

**SECOND VARIATION TO UNDERTAKING TO THE AUSTRALIAN COMPETITION AND  
CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B**

**BY**

NBN Co Limited  
ACN 136 533 741

**Persons giving this variation**

1. This variation is given to the Australian Competition and Consumer Commission (**ACCC**) by NBN Co Limited ACN 136 533 741 (**NBN Co**) of Tower 5, Level 14, 727 Collins Street, Docklands, 3008 in the State of Victoria.

**Background**

2. On 8 October 2019, the ACCC accepted an undertaking pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) (**CCA**) from NBN Co in connection with NBN Co's non-discrimination obligations in section 152AXD of the CCA (**Undertaking**).
3. On 17 December 2020, the ACCC accepted a variation to the Undertaking from NBN Co in connection with changes to NBN Co's organisational structure which occurred on 3 August 2020 and future organisational restructures.
4. The purpose of this second variation to the Undertaking is to facilitate changes to NBN Co's commercial deal constructs, and NBN Co's internal and commercial processes, in connection with build activities.
5. The ACCC is satisfied that the variation sought is appropriate in the circumstances.

**Commencement of variation**

6. This second variation comes into effect when:
  - (a) this variation is executed by NBN Co, and
  - (b) the ACCC accepts this variation so executed(the **Second Variation Date**).

**Variation to the Undertaking**

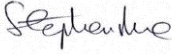
7. On and from the Second Variation Date, the Undertaking is varied by way of amendment and restatement such that Attachment B and Attachment C of the Undertaking are replaced with the attachments in Appendix A and Appendix B to this variation.
8. The amendments introduced by this variation only have effect on and from the Second Variation Date and do not affect NBN Co's obligations prior to the Second Variation Date, which were subject to the version of the Undertaking in force at that time.

**Acknowledgements**

9. NBN Co acknowledges that:
  - (a) The ACCC will make this variation available for public inspection, and
  - (b) The ACCC will from time to time, refer to this variation including in news media statements and in ACCC publications.

**Executed by**

NBN Co Limited ACN 136 533 741 by its authorised representatives:

DocuSigned by:  
  
4AC0EED1CB71458.....

Signature of authorised representative

Stephen Rue

Name of authorised representative

17 June  
This ..... day of .....2022

DocuSigned by:  
  
A4C5B0ED112B421.....


Signature of authorised representative

Brad whitcomb

Name of authorised representative

17th June  
This ..... day of .....2022

Accepted by the Australian Competition and Consumer Commission pursuant to s87B of the *Competition and Consumer Act 2010*

  
.....

Gina Cass-Gottlieb

Chair

This...1st...day of .....July..... 2022

## Appendix A to Second Variation

### Amended & Restated Attachment B to s. 87B undertaking

Item	NBN Co Action	Implementation date	Performance period
1	<b>Consistent contract terms and deal assessment available to all access seekers</b>		
1.1A	<p><b>Access to Standard Deal Constructs:</b> Where NBN Co makes available to access seekers one or more of the following standard deal constructs for the supply of Build Activities:</p> <ul style="list-style-type: none"> <li>• Deferred Charge construct (which may include an Upfront Charge) (<b>Deferred Charge Construct</b>);</li> <li>• Upfront Charge construct (<b>Upfront Charge Construct</b>);</li> <li>• Network Preference Payments construct if the criteria specified in the bulletin issued by NBN Co on 31 July 2019 are satisfied (which is a variation on the Deferred Charge Construct) (<b>Network Preference Construct</b>); and</li> <li>• upon withdrawal by NBN Co pursuant to item 2.1A of any of the standard deal constructs listed above, any new standard deal construct which is functionally similar to, and is a replacement of, the withdrawn standard deal construct,</li> </ul> <p>(each a <b>Standard Deal Construct</b>),</p> <p>NBN Co will ensure (subject to item 2.1A) that all access seekers have access to those Standard Deal Constructs on a non-discriminatory basis at all times unless withdrawn under item 2.1A.</p>	On and from Second Variation Date	Ongoing
1.2A	<p><b>Access to Portal Constructs:</b> Where NBN Co makes available to access seekers one or more of the following portal constructs for the supply of Build Activities:</p> <ul style="list-style-type: none"> <li>• the Enterprise Ethernet Portal for Enterprise Ethernet builds;</li> <li>• the nbn Select Portal for FTTP builds; and</li> </ul>	On and from Second Variation Date	Ongoing

