

# Global Services Agreement

## 1. **Agreement documents**

This Global Services Agreement, the Service Schedule(s), the Acceptable Use Policy and Customer's Order(s) set out the terms and conditions that apply to Customer's access to and use of the Services and forms an agreement (this **Agreement**) between Megaport (USA), Inc. of 6790 Embarcadero Ln #100, Carlsbad, CA, 92011 (**Megaport**) and the Customer.

## 2. **Account**

- a) To access the Services, Customer must create a Megaportal account and provide a valid email address.
- b) Megaport may assume that any request in relation to the Services Megaport receives from Customer, its agents or employees, from the premises where the Service is being supplied or accessed or from Customer's Megaportal account is authorised by Customer. Customer must notify Megaport in writing immediately if Customer believes that there has been unauthorised use of the Services or its account or if its account information is lost or stolen.

## 3. **Ordering Services**

- a) By submitting an Order to Megaport:
  1. Customer warrants that the information Customer provides to Megaport in an Order is true and correct and that Megaport may rely upon it; and
  2. Customer is making a binding offer to acquire the Services described in the Order on the terms set out in this Agreement, which Megaport may accept at its discretion. An agreement to supply a Service is formed on the date Megaport provisions that Service and charges apply from the Billing Commencement Date.

## 4. **Affiliates**

- a) Customer and its Affiliates may order Services from Megaport in various countries by submitting an Order. Each Order will form a separate agreement to purchase the relevant Services, incorporating the terms of this Global Services Agreement, the Service Schedule(s) and the Acceptable Use Policy. Customer will be the customer of record for all Services provided under this Agreement and, together with any ordering Customer Affiliate, will be jointly and severally liable for all obligations set out in this Agreement, notwithstanding that the Order may be submitted by a Customer Affiliate or that the invoices for a Service may be sent to a Customer Affiliate. If Megaport (or a Megaport Affiliate) accepts an Order from a Customer Affiliate by provisioning the Service(s) set out in that Order, then references in this Agreement to Customer will be read as references to Customer and the relevant Customer Affiliate.
- b) If an Order requires the provision of Services in a jurisdiction other than a jurisdiction where Megaport operates, a Megaport Affiliate may provide those Services in that jurisdiction. If a Megaport Affiliate accepts an Order by provisioning the Service(s) set out in that Order, the

Megaport Affiliate will be solely liable for that Order and references in this Agreement to Megaport will be read as references to that Megaport Affiliate.

- c) If the Services are to be provided in a jurisdiction where, in order for the Order to be enforceable or consistent with local law or operational practice, additional terms must be added to this Agreement or existing terms amended, those additional or amended terms will be set out in an addendum to this Agreement.
- d) In this Agreement, indemnities and limitations and exclusions of liability in favour of a party are to be construed as indemnities, limitations and exclusions in favour of each of that party's Affiliates.

## **5. Credit and security**

- a) From time to time during the term of this Agreement, Customer authorises Megaport to assess Customer's creditworthiness and to communicate with credit reporting agencies about Customer's credit status. Megaport may give these agencies information that Customer has provided to Megaport.
- b) Megaport may also set a credit limit or restrict Customer's use of the Services to limit Megaport's financial exposure. If Customer exceeds its credit limit, Megaport may restrict Customer's ability to order new Services and/ or require payment from Customer.

## **6. Services**

- a) Megaport will use its reasonable endeavours to begin providing the Service on the delivery date set out in the relevant Order.
- b) Megaport will use its reasonable endeavours to provide Services in accordance with service levels set out in the Service Schedule. If Megaport fails to meet a service level, Customer's remedy (if any) will be set out in the Service Schedule, and this will be Customer's only remedy in relation to that failure.
- c) Megaport may replace or vary an existing Service at any time provided that the variation does not result in any material deterioration in the quality of the Service.
- d) Note that as the Services involve providing a network for the transmission of Customers' data, Megaport is subject to telecommunications laws in the various countries in which it operates, bound to the secrecy of telecommunications, and registered with the relevant regulatory bodies where required, including the German Federal Network Agency (Bundesnetzagentur). Note the following regarding Megaport's transmission of such data:
  - 1. Only as lawfully required: Megaport only processes such data (including via its service providers and network operators) to the extent necessary to provide the Services and in accordance with relevant telecommunications laws.
  - 2. Automatically: Such data is processed automatically when Megaport's systems are triggered by Customers' instructions to transmit their data. In doing so, Megaport's systems not only transmit Customers' raw data packets ("Packets"), but read and record certain metadata relating thereto in order to build up the connection between sender and recipient, route the Packets properly and calculate Service fees (where fees are dependant on the quantity of data

