

MASTER SERVICES AGREEMENT

SERVICE DESCRIPTION



SERVICE DESCRIPTION: CLOUD BROKERAGE

PART A – PRODUCT OVERVIEW

One New Zealand’s Cloud Brokerage is a “secure cloud connection” capability providing the ability for you to access several cloud services via our network services. This is delivered in conjunction with components supplied by Megaport, a global Software Defined Network (SDN) provider that we have partnered with (“Megaport”).

PART B – TERMS AND CONDITIONS

1. YOUR CLOUD BROKERAGE SERVICE

1.1 Scope

The overall service that we deliver to you will be made up of several different elements, some of which we are sourcing direct from third-parties.

The Cloud Brokerage Service is made up of the following:

- (a) the Megaport Components (as set out in clause 1.2 and further described in clause 2); and
- (b) the One New Zealand Services (as set out in clause 1.3).

We will be responsible to you for the provision of the One New Zealand Services with reasonable skill and care. We will procure access to the Megaport Components for you directly from Megaport (please note that as these are provided by a third party we are not responsible for these Components including their quality, suitability, maintenance, service levels and availability).

1.2 Megaport Components

We will procure for you the following products from Megaport (as further described in clause 2) (“**Megaport Components**”):

Megaport Component	Summary
Megaport Port	Megaport Port provides you with access to the suite of Megaport services, which you can use for cloud provider connectivity.
Megaport VxC	Megaport VxC offers you a cloud connectivity solution, enabling you to access cloud services from several cloud service providers. This solution includes secure connectivity, intelligent path control, real-time cloud network configuration, and both real-time and scheduled bandwidth changes.
Online Portal	This self-service portal includes detailed reporting and management options. You will be able to produce detailed reporting on an adhoc or scheduled basis, view your Megaport topology and usage, and receive alerts for changes or impacts to services.

1.3 One New Zealand Services

As part of providing you with the Cloud Brokerage Service, we will do the following (“One New Zealand Services”):

- (a) provide you with a Megaport Port at a compatible data centre;
- (b) provide your authorised users access to the Megaport Online Portal where you can review network statistics;

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- (c) provide your authorised users with an online self-service portal that will enable you to have visibility of your Megaport Components including usage statistics, topology and configuration;
- (d) procure for you the Megaport Components outlined in the table above and further described in clause 2 below on an “as-is” basis;
- (e) process any orders you make in a Statement of Work (SOW) with us for Megaport Components directly with Megaport;
- (f) bill you for the Cloud Brokerage Service, including any fees payable for use of Megaport Components.
- (g) be responsible for the support, management and monitoring of the solution up to the point of the Megaport port. Beyond this point you, or your third parties, will be responsible for management and support of the solution.

2. MEGAPORT COMPONENT DESCRIPTIONS

2.1 Megaport Port

The “Megaport Port” is a high-speed Ethernet interface that provides the physical connection you need to access Megaport services. Available speed options are standards based 1Gbps and 10Gbps.

The Megaport Port is available at selected data centres as set out in clause 3.1c below.

You can use standards based protocols to connect and support the networks ability to provide Megaport services.

2.2 Megaport VxC

The “Megaport VxC” is a high-speed point-to-point Ethernet virtual circuit between two points on the Megaport network.

The service via Megaport VxC will provide Layer 2 transport of your traffic to and from the two points requested in a SOW which can include any two of the following:

- (a) A dedicated Megaport Port for you;
- (b) a cloud provider that you have an agreement for services with (e.g. Microsoft Azure); or
- (c) a different dedicated Megaport Port owned by you on the Megaport network.

The VxC as per the Megaport Port uses standards based Layer 2 protocols.

Service speed may be configured in 1Mbps increments, with a maximum speed equal to the speed of the slowest Megaport Port connected to the VXC.

2.3 Online Portal

The Online Portal is used for the creation, modification, and reporting of your Megaport Components. This is a self-service capability, with Megaport Components designed to be used in conjunction with the Online Portal with no manual interactions.

The creation of authorised portal accounts for your use will be created by us as part of the Cloud Brokerage Service onboarding. This will include the creation of an overall administrator account for use by a nominated representative within your organisation who will be responsible for administering additional accounts (including creating, deleting, modifying) of your approved users. We will retain Online Portal administrative accounts for ongoing operational troubleshooting and support.

3. PRE-REQUISITES FOR THE CLOUD BROKERAGE SERVICE

3.1 The following requirements are pre-requisites to enable us to provide you with the Cloud Brokerage Service. It is your responsibility to ensure these pre-requisites remain in place while we are providing the Cloud Brokerage Service to you.

- (a) **Network:** You must have us engaged as your service provider for managed network services via our Enterprise Operations team.