Item	NBN Co Action	Implementation date	Performance period
	<ul style="list-style-type: none"> <li>upon withdrawal by NBN Co pursuant to item 2.1B of any of the portal constructs listed above, any new portal construct which is functionally similar to, and is a replacement of, the withdrawn portal construct,</li> </ul> <p>(each a <b>Portal Construct</b>),</p> <p>NBN Co will ensure that all access seekers have access to those Portal Constructs on a non-discriminatory basis at all times unless withdrawn under item 2.1B.</p>		
1.3A	<p><b>Access to Standard Agreements:</b> Where NBN Co makes available to access seekers one or more of the following standard agreements for the supply of Build Activities:</p> <ul style="list-style-type: none"> <li>the Technology Extension Contract which will be used for the Standard Deal Constructs;</li> <li>the Deal Module under the Technology Extension Contract for Standard Deal Constructs;</li> <li>the Enterprise Ethernet Build Contract, which will be used for Enterprise Ethernet builds via the Enterprise Ethernet Portal;</li> <li>the nbn Select Build Contract, which will be used for FTTP builds via the nbn Select Portal; and</li> <li>upon withdrawal by NBN Co pursuant to item 3.4A of any of the standard agreements listed above, any new standard agreement which is functionally similar to, and is a replacement of, the withdrawn standard agreement,</li> </ul> <p>(each a <b>Standard Agreement</b>),</p> <p>NBN Co will ensure that all access seekers have access to those Standard Agreements on a non-discriminatory basis at all times unless withdrawn under item 3.4A.</p>	On and from Second Variation Date	Ongoing
1.4A	<p><b>No minimum site numbers:</b> NBN Co will not impose on access seekers any requirement for an order for Build Activities to have a minimum number of sites in relation to any Standard Deal Construct, Portal Construct or Standard Agreement for the supply of Build Activities.</p> <p>This is subject to the qualification criteria for the Deferred Charge Construct specified in item 1.7A.</p>	On and from Second Variation Date	Ongoing

Item	NBN Co Action	Implementation date	Performance period
1.5A	<p><b>Common Build Cost Method:</b> NBN Co must establish and use a Common Build Cost Method to be used for each Standard Deal Construct and Portal Construct. NBN Co must ensure that the Common Build Cost Method takes into account estimates of:</p> <ul style="list-style-type: none"> <li>• external costs set out in NBN Co's deployment contracts with its delivery partners;</li> <li>• NBN Co's internal costs of augmenting the capacity of the NBN Co access network for Enterprise Ethernet; and</li> <li>• internal labour costs of NBN Co's network planning and deployment division.</li> </ul> <p>Except during the validity period of a binding offer for the supply of Build Activities, any update to data or assumptions used in the Common Build Cost Method must be applied in all of NBN Co's offers to access seekers for new Build Activities at end user premises after any update has been made, whether it is incorporated into an automated tool used in the Common Build Cost Method or not.</p>	On and from Second Variation Date	Ongoing
1.6A	<p>For the purposes of a TEC Deal which includes an Upfront Charge, but not a Deferred Charge, NBN Co's Upfront Charges will be the aggregate amount comprising the following costs:</p> <ul style="list-style-type: none"> <li>• estimated build cost of undertaking the Build Activities calculated by the Common Build Cost Method;</li> <li>• the program management resources offered to an end user of the Deal (if any); and</li> <li>• a standardised rate across all deals and all access seekers for the cost of funding any Upfront Charge portion, where the access seeker elects to pay the Upfront Charge in equal annual instalments.</li> </ul>	On and from Second Variation Date	Ongoing

Item	NBN Co Action	Implementation date	Performance period
1.7A	<p>For the purposes of a TEC Deal which includes a Deferred Charge Construct, NBN Co's '<b>Build Charge</b>' will be the aggregate amount comprising the following costs:</p> <ul style="list-style-type: none"> <li>• estimated build cost of undertaking the Build Activities calculated by the Common Build Cost Method; plus the following costs:</li> <li>• the program management resources offered to an end user (if any);</li> <li>• the incremental operational costs of supplying the WBA services, using the same standard costs across all deals and all access seekers;</li> <li>• a standardised rate across all Deals and all access seekers for the cost of funding the Deferred Charge portion;</li> <li>• a standardised rate across all deals and all access seekers for the cost of funding any Upfront Charge portion, where the access seeker elects to pay the Upfront Charge in equal annual instalments; and</li> <li>• Churn Allowance selected by the access seeker, if any,</li> </ul> <p>less any NBN Co Build Charge Offset (where applicable).</p> <p>NBN Co will calculate Deferred Charges based on a formula comprising the following components:</p> <ul style="list-style-type: none"> <li>• For the purposes of a TEC Deal with a 3 year initial term (excluding term extensions): <ul style="list-style-type: none"> <li>a. the Build Charge associated with the Build Activities at the relevant Build Sites nominated by the access seeker;</li> <li>b. the forecast revenue based on the access seeker's assessment of the services on the applicable NBN Co technology that it (or another access seeker) is likely to order from NBN Co at the Build Sites during the term of the Deal Module;</li> <li>c. an assumption that revenue commences 90 calendar days following the commencement of the Deal Module; and</li> <li>d. the applicable Minimum Product Revenue for the relevant access technology.</li> </ul> </li> <li>• For the purposes of any TEC Deal with an initial term other than 3 years: <ul style="list-style-type: none"> <li>a. the Build Charge associated with the Build Activities at the relevant Build Sites nominated by the access seeker;</li> </ul> </li> </ul>	On and from Second Variation Date	Ongoing

