecast of inflation expectations for Financial Year  $t$ , determined in accordance with clause 2G.1.4;

~~(e)~~(i)  $X_t$  will have the following meaning:

- (i) where the formula in this clause 2D.2.4 is being applied to calculate the X-factor in:
  - (A) a Replacement Module Application provided by NBN Co to the ACCC;
  - (B) a Draft Replacement Module Determination Decision; ~~or~~

(C) an ACCC Replacement Module Determination issued by the ACCC on or before 31 March of the Financial Year immediately preceding the first Financial Year of the applicable Regulatory Cycle; or

~~(C)~~(D) an ACCC Replacement Module Determination issued by the ACCC after 31 March of the Financial Year immediately preceding the first Financial Year of the applicable Regulatory Cycle, where the WAPC Factor Change Year has not occurred prior to (and will not occur on) the first Financial Year of the applicable Regulatory Cycle,

$X_t$  means the X-factor for each Financial Year  $t$  (i.e. the amount that results in both sides of the formula in this clause 2D.2.4 being balanced), where the value of  $X_t$  for each Financial Year  $t$  ~~of the Regulatory Cycle~~ is the same; and

- (ii) where the formula in this clause 2D.2.4 is being applied to calculate the X-factor in an ACCC Replacement Module Determination issued by the ACCC after 31 March of the Financial Year immediately preceding the first Financial Year of the applicable Regulatory Cycle and the WAPC Factor Change Year has occurred prior to (or will occur on) the first Financial Year of the applicable Regulatory Cycle, then:
  - (A)  $X_t$  in respect of the first Financial Year of the Regulatory Cycle will be the X-factor applied for such Financial Year in accordance with clause ~~2D.2.3(b)~~ 2D.2.3(b)(ii)(B) or 2D.2.3(e) (as applicable); and
  - (B)  $X_t$  in respect of each subsequent Financial Year of the Regulatory Cycle will be the amount that results in both sides of the formula in this clause 2D.2.4 being balanced, where  $X_t$  must have the same value for each of those subsequent Financial Years and

**Commented [A13]: Explanatory note:** Where “s” is a Financial Year prior to WAPC Factor Change Year, the X-factor will be zero. We have reflected this in this definition, which uses a “zero” X-factor where Financial Year “s” is before Financial Year “u”.

**Commented [A14]: Explanatory note:** Sub-clause (ii) below provides that in particular circumstances (as noted in the previous comments), where an RMD is made after 31 March, the X-factor for the second and later years in a Regulatory Cycle will be adjusted to account for the X-factor used in the first year of the Regulatory Cycle.

In contrast, this new sub-clause (i)(D) has been inserted to make clear that, where the WAPC Factor Change Year will only occur on or after the second Financial Year of the Regulatory Cycle, no adjustment will need to be made under paragraph (ii) to account for the use of a “zero” or “draft” X under clause 2D.2.3(a) or 2D.2.3(d).

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where  $X_t$  in the first Financial Year of the Regulatory Cycle is determined in accordance with clause 2D.2.3(b)(ii)(B) or 2D.2.3(e) (as applicable) ~~2D.2.3(b)~~; and

~~(i)~~ (i) **Annual WAPC Revenue Requirement<sub>t</sub>** is defined in clause 2G.4.1.

[...]

### 2D.3 Effect of withdrawal of Proposed Withdrawn Product or Non-Recurring WAPC Charge Component on WAPC

[...]