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- (b) **Service Desk:** You must have the One New Zealand Enterprise Service Centre as your current One New Zealand Service Desk.
- (c) **Sites:** Your existing datacentres must be enabled for use with Megaport Components. For the list of current datacentres with Megaport connectivity, please see the list under "Oceania - New Zealand" in <https://www.megaport.com/megaport-enabled-locations/>
- (d) **Datacentre Connection:** You must have a datacentre connection in place with a Megaport Port. This provides you with a physical cable connection from your datacentre rack and network termination infrastructure to the Megaport Port. You will need to source this physical connection/cabling as part of your Data Centre hosting/tenancy agreement and is dependent on providing the associated Megaport connectivity.

4. ORDERING COMPONENTS

- 4.1 By submitting a SOW to us you are making a binding offer to acquire the Megaport Components described in the SOW on the terms set out in this Agreement, which we will process directly with Megaport. Megaport may accept or decline a SOW at their discretion. An agreement to supply a Megaport Component is formed on the date we provision it and charges apply from the Billing Commencement Date.
- 4.2 We will use reasonable endeavours to begin providing the Megaport Components on the delivery date set out in the SOW.

5. CHARGES AND PAYMENT

- 5.1 All charges for the Cloud Brokerage Service are exclusive of applicable Taxes and Regulatory Fees. We are entitled to add to the amount otherwise payable an additional amount for the applicable Taxes and Regulatory Fees. Megaport prices are obtainable from the Megaport website, with no additional Vodafone charges applied and may change without notice.
- 5.2 If you are required by law to deduct or withhold Taxes from a payment to us, you may make those deductions or withholdings (or both). However, you must provide us with a receipt for each payment and we will increase your payment amount by the amount necessary to ensure that we receive the full amount that we would have received if no deduction or withholding had been made.
- 5.3 Charges as set out in the Pricing Schedule are subject to change as per 5.1.
- 5.4 You may change the "rate limit" of a Megaport service at any time using your Megaport account or a SOW. You agree to pay the charges specified in the Megaport portal or the SOW for the change in rate limit when you make the change to your account.

6. CONDITIONS OF USE

- 6.1 **Nature of Cloud Brokerage service:** You acknowledge that the Megaport Components are provided by us to you as they are supplied to us by Megaport. We will provide connection to the Megaport Components as outlined in this Agreement and we will use reasonable endeavours to ensure that Megaport provides the Megaport Components as described in this Agreement, but we make no warranties or guarantees as to the quality, suitability, maintenance, service levels and availability of anything supplied by Megaport. We will remain responsible to you for the provision of the One New Zealand Services with reasonable skill and care.
- 6.2 Your obligations: You will:
 - (a) supply and configure your own (and any third party) compatible equipment to connect to the Components;
 - (b) be responsible for all information and data transmitted or accessed using the Cloud Brokerage Service;
 - (c) be responsible for any of your agents, employees, contractors or other service providers who have access to the Cloud Brokerage Service;
 - (d) ensure you have one or more active Megaport Ports in order to keep receiving the Cloud Brokerage Service;

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- (e) uninstall cross connects from your equipment to the demarcation point at your cost within 30 days after the Cloud Brokerage Service is terminated, unless otherwise specified in the SOW;
- (f) be responsible for the support and management of the solution beyond the Megaport port including access to Cloud providers;
- (g) be responsible for maintaining the security of your Megaport account, devices and network; and
- (h) pay all charges in connection with the usage of a Component, even if that usage was not authorised by you, unless that usage was caused by our mistake.

6. 3 **Use of services:** In addition to the terms and conditions in this Agreement, for as long as you are receiving the Cloud Brokerage Service you must comply with (and ensure your agents, employees, sub-contractors and other service providers who have access to the Cloud Brokerage Service comply with):

- (a) Megaport's Acceptable Use Policy, available on Megaport's website at <https://www.megaport.com/legal/>; and
- (b) Megaport's operational procedures, technical specifications and other reasonable directions provided by Megaport in relation to the Components.

6. 4 **Suspension or restriction of services by Megaport:** We may advise you that Megaport has temporarily suspended or restricted the Megaport Components, including but not limited to for the following reasons:

- (a) for your (or any of your agents, employees, sub-contractors and other service providers) failure to comply with Megaport's Acceptable Use Policy as set out in clause 6.3a) and we will aim to provide you with three (3) days' written notice of this, provided that suspension may occur immediately without notice for a material failure to comply;
- (b) where there are technical problems with the Megaport Components or maintenance is required and we will aim to provide you with 12 days' written notice of this, provided that suspension may occur immediately without notice if emergency repairs are required by Megaport;
- (c) where Megaport believes it is necessary to do so to comply with any law or an order of any government or regulatory body; or
- (d) where Megaport believes it is necessary to protect any person, equipment, network, or to attend to any emergency.