Item	NBN Co Action	Implementation date	Performance period
	<ul style="list-style-type: none"> <li>b. the forecast revenue based on the access seeker’s assessment of the services on the applicable NBN Co technology that it is likely to order from NBN Co at the Build Sites during the term of the Deal Module; and</li> <li>c. an assumption that revenue commences 60 calendar days following the indicative target build completion date.</li> </ul> <p>If, in respect of a TEC Deal, the Deferred Charge calculated by NBN Co in accordance with the formula referred to above (excluding any expected or potential reduction by the Revenue Credit Amount) is less than the Build Charge, then NBN Co will require the access seeker to pay an Upfront Charge for the shortfall.</p> <p>The amount of the Deferred Charge payable will be reduced by the Revenue Credit Amount.</p> <p>On and from the date NBN Co makes available to access seekers a Deal Module with a 3 year initial term, NBN Co will ensure that all access seekers have access on a non-discriminatory and prospective basis, at all times, to a Deferred Charge which encompasses features no less favourable than a Deal term of 3 years (which may be rolled over at the election of the access seeker for the period specified by NBN Co in the Deals Manual, which will be up to 12 months), although an access seeker may, at its election, pay back the Deferred Charge earlier than 3 years (whether through an offset of the Revenue Credit Amount or payment of instalment(s)), in which case the agreement terminates at that time (if there is a variation to an existing Deal Module, the term of the varied Deal Module will remain the same as the original term in the original Deal Module).</p> <p>NBN Co will use the Common Build Cost Method to estimate the capital cost of undertaking Build Activities. The Upfront Charge calculation will only include the portion of the capital cost that is not deferred. The project management resources (if any) will be included in the Deferred Charge calculation. The Deferred Charge calculation will be calculated in accordance with the principles in this item 1.7A, less the build cost component that is being paid upfront.</p> <p><b>Expanded revenue pool option:</b> NBN Co will ensure that access seekers have access on a non-discriminatory basis at all times to the following option for a TEC Deal, where made available, as further described in the Deals Manual and applicable Technology Extension Contract and Deal Module.</p> <ul style="list-style-type: none"> <li>• an option for a Deal Module which allows the access seeker’s Revenue Credit Amount to be calculated having regard to WBA revenue that is received by NBN Co from that access seeker and another access seeker, so long as conditions specified in the Technology Extension Contract are met, including the provision of a confidentiality consent from the other access seeker.</li> </ul>		

Item	NBN Co Action	Implementation date	Performance period
1.8A	<p><b>Standard Agreements:</b></p> <ul style="list-style-type: none"> <li>NBN Co will only offer and enter into TEC Deals with access seekers that are for a contract term set out in the Deals Manual.</li> <li>Notwithstanding the preceding point, NBN Co will, from a date to be notified by NBN Co to access seekers, ensure that Deal Modules that include a Deferred Charge are only offered with an initial term of 3 years (excluding any term extensions).</li> </ul>	On and from Second Variation Date	Ongoing
<b>2</b>	<b>Change management</b>		
2.1A	<p><b>Immediacy of change notification:</b> Subject to item 2.2A, NBN Co must inform all access seekers specified on the List of Access Seekers if NBN Co:</p> <ul style="list-style-type: none"> <li>makes an amendment to, or withdraws, a Standard Deal Construct; or</li> <li>makes an amendment to the Deals Manual.</li> </ul> <p>In the case of an amendment, NBN Co must inform access seekers in writing within 10 Business Days of making the amendment (which may be by offering or agreeing the changes with an access seeker). NBN Co will make the amended Standard Deal Construct or Deals Manual available to all access seekers on a non-discriminatory and prospective basis on the date that NBN Co provides notice of the amendment. Throughout the Undertaking and attachments, 'prospective basis' means that NBN Co is not required to reopen previously executed deals.</p> <p>In the event of a withdrawal of a Standard Deal Construct, NBN Co must inform all access seekers specified on the List of Access Seekers and the ACCC a minimum of 3 months prior to the proposed withdrawal of that Standard Deal Construct.</p>	On and from Second Variation Date	Ongoing
2.1B	<p><b>Immediacy of change notification:</b> NBN Co must inform all access seekers specified on the List of Access Seekers and the ACCC a minimum of 3 months prior to the proposed withdrawal of a Portal Construct.</p>	On and from Second Variation Date	Ongoing



Item	NBN Co Action	Implementation date	Performance period
2.2A	<p><b>Tenders:</b> If NBN Co:</p> <ul style="list-style-type: none"> <li>• varies a Standard Deal Construct by either offering a variation to an access seeker or agreeing to a variation with an access seeker; and</li> <li>• is aware another access seeker is participating in the same competitive tender process as the access seeker that was offered or agreed to the variation, and the other access seeker has engaged NBN Co in relation to its tender response,</li> </ul> <p>NBN Co will notify that other access seeker within 2 Business Days of the variation, and the amended Standard Deal Construct will be available effective from the date the notice is sent.</p>	On and from Second Variation Date	Ongoing
2.3A	<p><b>Offers:</b> NBN Co will specify in the Deals Manual the validity period applicable to its offers for Standard Deal Constructs, and will apply each validity period in a non-discriminatory manner in its offers to access seekers.</p> <p>Prior to both parties executing a Deal Module, NBN Co may amend or withdraw any offer for a Deal made to the access seeker due to:</p> <ul style="list-style-type: none"> <li>• NBN Co ascertaining that the actual cost to undertake the build activity is different to its previous estimate of the cost of the build activity;</li> <li>• NBN Co discovering an error or mistake in the Deal or offer of a Standard Deal Construct; or</li> <li>• a change in the access seeker's requirements.</li> </ul> <p>Any such amendment or withdrawal of an offer for undertaking Build Activities at a particular premises will occur in the same way for all access seekers impacted at that premises.</p>	On and from Second Variation Date	Ongoing
2.4A	The amendments introduced by the Second Variation to this Undertaking only have effect on and from the Second Variation Date and do not affect NBN Co's obligations prior to the Second Variation Date, which were subject to the version of the Undertaking in force at that time.	On and from Second Variation Date	N/A