#### 2D.3.3 WAPC consequences of withdrawal of products or services that have Recurring WAPC Charge Components

##### Effect on WAPC calculations for Relevant Financial Year

(a) On a date no later than 20 Business Days after the ACCC gives NBN Co a WAPC Treatment Notice in accordance with clause 2D.3.2 in respect of a Proposed Withdrawn Product (such date, in this clause 2D.3.3, the **WAPC Reapplication Date**), NBN Co must publish an updated Tariff List under clause 2B.2.3(d)(iv) for the remainder of the Financial Year in which the WAPC Reapplication Date falls (in this clause 2D.3.3, **Relevant Financial Year**), that re-applies the WAPC formula in clause 2D.2.2 in the following manner:

(i) if the WAPC Treatment Notice identifies one or more Expected Successor Charge Components in respect of a Recurring WAPC Charge Component of that Proposed Withdrawn Product,  $p_t^m$  for that Recurring WAPC Charge Component will be the weighted average  $p_t^m$  of the Expected Successor Charge Components, weighted by the proportion of  $q_{t-1.25}^m$  quantities of that Recurring WAPC Charge Component allocated to the Expected Successor Charge Components, where:

(A) the relevant proportion of  $q_{t-1.25}^m$  quantities of the Expected Successor Charge Components is as set out in the WAPC Treatment Notice; and

~~(A)(B)~~ (B)  $p_t^m$  of an Expected Successor Charge Component has the meaning given in clause 2D.2.2(d), except that the reference to "1 July of Financial Year  $t$ " in clause 2D.2.2(d)(ii) will be read as if it were a reference to the WAPC Reapplication Date;

(ii) if the WAPC Treatment Notice does not identify any Expected Successor Charge Components in respect of a Recurring WAPC Charge Component, then:

(A) if the Proposed Withdrawn Product is still being supplied as at the WAPC Reapplication Date,  $p_t^m$  for that Recurring WAPC Charge Component will be determined in accordance with clause 2D.2.2; and

(B) if the Proposed Withdrawn Product has already been withdrawn as at the WAPC Reapplication Date,  $p_t^m$  for that Recurring WAPC Charge Component will be \$0;

(iii) all other inputs into the WAPC formula (including in relation to other WAPC Charge Components) will be those used by NBN Co when the WAPC formula in clause 2D.2.2 was most recently applied when publishing or updating a Tariff List for the Relevant Financial Year, except that:

**Commented [A15]: Explanatory note:** This change is a minor change to clarify the previous drafting.

**Commented [A16]: Explanatory note:** The standard definition of  $p_t^m$  in clause 2D.2.2(d) refers to the Price to be set out in the Tariff List which applies from 1 July of the relevant Financial Year. However, nbn considers that, since the WAPC will be reapplied in this clause on an intra-year basis, the  $p_t^m$  of an Expected Successor Charge Component should be the Price that will apply under the Tariff List updated as at the WAPC Reapplication Date (rather than as at 1 July). This will ensure that nbn will have the ability to ensure compliance with the WAPC upon its reapplication by reducing Prices in the Tariff List for Expected Successor Charge Components from the WAPC Reapplication Date. This is the intended effect of these provisions.

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- (A) NBN Co may correct an error, omission or miscalculation in the most recent application of the WAPC formula in clause 2D.2.2; and
- (B) the average calculated to determine  $p_{t-1}^m$  for each Recurring WAPC Charge Component of that Proposed Withdrawn Product will exclude any days in Financial Year  $t - 1$  after the withdrawal of that Proposed Withdrawn Product; and
- (iv) in the updated Tariff List for the Relevant Financial Year, NBN Co must not include Prices for any WAPC Charge Components that are higher than the Prices for such WAPC Charge Components in the immediately preceding Tariff List for the Relevant Financial Year published by NBN Co under clause 2B.2.3.

*Note: For clarity, if the ACCC provides a Withdrawal Objection Notice in respect of a Proposed Withdrawn Product, the operation of the clauses in Schedule 2D is such that, when NBN Co publishes a Tariff List under clause 2B.2.3(a) to apply from 1 July of the next Financial Year, NBN Co will apply the WAPC formula in accordance with clause 2D.2.2 (with all relevant inputs given a value that reflects that the Proposed Withdrawn Product will not be withdrawn).*

[...]