We will continue to charge you for the Cloud Brokerage Service where a suspension or restriction occurs in accordance with clause 6.4a).

7. LIABILITY

- 7. 1 To the extent permitted by law, Megaport excludes all warranties and conditions of any kind, express or implied, including without limitation any implied warranties and conditions of merchantability or fitness for a particular purpose, in relation to the Megaport Components.
- 7. 2 You will not (and will ensure your agents, employees, sub-contractors and other services providers who use or benefit from the use of any Megaport Components do not) hold us or Megaport liable for any costs, claims, demands, losses, damages, expenses and liabilities of any nature in relation to the use of the Megaport Components. We will remain liable to you for the performance of the One New Zealand Services only.
- 7. 3 The benefits of this section 7 are intended to extend to Megaport and to be enforced by them under the Contract and Commercial Law Act 2017 Part 2, Subpart 1.

8. TERMINATION

- 8. 1 You acknowledge that if you terminate any of the Components directly via Megaport this will be deemed to be a termination of the main Agreement Cloud Brokerage Service with us and Any such termination must be in accordance with the terms of the main Agreement and you may be required to pay Early Termination Charges as set out in the Commercial Terms.

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PART C – PRICING

9. PRICING OVERVIEW

9.1 Refer to the Pricing Schedule for details of the applicable Charges.

10. INSTALLATION

10.1 A Non-Recurring Charge will apply for installations that will be charged on a time and materials basis and we will consult with you to agree on the costs (or the basis of such costs) prior to incurring them.

11. SITES

11.1 Please refer to the Pricing Schedule for details of your sites which will receive the Cloud Brokerage Service provided under this Agreement (if applicable).

PART D – SUPPORT

12. SUPPORT

12.1 The Service Centre Service Description applies to the Cloud Brokerage Service.

12.2 In addition to Service Centre Service Description, the following service levels apply to the Components as advised to us by Megaport. We are not liable for performance of the Components to these targets:

(a) Service Availability

The Service has a Service Availability Target of 100%. Service Availability is calculated as Uptime per month divided by (the number of minutes in the month less **Excused Downtime**), expressed as a percentage. This is measured individually for the separate components:

(i) **Megaport Port**; and

(ii) **Megaport VxC**

(b) Reporting on Service Availability is available to your authorised users via the Online Portal

PART E – OTHER TERMS AND CONDITIONS

13. DATA INTERCEPTION

13.1 Please note that data transmitted using any of the Components provided by Megaport may be intercepted by authorised Megaport personnel:

(a) in order for Megaport to comply with its obligations pursuant to law or as set out in a court order or subpoena (any misuse of Megaport Components by you may be investigated by Megaport including in conjunction with law enforcement agencies);

(b) for troubleshooting purposes (such data will only be kept for as long as is required to complete the troubleshooting).

14. DEFINITIONS

In this Service Description, in addition to the terms defined elsewhere in the Agreement, the following defined terms will apply to this Service Description:

Excused Downtime means the number of minutes in the month, rounded to the nearest minute that the Cloud Brokerage is unavailable due to:

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- (a) Customer's acts or omissions or the acts or omissions of Customer's agents, contractors or anyone Customer is responsible for;
- (b) the acts or omissions of any third party or a fault on a third party's network;
- (c) any failure, incompatibility or error in the configuration of Customer equipment or cabling (including any cross-connects);
- (d) One New Zealand suspending the Cloud Brokerage Service in accordance with the Agreement or the Acceptable Use Policy; or
- (e) an Intervening Event

Uptime means the number of minutes in the month where the Component is Available (as defined below), rounded to the nearest minute:

Megaport Port

the number of minutes in the month where the link state of the Megaport Port is 'up, rounded to the nearest minute;

Megaport VxC

A service will be considered available when the Label Switched Path (LSP) meets or exceeds all of the service targets below for three consecutive five-minute intervals, in which case the time of availability will start from the first of these intervals (Available).

Each service traverses a single Label Switched Path (as defined by ITU-T Recommendation Y.1561 (05/2004)(LSP) through Megaport's network, and the availability of a service is measured by the availability of that LSP.

A service will continue to be considered Available until the LSP fails to meet one or more of the service targets below for three consecutive five-minute intervals, in which case the time of unavailability will start from the first of these intervals (Unavailable). A service will continue to be considered Unavailable until it is Available again. Availability is measured by reference to ITU-T Recommendation Y. 1561 (05/2004).

Service Target	Value
Packet Error Ratio (PER)	<0.1%
Packet Loss Ratio (PLR)	<0.1%
Packet Transfer Delay (PTD)	Refer to https://megaport.com/legal/packet-transfer-delay Note that the target does not apply between Megaports with a 5 minute average traffic load of more than 70% for either incoming or outgoing traffic.