Item	NBN Co Action	Implementation date	Performance period
<b>3</b>	<b>Informational equivalence</b>		
3.1A	<p><b>List of Access Seekers:</b> NBN Co will develop a list of access seekers including access seekers that have:</p> <ul style="list-style-type: none"> <li>• signed the TEC, Enterprise Ethernet Build Contract, or the nbn Select Build Contract; or</li> <li>• requested, in writing, a copy of those contracts,</li> </ul> <p>and have not requested that they be removed from this distribution list (<b>List of Access Seekers</b>).</p> <p>NBN Co will write to all access seekers that have executed a WBA, or subsequently execute a WBA, offering them an opportunity to be added to the List of Access Seekers if they are not already on the list.</p>	On and from Second Variation Date	Ongoing
3.2A	<p><b>Deals Manual:</b> NBN Co will develop and maintain a Deals Manual and ensure that all access seekers on the List of Access Seekers have non-discriminatory access to the Deals Manual.</p> <p>At a minimum, the Deals Manual will contain:</p> <ul style="list-style-type: none"> <li>• details of all available Standard Deal Constructs, including any eligibility criteria which might apply to the availability of any Standard Deal Construct, and any information that must be provided by the access seeker to NBN Co;</li> <li>• a description of the Common Build Cost Method for the calculation of the Upfront Charge and Deferred Charge under the TEC;</li> <li>• a description of the Common Build Cost Method for estimating the capital costs of undertaking Build Activities for the purposes of the nbn Select Build Contract and the Enterprise Ethernet Build Contract;</li> <li>• a description of NBN Co's approach to calculating Deferred Charges and Upfront Charges for the purposes of a TEC Deal;</li> <li>• the methodology and principles for the availability of any Churn Allowance (if any), including NBN Co's right to reject an access seeker's request to add a churn site;</li> <li>• the process that NBN Co will follow when entering into new Deal Modules;</li> </ul>	On and from Second Variation Date	Ongoing

Item	NBN Co Action	Implementation date	Performance period
	<ul style="list-style-type: none"> <li>• NBN Co's process for notifying access seekers of any new, amended or withdrawn deal constructs; and</li> <li>• NBN Co's process for amending the Deals Manual and notifying access seekers specified on the List of Access Seekers of any amendments to the Deals Manual.</li> </ul>		
3.4A	<p><b>Standard Agreements:</b> NBN Co will make available on NBN Co's public website a copy of the current standard version of the following contractual terms:</p> <ul style="list-style-type: none"> <li>• the Technology Extension Contract;</li> <li>• the Deal Module;</li> <li>• the Enterprise Ethernet Build Contract; and</li> <li>• the nbn Select Build Contract.</li> </ul> <p>If NBN Co makes an amendment to such standard versions of the above contractual terms, NBN Co will upload an updated version of such standard versions of the contractual terms to its public website within 15 Business Days of that amendment occurring.</p> <p>NBN Co must inform all access seekers specified on the List of Access Seekers and the ACCC of any proposed withdrawal of a Standard Agreement a minimum of 3 months prior to the proposed withdrawal.</p>	On and from Second Variation Date	Ongoing
3.5	<p>NBN Co will, every three calendar months, send to all access seekers specified on the List of Access Seekers a bulletin that details any amendments that have been made in the preceding 3 months to any Standard Deal Construct, the Technology Extension Contract, Deal Module, Enterprise Ethernet Build Contract or nbn Select Build Contract, any further or replacement contractual arrangement, or to the Deals Manual.</p>	On and from Second Variation Date	Ongoing on a quarterly basis
3.6A	<p>NBN Co will publish the dollar amounts on offer in the nbn Enterprise Ethernet price list that forms part of the WBA standard form of access agreement published on NBN Co's website for each charge currently specified to be "By Price Confirmation" with the exception of the 0 Mbps OVC bandwidth option as that option is erroneous and will be deleted from the WBA.</p>	On and from Second Variation Date	Ongoing

Item	NBN Co Action	Implementation date	Performance period
	<p>This WBA change will apply to orders placed after the “EE Price Transition Date” (as that term is defined in the WBA as at the Second Variation Date).</p> <p>The terms of the WBA will otherwise continue to apply including the existing WBA change and discount, credit and rebate processes.</p>		
<b>4</b>	<b>No circumvention</b>		
4.1	NBN Co will not engage in conduct that has the purpose or effect of impeding access seekers from gaining the benefit of the commitments it is providing in this Undertaking.	On and from Second Variation Date	Ongoing
<b>5</b>	<b>Compliance arrangements</b>		
5.1A	<p>NBN Co will appoint a person at a level equivalent to General Manager at NBN Co with suitable qualifications or experience in corporate compliance as a compliance officer (<b>Compliance Officer</b>).</p> <p>The Compliance Officer will have responsibility for ensuring the NDO Compliance Program is effectively designed, implemented and maintained. The Compliance Officer will provide general oversight of all Deals offered by NBN Co’s BSM Department, to ensure compliance with the non-discrimination obligations and with the transparency commitments in this Undertaking.</p> <p>Up to and including 31 August 2021 the Compliance Officer will report directly to the person who is the holder of the position currently titled Chief Strategy Officer (or equivalent if this title changes) who will have overall responsibility for NBN Co’s compliance with the NDO Compliance Program until that date. From 1 September 2021, the Compliance Officer will report directly to the person who is the holder of the position currently titled Chief Legal &amp; Regulatory Officer (or equivalent if this title changes) who will have overall responsibility for NBN Co’s compliance with the NDO Compliance Program from that date.</p>	On and from Second Variation Date	Ongoing
5.2	NBN Co will establish and maintain a compliance program in relation to compliance with its non-discrimination obligations for the supply of Build Activities to access seekers, and the supply of	On and from Second Variation Date	Ongoing