### 2D.3.4 WAPC consequences of withdrawal of Non-Recurring WAPC Charge Components

#### Effects on WAPC calculations for Relevant Financial Year

- (a) Subject to clause 2D.3.4(b), on a date no later than 20 Business Days after NBN Co has withdrawn a Non-Recurring WAPC Charge Component (such date, in this clause 2D.3.4, the **WAPC Reapplication Date**), NBN Co must publish an updated Tariff List under clause 2B.2.3(d)(iv) for the remainder of the Financial Year in which the WAPC Reapplication Date falls (in this clause 2D.3.4, **Relevant Financial Year**), that re-applies the WAPC formula in clause 2D.2.2 in the following manner:
  - (i)  $p_t^m$  for that Non-Recurring WAPC Charge Component will be:
    - (A) if NBN Co reasonably considers that one or more Non-Recurring WAPC Charge Components will be a substitute for, or successor to, the Non-Recurring WAPC Charge Component that has been withdrawn (**Non-Recurring Successor Charge Components**), the weighted average  $p_t^m$  of those Non-Recurring Successor Charge Components, weighted by the proportion of  $q_{t-1,25}^m$  quantities of that Non-Recurring WAPC Charge Component allocated to each Non-Recurring Successor Charge Component, where:
      - (i) the relevant proportion of  $q_{t-1,25}^m$  quantities of that Non-Recurring WAPC Charge Component is as reasonably determined by NBN Co based on estimates of the quantities of the Non-Recurring WAPC Charge Component that are likely to be subject to such Non-Recurring Successor Charge Components by the date on which the Non-Recurring WAPC Charge Component is withdrawn; and
      - ~~(ii)~~  $p_t^m$  of a Non-Recurring Successor Charge Component has the meaning given in clause 2D.2.2(d), except that the reference to “1 July of Financial Year  $t$ ” in clause 2D.2.2(d)(ii) will be read as if it were a reference to the WAPC Reapplication Date; or
    - (B) if NBN Co does not reasonably consider that there is any Non-Recurring Successor Charge Component for the Non-Recurring WAPC Charge Component that has been withdrawn, \$0;

**Commented [A17]:** Explanatory note: this rider makes changes here to clarify this clause, including clarifying the meaning of “ $p_t^m$  of those Non-Recurring Successor Charge Components”, for the same reasons as noted above at 2D.3.3(a)(i).

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- (ii) all other inputs into the WAPC formula (including in relation to other WAPC Charge Components) will be those used by NBN Co when the WAPC formula in clause 2D.2.2 was most recently applied when publishing or updating a Tariff List for the Relevant Financial Year, except that:
    - (A) NBN Co may correct an error, omission or miscalculation in the most recent application of the WAPC formula in clause 2D.2.2; and
    - (B) the average calculated to determine  $p_{t-1}^m$  for the Non-Recurring WAPC Charge Component that has been withdrawn will exclude any days in Financial Year  $t - 1$  after the withdrawal of that Non-Recurring WAPC Charge Component; and
  - (iii) in the updated Tariff List for the Relevant Financial Year, NBN Co must not include Prices for any WAPC Charge Components that are higher than the Prices for such WAPC Charge Components in the immediately preceding Tariff List for the Relevant Financial Year published by NBN Co under clause 2B.2.3.
- (b) NBN Co will not be required to publish an updated Tariff List (and re-apply the WAPC formula) under clause 2D.3.4(a) if, for the Financial Year ( $t$ ) in which NBN Co has withdrawn a Non-Recurring WAPC Charge Component, the  $q_{t-1.25}^m$  quantity for that Non-Recurring WAPC Charge Component (determined in accordance with clause 2D.2.2(g)) is zero.
  - (c) If clause 2D.3.4(a) applies to a Non-Recurring WAPC Charge Component, the next Price Control Compliance Statement issued by NBN Co under clause 2F.2.1(a) after the WAPC Reapplication Date must include a statement of NBN Co's choice of treatment for  $p_t^m$  under clause 2D.3.4(a)(i) for that Non-Recurring WAPC Charge Component.

[...]