

# DEED OF VARIATION

The Council of the City of Sydney  
(ABN 22 636 550 790)

and

Nextgen Networks Pty Ltd  
(ABN 32 094 147 403)

For Data Centre Facilities & Services

Reference: X011782.001

## DEED OF VARIATION

**THIS DEED** is made on

## PARTIES

- (1) **THE COUNCIL OF THE CITY OF SYDNEY** ABN 22 636 550 790 of Town Hall House, 456 Kent Street Sydney NSW 2000 (**City**);
- (2) **Nextgen Networks Pty Ltd** ABN 32 094 147 403, Level 6, 333 Collins St Melbourne VIC 8010 (**Service Provider**);

## BACKGROUND

- A. The City and the Service Provider entered into the Agreement.
- B. The City and the Service Provider have agreed to vary the Agreement in the manner set out in this Deed of Variation.

## THE PARTIES AGREE AS FOLLOWS:

### 1 DEFINITIONS

- 1.1 In this Deed of Variation, unless the context otherwise requires:

**Agreement** means the Major Services Agreement for Data Centre Facilities & Services between City and the Service Provider which has a Start Date of 30 June 2014.

**Deed of Variation** means this deed of variation and all annexures, schedules, attachments and exhibits.

**Excess Power Rate** means the rate charged for exceeding maximum power draw specified in the applicable service order

### 2 INTERPRETATION

- 2.1 Headings are for convenience only, and do not affect interpretation.
- 2.2 The following rules apply in interpreting this Deed of Variation, except where the context makes it clear that a rule is not intended to apply:

(a) A reference to:

- i. a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- ii. a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- iii. a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;

- iv. a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- v. anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The words subsidiary, holding company and related body corporate have the same meanings as in the Corporations Act.
- (g) A reference to dollars or \$ is to an amount in Australian currency.
- (h) A reference to this document includes the agreement recorded by this document.
- (i) Words defined in the GST Act have the same meaning in clauses about GST.
- (j) A reference to a month is to a calendar month.
- (k) A reference to a term defined in the Agreement has the same meaning when used in this Deed of Variation.

2.3 This Deed of Variation is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

### 3 VARIATION OF AGREEMENT

The Agreement is varied as follows:

#### 3.1 In Schedule 1 – AGREEMENT DETAILS - Further Terms

In the Description of Item 3 insert:

3.	Further Terms	Length of Further Terms (if applicable): <ul style="list-style-type: none"> <li>• 1 x 1-year to 30 June 2025</li> <li>• 2 x 3-year to 30 June 2031</li> </ul>
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3.2 In Clause 7 – PAYMENT, INVOICING AND GST:

Insert new clause 7.9:

**"7.9 Price Adjustment Clause – Rise and fall of the Schedule of Rates**

(a) The purpose of this clause 7.9 is to provide the Service Provider with an entitlement to make a claim for an adjustment to the Schedule of Rates:

- (a) as a result of changes to the CPI ("Claim for CPI Adjustment"); or
  - (b) where the adjustment sought is higher or lower than the amount of CPI ("Claim for Adjustment"),
- (collectively 'Claim').

For the purposes of this clause, "CPI" means the Consumer Price Index (All Groups) for Sydney compiled by the Australian Government Statistician, or if such index ceases to exist, such other index nominated by the City in substitution of the same).

(b) Although this clause 7.9 applies to Claims made either during the Term or a Further Term, the Service Provider is only entitled to make a Claim under this clause 7.9:

- (a) within 6 weeks before the first 12 month anniversary of the Start Date; and
- (b) within 6 weeks before each subsequent 12 month anniversary of the Start Date.

Time is of the essence in relation to these periods, and there will be no right for the Service Provider to seek a Claim outside the time periods.

(c) The prices included in the Schedule of Rates are fixed for both the Term and any Further Term, subject to the Service Provider making a Claim under this clause 7.9.

(d) The purpose of the City providing the Service Provider with an entitlement to make a Claim under this clause 7.9 is to assist the Service Provider to manage the rising costs they will, or are likely to, incur in carrying out the Services:

- (a) as a result of changes to the CPI; or
- (b) where those costs have increased above or below the amount of CPI.

(e) To take up this entitlement, the Service Provider must:

- (a) submit a Claim under this clause 7.9 to the City within the timeframe specified above (which may either be during the Term or during a Further Term); and



(b) ensure that the Claim is supported and accompanied by applicable and relevant evidence to justify the Claim. If, in the reasonable opinion of the City, applicable and relevant evidence has not been provided by the Service Provider, the City will reject the Claim. Time is of the essence in relation to the provision of the evidence by the Service Provider and if the evidence is not provided within the timeframe specified above, the City will be under no obligation to consider the Claim.

(f) If the Service Provider makes a Claim which meets the requirements of clause 7.9(e), the City will increase the Schedule of Rates by the amount of the Claim. However, the City has no obligation to consider any Claim made under this clause 7.9 which is made outside of the above specified timeframe – whether a Claim is made early or late.

Examples for making a Claim:

Year 1 Claim: If the Start Date is 1 October 2018, a Claim under this clause 7.9 must be submitted to the City within 6 weeks before 30 September 2019.

Year 2 Claim: A Claim under this clause 7.9 must be submitted to the City within 6 weeks before 30 September 2020.

(g) The City will provide its written assessment in response to a Claim made under this clause 7.9 no later than 4 weeks after receiving the Service Provider's submission of a Claim made under this clause.

(i) If the City approves an adjustment under this clause 7.9 for any Claim, any adjustment granted will only apply from the date the City provides the Service Provider with a written copy of its assessment. Under no circumstances will an adjustment apply retrospectively.