Item	NBN Co Action	Implementation date	Performance period
	business grade services to access seekers, by NBN Co's BSM Department (as defined in the definition of NDO Compliance Program in Attachment C), which is consistent with the undertakings made by NBN Co as specified in this Attachment B.		
5.3	<p>NBN Co will document the NDO Compliance Program and update its NBN Co training and compliance materials to reflect the undertakings made by NBN Co as specified in this Attachment B.</p> <p>NBN Co will ensure that its NDO Compliance Program includes the following:</p> <ul style="list-style-type: none"> <li>• a requirement for all of NBN Co's BSM Department staff to report any NDO Compliance Program related issues and concerns to the Compliance Officer;</li> <li>• a guarantee that whistleblowers with non-discrimination obligation compliance concerns will not be disadvantaged in any way and that their reports will be kept confidential and secure; and</li> <li>• a clear statement that NBN Co will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the non-discrimination obligations for the supply of Build Activities to access seekers, and the supply of business grade services to access seekers, by NBN Co's BSM Department.</li> </ul> <p>NBN Co will publish on its intranet the NDO training and compliance materials, and any subsequent updates of such documents.</p>	On and from Second Variation Date	Ongoing
5.4A	NBN Co will ensure that all officers, NBN Co BSM staff and any other employee, agent or representative of NBN Co, whose duties could result in them being concerned with conduct that may cause NBN Co to contravene its non-discrimination obligations for the supply of Build Activities to access seekers, and the supply of business grade services to access seekers, by NBN Co's BSM Department will complete NDO compliance training annually. NBN Co must ensure that the training is conducted by (or in the case of digital e-learning, is prepared by) a suitably qualified compliance or regulatory professional or legal practitioner with expertise in competition law, specifically regarding NBN Co's non-discrimination obligations.	On and from Second Variation Date	Ongoing on an annual basis
5.5	NBN Co will ensure all new officers, NBN Co BSM staff and any other employee, agent or representative of NBN Co whose duties could result in them being concerned with conduct that may cause NBN Co to contravene its non-discrimination obligations for the supply of Build Activities, and	On and from Second Variation Date	Ongoing

Item	NBN Co Action	Implementation date	Performance period
	the supply of business grade services to access seekers, by NBN Co's BSM Department complete NDO compliance training as part of induction.		
5.6	<p>NBN Co will engage a suitably qualified independent external compliance professional with expertise in competition law (<b>Reviewer</b>), to conduct an annual audit of NBN Co's compliance with its non-discrimination obligations, including advising on the continuing effectiveness of the NDO Compliance Program.</p> <p>The Reviewer will qualify as independent on the basis that they:</p> <ul style="list-style-type: none"> <li>• did not design or implement the Compliance Program;</li> <li>• are not a present or past staff member or director of NBN Co; and</li> <li>• has not acted and/or does not act for, and does not consult and has not consulted to, NBN Co in any competition related matters, other than performing audits under this Undertaking.</li> </ul> <p>NBN Co will use its best endeavours to ensure that, for each annual audit, the Reviewer has access to all relevant sources of information in NBN Co's possession and control, including:</p> <ul style="list-style-type: none"> <li>• the ability to make enquiries of any officers, employees, representatives and agents of NBN Co;</li> <li>• documents relating to the NDO Compliance Program for the supply of Build Activities to access seekers, and the supply of business grade services to access seekers, by NBN Co's BSM Department, including all NDO training and compliance materials, complaints, staff training and induction program; and</li> <li>• any reports made to the Compliance Officer by staff in relation to NDO Compliance Program related issues and concerns with the NDO Compliance Program.</li> </ul> <p>When undertaking the annual audit, the Reviewer must provide a finding as to whether NBN Co has acted consistently with its non-discrimination obligations and the NDO Compliance Program, and, if not:</p> <ul style="list-style-type: none"> <li>• identify all instances of failure to comply; and</li> <li>• recommendations for rectifying those failures.</li> </ul> <p>NBN Co will act promptly and with due diligence to address any failures identified by the Reviewer in the annual audit report.</p>	<p>By 30 September 2020 for the period from the Commencement Date to 30 June 2020.</p> <p>Then by 30 September 2021 for the period 1 July 2020 to 30 June 2021 and annually thereafter.</p>	<p>Ongoing on an annual basis</p>

Item	NBN Co Action	Implementation date	Performance period
5.7	NBN Co will notify the ACCC within 10 Business Days if any other department, division or team (howsoever described) takes on the processes, functions or responsibilities of any of the divisions or teams listed in the definition of BSM from and including 4 August 2020, in relation to the supply of Build Activities to access seekers or the supply of business grade services to access seekers.	On and from Second Variation Date	Ongoing