transmitted). Such metadata would be IP addresses and Packet headers, transmission start and end, transmitted data quantity, and other data required to create or maintain the communication channel between sender and recipient) (“Metadata”). Packet content is not accessed and data is deleted directly after the requested connection has been terminated, save for retention of Metadata as required for the purposes described herein and below.

3. Manually: Manual processing of Metadata is only done by authorised Megaport personnel and only for troubleshooting purposes (ie to detect and resolve Service or network malfunctions) and to detect and prevent unlawful use of the Services or network.
4. Court orders, subpoenas & laws: Megaport will only intercept data beyond what is described above in the event and to the extent required for compliance with any law, court order or subpoena (including in conjunction with law enforcement agencies).

## **7. Customer responsibilities**

### a) Customer must:

1. establish and maintain all cabling at third party sites (including all cross-connects) from the Service demarcation point to Customer’s own equipment and comply with any requirements of the third party site provider in relation to that cabling;
2. supply and configure Customer’s own compatible equipment to connect to the Services;
3. follow Megaport’s operational procedures, technical specifications and other reasonable directions provided by Megaport in relation to the Service (including as set out in <https://www.megaport.com/services/policies-procedures/>);
4. ensure that Customer does not (and its agents, contractors and third party suppliers do not) damage any equipment, network or sites Megaport uses to provide the Services; and
5. uninstall cross connects from the Customer’s equipment to the demarcation point at Customer’s cost within 30 days after the Service is terminated, unless otherwise specified in the Order.

### b) When Customer uses a Service, Customer must:

1. comply with all applicable laws, regulations and codes of conduct;
2. comply with the Acceptable Use Policy;
3. comply with Megaport’s reasonable directions concerning Customer’s use of the Service;
4. use the Service for business purposes only and not resell or resupply the Service unless Megaport agrees in writing;
5. be responsible for all information and data transmitted or accessed using the Service; and
6. be responsible for any of its agents, employees, contractors or other service providers who have access to the Service.

- c) Customer is responsible for implementing and maintaining the security of its Megaportal account, devices and network. Customer must pay all charges in connection with the usage of a Service, even if that usage was not authorised by Customer, unless that usage was caused by Megaport's mistake.
- d) Customer indemnifies Megaport and will keep Megaport indemnified for any Loss suffered or incurred by Megaport due to a breach of this Agreement by Customer. This indemnity is not limited by Clause 10 but is reduced to the extent that the Loss is caused by Megaport's negligence.

## **8. Charges and payment**

- a) Charges for the Services will be specified on Customer's Order, or if not specified, as set out in Customer's Megaportal account.
- b) Megaport will issue clear and accurate invoices monthly. Megaport will notify Customer by email when an invoice is available in Customer's Megaportal account. All charges will be invoiced and must be paid in the currency specified on the relevant Order.
- c) Customer must pay all invoices within thirty (30) days of the invoice date using one of the payment methods listed on the invoice. Megaport will determine how payments will be applied against outstanding invoices. Service fees and charges may apply to some payment methods. Customer will be responsible for payment of any fees and charges that apply to payment methods. Note that if Customer has chosen to pay via credit card, such payments are processed by Stripe Payments Australia Pty Ltd, a Level 1 PCI compliant service provider ([www.stripe.com/au/privacy](http://www.stripe.com/au/privacy)).
- d) If Customer does not pay an invoice in full by the due date then, in addition to any other rights Megaport has under this Agreement, Megaport may charge Customer a default fee on the unpaid amount on a daily basis from the due date until payment is made at the rate of three per cent (3%) per annum above the prevailing base rate charged by its current bank.
- e) If Customer considers in good faith there has been a mistake in any invoice, Customer must notify Megaport within ninety (90) days after the relevant invoice date with full details. Customer will not be liable to pay for Services that it has not agreed to receive. Megaport will investigate Customer's claim and suspend its collection processes until the claim has been resolved. If Megaport has made a mistake, it will reimburse Customer as soon as practicable.
- f) Megaport may vary the charges at any time:
  - 1. on thirty (30) days' notice, if Megaport provides a Service to Customer that does not have a Minimum Term; or
  - 2. on thirty (30) days' notice, if Megaport continues to provide a Service to Customer after the Minimum Term of that Service has expired and the Service is being provided on a month to month basis.
- g) All charges for the Services are exclusive of applicable Taxes and Regulatory Fees. Megaport is entitled to add to the amount otherwise payable an additional amount for the applicable Taxes and Regulatory Fees.