(j) The guiding principle to calculating CPI price requires both the City and the Service Provider to take into consideration the delay of CPI statistics being published, whereby the most recent consecutive four (4) quarters (that is, 12 months) of CPI index numbers published must be used in the calculation in a Claim for CPI Adjustment.

Insert new clause 7.10:

#### Power Charges

(a) Power costs are included in the rack charges.

Notwithstanding any other provision of this **Deed**, the Service Provider may pass on to the City all increases or decreases in the cost of power once per 12-month period for each data centre hosting City services. Any such changes to power rates automatically supersede existing rates. The Service Provider will give the City at least 30 days' notice of any such

increase in rates, although a failure to notify does not negate your obligation to pay the higher rates.

#### Maximum Power Draw

(a) City must not exceed the maximum power draw stated in a service order without the Service Providers' prior written consent.

(b) If City exceed the maximum power draw without the Service Providers' prior written consent, then:

- (i) the Excess Power Rate applies to all power used by City in excess of the stated maximum power draw;
- (ii) Service Provider's obligation to comply with Nextgen's SLA is waived and the Service Provider has no liability to City for any loss or damage suffered by City as a result of any failure to meet the Nextgen SLA for the duration of the period of the excess power usage; and
- (iii) City indemnifies the Service Provider in respect to any losses, damages, costs or other liabilities incurred by Service provider as a result of the excess power usage, including those arising as a result of any failure of power or cooling equipment caused by City's excess power usage.

### 3.3 **Works Schedule 1 - Annexure D - Schedule of Rates**

Delete the table in Annexure D – Schedule of Rates and replace with the following table:

SCHEDULE OF RATES				
FACILITIES & SERVICES	UNIT	COST/UNIT (EX GST)	ONE-OFF COST (EX GST)	MONTHLY COST (EX GST)
<b>Data Centre Colocation Facilities</b>				
Rack space to suit the City's HP or Rittal TS-IT 5516.110 47RU (racks) inclusive of 5kW power				
Additional kW power	1		Nil	
Site A - Rack space initial requirement of three (3) racks	3		Nil	
Site B - Rack space initial requirement of three (3) racks	3		Nil	
<b>Remote hands - Cabling and cross-connect services</b>				
Remote hands (as required) per half hour during business hours 8:30am-5:30pm – minimum of 30 mins.	1			
Remote hands (as required) per half hour outside business hours – minimum of 2 hours.	1			
<b>Cabling and cross-connect services</b> For single copper or SMOF fibre x-connect from Nextgen PoP/ Handoff to the City's rack	1			
<b>High Speed Data Links</b>				
High speed 10 Gbps point-to-point data link between Site A Nextgen Silverwater and Site B Nextgen Rosebery	1		Nil	
High speed 10 Gbps point-to-point data link between Site A & Town Hall House, 456 Kent St Sydney	1		Nil	
High speed 10 Gbps point-to-point data link between Site B & 307 Pitt St, Sydney	1		Nil	
<b>Reporting Services</b>				
Reporting Services (included)		No Charge	No Charge	No Charge



SCHEDULE OF RATES		COST/UNIT	ONE-OFF	MONTHLY
		UNIT	COST	COST
FACILITIES & SERVICES		(EX GST)	(EX GST)	(EX GST)
<b>Other Services</b>				
<b>Other Services (RFT Section 1.7)</b> (As agreed from time to time)		POA	POA	POA
<b>IaaS Services</b> (As requested from time to time)		POA	POA	POA

*Schedule of Rates as applicable from 1 May 2025*

#### **4 NO OTHER CHANGE**

The parties confirm that the Agreement will continue in full force and effect as varied by this Deed of Variation. Nothing in this Deed of Variation will be read or construed as implying any form of variation or waiver other than as expressly set out in this Deed of Variation.

#### **5 FURTHER ASSURANCE**

Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Deed of Variation.

#### **6 LEGAL COSTS**

Each party will bear its own legal costs in relation to the preparation and execution of this Deed of Variation.

#### **7 GENERAL**

7.1 This Deed of Variation contains the entire agreement between the parties and any previous negotiations, agreements, representations or warranties relating to the subject matter of this Deed of Variation are of no effect.

7.2 A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

- 7.3 Nothing in this Deed of Variation in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.
- 7.4 The invalidity, illegality or unenforceability of any provisions of this Deed of Variation will not affect the validity or enforceability of any other provisions.
- 7.5 This Deed of Variation may only be varied in writing by the agreement of the parties.
- 7.6 This Deed of Variation is governed by and construed in accordance with the law of the State of New South Wales.
- 7.7 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in relation to all matters arising under, or relating to, this Deed of Variation.

## EXECUTION

EXECUTED by the parties as a deed:

Signed for and on behalf of the COUNCIL OF THE )  
CITY OF SYDNEY by its duly authorised officer in )  
the presence of: )



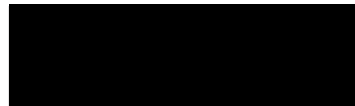
Signature of Witness



Name of witness (printed):

02.06.2025

Date signed



Signature of authorised officer:

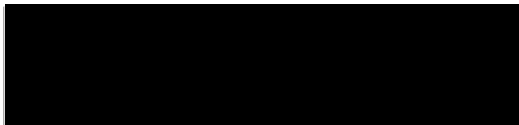


Name of Authorised Officer:

2/6/25

Date executed by Authorised Officer

SIGNED by Nextgen Networks Pty Ltd ABN 32 094  
147 403, in accordance with section 126 of the  
Corporations Act 2001 (Cth): ) )  
)



Signature of Authorised Person



Name (printed):

26th MAY 2025

Date signed