Item	NBN Co Action	Implementation date	Performance period
<b>6</b>	<b>Reporting and record keeping</b>		
6.1	NBN Co will keep records of all NDO compliance training conducted with all officers, NBN Co BSM staff and any other employee, agent or representative of NBN Co whose duties could result in them being concerned with conduct that may cause NBN Co to contravene its non-discrimination obligations for the supply of Build Activities to access seekers, and the supply of business grade services to access seekers, by NBN Co's BSM Department.	On and from Second Variation Date	Ongoing
6.2	NBN Co will provide to the ACCC all documents recording its NDO Compliance Program for the supply of Build Activities to access seekers, and the supply of business grade services to access seekers, by NBN Co's BSM Department, and any subsequent updates of such documents on reasonable request.	On and from Second Variation Date	Ongoing
6.3A	NBN Co will prepare and maintain the List of Access Seekers. NBN Co can remove an access seeker from the list following the access seeker's written request.	On and from Second Variation Date	Ongoing
6.4A	NBN Co will create and maintain an internal central register of all executed Deals and Deals offered to access seekers. Access to the central register will be given to all Relevant BSM Staff to enable staff to have visibility and understand what NBN Co has committed to access seekers historically.	On and from Second Variation Date	Ongoing
6.5	NBN Co will keep records of all complaints made by access seekers to NBN Co which describe a grievance in relation to NBN Co's compliance with its non-discrimination obligations for the supply of Build Activities to access seekers, and the supply of business grade services to access seekers, by NBN Co's BSM Department, and will notify the ACCC within 10 Business Days of receiving such complaint by providing details of that complaint.	On and from Second Variation Date	Ongoing



Item	NBN Co Action	Implementation date	Performance period
6.6A	<p>For each annual audit conducted as per Item 5.6 above, the Reviewer must prepare a report outlining the findings of the annual audit.</p> <p>The report will be provided to NBN Co management and Audit and Risk Committee.</p> <p>No later than 20 November each year, NBN Co must also provide a copy of that report to the ACCC, and, where a failure has been identified by the Reviewer in the report, NBN Co must inform the ACCC of:</p> <ul style="list-style-type: none"> <li>• any steps that it has taken to implement the recommendations made by the Reviewer in that report; or</li> <li>• otherwise: <ul style="list-style-type: none"> <li>a. outline the steps that it proposes to take to implement the recommendations of the Reviewer and the timeframe for implementation to the ACCC; and</li> <li>b. subsequently inform the ACCC once those steps have been implemented.</li> </ul> </li> </ul>	<p>Each review will be completed no later than 30 September each calendar year on and from the Second Variation Date</p>	<p>Ongoing on an annual basis</p>
7	<b>Prior compliance commitments</b>		

Item	NBN Co Action	Implementation date	Performance period
7.1A	<p>NBN Co will write to all access seekers that have a Deal Module executed between 5 November 2018 and 5 September 2019 (inclusive) and have not previously been offered a Churn Allowance or cancellation allowance for that Deal Module(s) (<b>Eligible Access Seekers</b>) to offer each Eligible Access Seeker an opportunity to amend its Deal Module(s) entered into between 5 November 2018 and 5 September 2019 (inclusive) to add the below churn and cancellation allowance provision, which will be based on NBN Co's business rules in place as at 27 February 2019 as described below, regardless of the number of sites in the Deal Module (noting that Churn Premises need to be a whole number).</p> <p>As at 27 February 2019, NBN Co had an allowance of 3% per annum for relocation and 7% per annum for cancellation. It will be offered to Eligible Access Seekers in accordance with the following (which excludes any historic requirement for a minimum number of sites):</p> <ul style="list-style-type: none"> <li>• Use the total build costs for the premises in the Deal Module calculated at the time of entering into the Deal Module.</li> <li>• Add 3% for each year of the Deal Module term to the total build costs to arrive at the new total build costs (the 7% for cancellation does not need to be added to the total build costs because no new sites are added and built to as part of the cancellation right).</li> <li>• If the Deferred Charges from the Deal Module are greater than the new total build costs, then NBN Co will offer the Churn Allowance and leave the Deferred Charges unchanged.</li> </ul> <p>If the Deferred Charges from the Deal Module are less than the new total build costs, then the Churn Allowance will only be offered if the access seeker agrees to an increase in the Deferred Charges to cover the amount of the shortfall between the Deferred Charges from the Deal Module and the new total build costs.</p>	Within 10 business days of the Commencement Date	Completed by Implementation Date
7.2A	NBN Co will provide to all WBA customers a letter which contains a summary of the key commercial terms of a Network Preference Deal and the eligibility criteria for such a Deal construct.	Commencement Date	Completed by Implementation Date
7.3A	<p>NBN Co will publish on its website a document setting out the dollar amounts as at the publication date for the Enterprise Ethernet service that will be specified in Price Confirmations issued to WBA customers.</p> <p>This document can be removed once NBN Co has performed the action set out in item 3.6A.</p>	Within 5 Business Days of the Commencement Date	Completed by Implementation Date