- h) If Customer is required by law to deduct or withhold Taxes from a payment to Megaport, then Customer may make those deductions or withholdings (or both). However, Customer must provide Megaport with a receipt for each payment and Megaport will increase Customer's payment amount by the amount necessary to ensure that Megaport receives the full amount that Megaport would have received if no deduction or withholding had been made.
- i) If Customer claims a tax exemption, then Customer must provide Megaport with a properly executed exemption form that applies to the jurisdiction/s in which the Service is rendered. Once the exemption form is received and is deemed to be satisfactory evidence, Taxes will not be charged for the applicable Service.

## **9. Service Suspension**

- a) Subject to applicable laws, Megaport may temporarily suspend or restrict the Customer's Services:
  - 1. if Customer does not pay an invoice within thirty (30) days after receiving notice from Megaport that payment is overdue;
  - 2. on 5 days' written notice, if Customer fails to comply with the Acceptable Use Policy, provided that Megaport may immediately suspend Services without notice if Customer materially fails to comply with the Acceptable Use Policy;
  - 3. if Megaport believes it is necessary to do so to comply with any law or an order of any government or regulatory body;
  - 4. if Megaport believes it is necessary to do so to protect any person, equipment, network or to attend to any emergency; or
  - 5. on 14 days' notice, where there are technical problems with the Service or where Megaport is maintaining or maintenance is required, provided that Megaport may immediately suspend service without notice if emergency repairs are required.
- b) If Megaport suspends or restricts a Service, Megaport will only continue to charge Customer for the Service if the suspension or restriction is due to Customer's failure to comply with this Agreement or the Acceptable Use Policy.

## **10. Liability**

- a) To the extent permitted by law, Megaport excludes all statutory or implied conditions or warranties, including without limitation, any implied warranties or conditions of merchantability or fitness for a particular purpose. Megaport does not warrant that the Services will be continuous, error-free or secure. Megaport's liability for non-excludable conditions and warranties is limited (where it can be limited) to:
  - 1. supplying the Services again; or
  - 2. paying Customer the cost of having the Services supplied again.
- b) To the extent permitted by law, each party's total liability in respect of all claims in connection with this Agreement (whether in contract, negligence or any other tort, under any statute or

otherwise) will be the sum of the charges paid or payable by Customer under this Agreement in the 12-month period preceding the date of the event that gave rise to the claim. This limitation of liability does not apply in respect of indemnity obligations or obligation to pay charges under this Agreement.

- c) Neither party will be liable to the other (under the law of contract, tort, equity or otherwise) for:
1. any damages of any kind arising out of or in connection with this Agreement that are indirect or consequential;
  2. any loss or corruption of any data, interruption to business, loss of revenue, loss of sale, loss of profits, loss of business or any other economic loss or any loss of goodwill; or
  3. any failure to perform this Agreement if that failure is caused by an event which is an Intervening Event.

## **11. Intellectual Property**

- a) This Agreement does not transfer any of Megaport's Intellectual Property to Customer, or any of Customer's Intellectual Property to Megaport.
- b) If any improvements or changes are made by anyone to the Services during the time Megaport is providing the Services, Megaport will own the Intellectual Property in those improvements or changes and Customer must do all things reasonably within its power to assign to Megaport all Intellectual Property in such improvements or changes.
- c) Customer consents to Megaport listing Customer as a customer on Megaport's websites and to otherwise referring to Customer as a customer in Megaport's advertising material and marketing collateral.