Item	NBN Co Action	Implementation date	Performance period
7.4A	<p>NBN Co will offer to each WBA customer a contractual variation that, immediately on execution, varies the Enterprise Ethernet Price List in that customer's WBA access agreement so that it specifies a dollar amount on offer for each "By Price Confirmation" charge for the Enterprise Ethernet service with the exception of the 0 Mbps OVC bandwidth option as that option is erroneous and will be deleted from the WBA.</p> <p>This WBA change will apply to orders placed after the effective date of the contractual variation.</p> <p>The terms of the WBA will otherwise continue to apply including the existing WBA change and discount, credit and rebate processes.</p> <p>Each such contractual variation will lapse after NBN Co has performed the action in item 7.6A below and that action becomes effective.</p>	31 October 2019	Completed by Implementation Date
7.5A	<p>NBN Co will commence the consultation and change process in accordance with the provisions of the WBA in relation to the required WBA changes in order to publish dollar amounts on offer for the Enterprise Ethernet service in the Price List in the Enterprise Ethernet Product Module of the WBA where any charges are currently specified to be "By Price Confirmation" with the exception of the 0 Mbps OVC bandwidth option as that option is erroneous and will be deleted from the WBA.</p>	31 October 2019	Completed by Implementation Date
7.6A	<p>NBN Co will, following compliance with the WBA consultation process and change provisions under the WBA, notify to WBA customers the WBA changes required to publish dollar amounts on offer for the Enterprise Ethernet service in the Price List in the Enterprise Ethernet Product Module of the WBA where any charges are currently specified to be "By Price Confirmation" with the exception of the 0 Mbps OVC bandwidth option as that option is erroneous and will be deleted from the WBA.</p> <p>This WBA change will apply to orders placed after the effective date of the WBA change.</p> <p>The terms of the WBA will otherwise continue to apply including the existing WBA change and discount, credit and rebate processes.</p>	20 December 2019	Completed by Implementation Date

## Appendix B to Second Variation

### Amended and Restated Attachment C to s. 87B undertaking

#### Definitions

'ACCC' means the Australian Competition and Consumer Commission;

'Audit and Risk Committee' means the committee established by the NBN Audit and Risk Committee Charter issued on 5 February 2019;

'BSM' or 'BSM Department' means:

- (a) for the period from the Commencement Date up to, and including, 2 August 2020, NBN Co's business sales and marketing department;
- (b) for the period from, and including, 3 August 2020 up to, and including, 14 February 2021, NBN Co's:
  - (i) Government & Enterprise Solutions division;
  - (ii) Small & Medium Business division;
  - (iii) Commercial & Contract Management team within the Commercial division;
  - (iv) CPM Strategy team within the Strategy and Marketing division;
  - (v) within the Products division the following teams:
    - A. Fibre Deployment Products team;
    - B. Enhanced and Wholesale Products team; and
    - C. Product Enablement team,each within the Customer Products and Marketing department, and their direct managers;
- (c) for the period from, and including, 15 February 2021 up to, and including, 28 February 2022, the following NBN Co divisions and/or teams:
  - (i) within the Customer Products and Marketing department, the following NBN divisions and/or teams, and their direct managers:
    - A. Business division;
    - B. Commercial & Contract Management team within the Commercial division;
    - C. CPM Strategy team within the Strategy and Marketing division;
    - D. within the Products division the following teams:
      - 1. Fibre Deployment Products team;
      - 2. Enhanced and Wholesale Products team;
      - 3. Product Enablement team;
  - (ii) within the Corporate Affairs department, the following NBN Co team and its direct manager:
    - A. the Government Solutions team within the State Corporate Affairs division;
- (d) for the period from, and including, 1 March 2022, the following NBN Co divisions and/or teams:
  - (i) within the Customer Products and Marketing department, the following NBN divisions and/or teams, and their direct managers:
    - A. Business division;

- B. Commercial & Contract Management team within the Commercial division;
  - C. CPM Strategy team within the Strategy and Marketing division;
  - E. within the CX & Products division the following teams:
    - 1. Fibre Deployment CX & Products team;
    - 2. Business CX & Products team;
    - 3. RSP & Channel Enablement team;
- (ii) within the Corporate Affairs department, the following NBN Co team and its direct manager:
- A. the Government Solutions team within the State Corporate Affairs division; and
- (e) any other department, division or team (howsoever described), notified by NBN Co to the ACCC pursuant to item 5.7 of the Undertaking, that takes on the processes, functions or responsibilities of any of the divisions or teams listed in (b) to (d) above related to the supply of Build Activities to access seekers or the supply of business grade services to access seekers from and including 4 August 2020.

'Build Activities' are planning, design and construction activities undertaken by NBN Co to the premises of either business, enterprise or government end users in order to change the access technology that NBN Co had originally proposed to use to service that premises and enable NBN Co to supply access seekers with business grade wholesale services over a different access technology as identified in the Deals Manual from time to time. NBN Co's Technology Choice Program, including individual premises switch and area switch, and NBN Co's new developments program are excluded for the purposes of this definition;

'Build Charge' has the meaning in item 1.7A of Attachment B;

'Build Charge Offset' means a standard amount determined by NBN Co from time to time that NBN Co will apply (on a non-discriminatory basis at all times) as a discount for all access seekers when determining the Build Charge for a Deferred Charge Deal with a 3 year term;

'Build Sites' means the premises specified in a Deal Module as requiring Build Activities;

'Business Day' means any day that is not a Saturday, Sunday or public holiday in Sydney;

'CCA' means the *Competition and Consumer Act 2010* (Cth);