## **12. Personal Information**

- a) As part of the registration process, or in connection with providing Services to Customer, Megaport may collect Personal Information from Customer, such as the names and contact details of Customer's employees and other representatives. Megaport shall collect, use, disclose and store such Personal Information in accordance with the Privacy Policy and applicable laws.
- b) Customer agrees that Megaport may collect and disclose Customer's Personal Information from or to:
  1. any third party supplier for the purpose of providing the Services;
  2. credit providers or credit reporting agencies for the purpose of ongoing credit management of Customer's account;
  3. law enforcement agencies to assist them with criminal prosecution or crime prevention activities; and
  4. otherwise in accordance with the Privacy Policy and as permitted under applicable law.

- c) Each party agrees to handle Personal Information obtained from the other party in accordance with applicable privacy laws.
- d) If Megaport has issued IP addresses to Customer in connection with a Service, Customer agrees that on termination of that Service, Customer's right to use those IP addresses also terminates.

### **13. Confidential Information**

- a) Each party agrees in relation to the Confidential Information of the other party:
  - 1. to keep confidential the Confidential Information;
  - 2. to use the Confidential Information solely for the purposes of the performance of its obligations and the exercise of its rights under this Agreement; and
  - 3. to disclose the Confidential Information only to those of its (and its Affiliates') directors, employees, agents and advisors who have a need to know (and only to the extent each has a need to know) and who are aware and agree that the Confidential Information must be kept confidential.
- b) The obligations of confidentiality under 13(a) do not extend to information, which is required by law, or the rules of any securities exchange, to be disclosed and the party required to make the disclosure ensures that information is disclosed only to the extent required.

### **14. Term and termination**

- a) If a Minimum Term applies to a Service, the Minimum Term will be specified on the relevant Order. On the expiry of any Minimum Term, or if no Minimum Term is specified, the Service will continue until terminated by either party in accordance with this Agreement.
- b) If no Minimum Term applies to a Service, or the Minimum Term has expired, Customer may terminate that Service at any time on 30 days' notice, but must pay charges for the full Charging Period in which termination occurs (if applicable). VXC's are usage based and therefore no Minimum Term applies to VXC's.
- c) Either party may terminate:
  - 1. a Service by written notice if the other party has breached a material term of this Agreement as it relates to that Service and has failed to remedy the breach within thirty (30) days of receipt of notice from the non-defaulting party requiring the breach to be remedied; or
  - 2. all Services immediately by notice in writing if the other party suffers an Insolvency Event.
- d) Megaport may terminate a Service on notice to Customer:
  - 1. if Megaport reasonably determines that Customer poses an unacceptable credit risk;
  - 2. if Megaport reasonably believes it needs to do so to comply with any law or any order or request of any government or regulatory body;

3. if Megaport is unable to continue to supply a Service to Customer for any reason (including due to technical reasons or the termination of any agreement with its suppliers); or
  4. for any reason, by providing Customer with thirty (30) days' prior notice, if no Minimum Term applies to the Service or the Minimum Term has expired.
- e) If before the end of the Minimum Term and subject to clause 14f), Customer terminates a Service other than under Clause 14c) or Megaport terminates a Service under Clauses 14c) or 14d), Customer must pay Megaport an Early Termination Fee (**ETF**), calculated as an amount equal to fifty percent (50%) of Customer's average monthly spend or monthly recurring charge (whichever is greater) on the terminated Service, multiplied by the number of months (or part thereof) between the date of termination and the end of the Minimum Term.
- f) If before the end of the Minimum Term, Customer terminates a Service other than under Clause 14c) but replaces it with another Service of equal or greater monthly recurring charge and term, there will be no ETF applied. Customer will have 120 days to replace the outgoing Service with the new Service, however, Customer must notify Megaport in writing of their intention to "port" the Service within 30 days of termination to be eligible for the ETF waiver. If Customer does not notify Megaport within 30 days of termination or the Service is not replaced within 120 days of termination the ETF will be charged. Customer must notify Megaport of the incoming Service that will be used for replacement as it relates to the terminated service to be eligible for the ETF waiver.
- g) Customer agrees that the Early Termination Fee is a reasonable estimate of Megaport's likely financial loss if any Service is terminated prior to the end of the Minimum Term.