'Churn Allowance' means, where available, a contractual term that allows an access seeker that has a Deferred Charge Deal to relocate Build Sites by cancelling the Build Activities for the Build Sites and requesting Build Activities for replacement Build Sites without changes to the charges at the time of the churn up to a pre-agreed limit determined prior to entering the Deal;

'Churn Premises' means the premises included in a Deferred Charge Deal identified by the access seeker as being subject to a Churn Allowance;

'Common Build Cost Method' means the method by which NBN Co estimates the capital costs of undertaking Build Activities, such as a distance based cost calculator tool to estimate the capital cost of undertaking Build Activities, which may include a combination of manual and automated processes;

'Compliance Officer' has the meaning in item 5.1A of Attachment B;

'Deal' means a Deal Module between NBN Co and an access seeker governing the Build Activities to be performed by NBN Co at specified end user premises agreed between the parties;

'Deals Manual' means the document developed and made available by NBN Co to all access seekers specified on the List of Access Seekers that contains the information included in item 3.2A of Attachment B, and which may alternatively be referred to by such other name that NBN Co gives that document from time to time;

'Deal Module' means a contract issued by NBN Co and accepted by the relevant party to an executed Technology Extension Contract, which specifies the terms governing the Deal between the relevant party to that Technology Extension Contract and NBN Co;

'Deferred Charge' means a contractual term for the payment of charges for Build Activities at specified end user premises where the amount of charges payable for those Build Activities under that Deal at the end of its term is reduced by the amount equal to the charges payable under a WBA for specified services at the specified premises;

'Deferred Charge Construct' has the meaning in item 1.1A of Attachment B;

'Deferred Charge Deal' means a Deal that includes a Deferred Charge;

'Eligible Access Seekers' has the meaning in item 7.1A of Attachment B;

'Enterprise Ethernet' means the product described in the Enterprise Ethernet Product Module of the Wholesale Broadband Agreement published on NBN Co's website;

'Enterprise Ethernet Build Contract' means a standard form agreement provided by NBN Co to an access seeker for the purpose of governing any Build Activities ordered through the Enterprise Ethernet Portal;

'Enterprise Ethernet Portal' means the service portal which enables access seekers and NBN Co to perform supported business transactions for Enterprise Ethernet over the internet using a web-based portal provided by NBN Co;

'FTTP' means fibre-to-the-premises access technology;

'List of Access Seekers' has the meaning in item 3.1A of Attachment B;

'Minimum Product Revenue' means the minimum business grade product revenue (as determined by NBN Co from time to time) aggregated over 3 years in respect of an access technology specified by NBN Co;

'NBN' means the National Broadband Network;

'NBN Co' means NBN Co Limited ACN 136 533 741;

'nbn Select Build Contract' means a standard agreement provided by NBN Co to an access seeker for the purpose of governing any Build Activities ordered through the nbn Select Portal;

'nbn Select Portal' means the service portal which will enable access seekers and NBN Co to perform supported business transactions related to requests to change access technology at a premises to FTTP technology using a web-based portal provided by NBN Co;

'NDO Compliance Program' means the compliance program that NBN Co commits to establish and maintain in relation to compliance with its non-discrimination obligations for the supply of Build Activities to access seekers, and the supply of business grade services to access seekers, by NBN Co's BSM Department;

'Network Preference Construct' has the meaning in item 1.1A of Attachment B;

'Network Preference Deal' means a Deferred Charge Deal that includes the payment of Network Preference Payments by NBN Co to an access seeker where that access seeker commits to on-demand technology upgrades and preferences the NBN for the supply of all fixed line services subject to certain exceptions;

'Network Preference Payments' means the incentive payments paid by NBN Co to an access seeker pursuant to a contractual term agreed between NBN Co and that access seeker under a Network Preference Deal;

'Portal Construct' has the meaning in item 1.2A of Attachment B;

'Relevant BSM Staff' are BSM staff members who are involved in the development and administration of the offering contained in a letter of offer for Build Activities or in a Deal Module;

'Revenue Credit Amount' means the WBA revenue for specified services at end user premises using the new technology agreed between the parties to a Deferred Charge Deal;

'Reviewer' has the meaning in item 5.6 of Attachment B;

'Second Variation' means the second variation to this Undertaking;

'Second Variation Date' means the date on which

(a) the Second Variation is executed by NBN Co; and

(b) the ACCC accepts the Second Variation so executed;

'Standard Agreement' has the meaning in item 1.3A of Attachment B;

'Standard Deal Construct' has the meaning in item 1.1A of Attachment B;

'Technology Extension Contract' or 'TEC' means a master agreement under which NBN Co and an access seeker can agree the terms of a Deal Module relating to the supply of Build Activities by NBN Co;

'Undertaking' means the section 87B undertaking given by NBN Co to the ACCC and accepted by the ACCC on 8 October 2019 (as varied), including Attachments A, B and C to the section 87B undertaking;

'Upfront Charge' means a contractual term for the payment of charges for Build Activities at specified end user premises where the payment of charges for those Build Activities under that Deal is made at specified dates or upon specified events, which may be in accordance with a schedule of instalments, and which is not a Deferred Charge;

'Upfront Charge Construct' has the meaning in item 1.1A of Attachment B;

'Upfront Charge Deal' means a Deal that includes an Upfront Charge and does not involve any Deferred Charges; and

'WBA' means the wholesale broadband agreement, which is a standard access agreement published by NBN Co for the purposes of Part XIC of the CCA.