## 15. **Changes to this Agreement**

- a) Except for changes in charges (which are regulated by clause 8(f) above) and changes to the specific cookies used on the Megaport websites (which will be notified to Customer via the website at the time of any such change, giving Customer the opportunity to consent and/or adjust its cookie preferences), Megaport may change the terms of this Agreement at any time by giving Customer thirty (30) days' prior notice (**Notice Period**). If Customer does not agree with the change, Customer may terminate any affected Services by giving Megaport notice in writing prior to the expiry of the Notice Period. Any Service terminations must take effect within fourteen (14) days after the expiry of the Notice Period. If Customer takes no action during the Notice Period, Customer will be deemed to have accepted the changes.
- b) Megaport may modify the Megaport API, or may transition to a new API at any time but will use reasonable efforts to maintain backward compatibility where reasonably practicable. Megaport will notify Customer if a modification is likely to adversely affect Customer's ability to use the API.

## 16. **Notices**

- a) Megaport may provide any notices under this Agreement by:
1. posting a notice on Customer's Megaportal account; or
  2. sending an email to the email address associated with Customer's Megaportal account.



- b) Notices will take effect upon posting to Customer's Megaportal account or upon sending to Customer's email address. Customer is responsible for keeping its email address current.
- c) Customer may provide notice to terminate this Agreement by using its Megaportal account or by email y to notices@megaport.com.

## **17. General**

- a) Customer may not transfer its rights and responsibilities under this Agreement unless Megaport agrees in writing. Where Megaport reasonably considers there will be no adverse effect on Customer, Megaport may transfer its rights and responsibilities under this Agreement without Customer's consent and without notice.
- b) This Global Service Agreement (together with the Acceptable Use Policy) is part of the terms of any and all Orders. If there is any inconsistency between the documents that form this Agreement, the order of precedence is (i) the Service Schedule(s), (ii) the Order, (iii) the Acceptable Use Policy and then (iv) this Global Service Agreement.
- c) The terms applicable to an Order (including this Global Services Agreement) are governed by the law governing the respective Order. Unless the parties have agreed otherwise, each Order is governed by the laws of the jurisdiction in which the relevant Service is provided, or if provided in more than one jurisdiction, where the relevant Service originates.
- d) Customer and Megaport agree to submit all questions in connection with the terms of an Order, (including issues arising from this Global Services Agreement) to any exclusive jurisdiction agreed in the respective Order. If the parties do not agree on an exclusive jurisdiction in an Order, they submit to the non-exclusive jurisdiction of the courts of the jurisdiction where the Service is provided, or if provided in more than one jurisdiction, where the Service originates, and to the non-exclusive jurisdiction of the courts of New York.
- e) Customer acknowledges that it has relied on its own judgment to evaluate the suitability of the Services for the purpose for which Customer requires them. Customer does not rely on any statement, representation or promise by Megaport that is not expressly set out in this Agreement.
- f) No failure, delay or indulgence by either party in exercising any power or right conferred by the Agreement on that party will operate as a waiver of that power or right.
- g) Megaport may have subcontractors or other agents meet any of its obligations under this Agreement but Megaport will remain liable to Customer for satisfying those obligations.
- h) If a provision of the Agreement is void, voidable, unenforceable or the invalid part severed, the remainder of this Agreement will not be affected.
- i) Subject to Clause 15, this Agreement may only be varied by agreement in writing signed by the parties.
- j) This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior representations and agreements in connection with that subject matter.

- k) Nothing in this Agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the parties.
- l) Each party will pay its own costs and expenses in respect of this Agreement and any agreement or document contemplated by this Agreement or required to give effect to it.
- m) The parties confirm that it is their intention that this Agreement and any other documents delivered or given under this Agreement, including notices, have been and will be in the English language only. Les parties aux présents confirment leur volonté que cette convention de même tous les documents, y compris tous avis, s'y rattachant, soient rédigés en anglais seulement.
- n) The parties agree that this Agreement may be electronically signed. The parties agree that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

#### **18. Dictionary**

**Acceptable Use Policy** means Megaport's acceptable use policy for the Services, a copy of which is available at [www.megaport.com/legal](http://www.megaport.com/legal).

**Affiliate** in respect of an entity (the first entity), means another entity that Controls the first entity, that is Controlled by the first entity or that is under common Control with the first entity.

**API** means application programming interface.

**Billing Commencement Date** means:

- a) for a Port, the date that is 14 days after the date Megaport provisions the Service, or the date on which the Service goes Live, whichever occurs earlier. For the avoidance of doubt, a Port will go Live when the physical cross connect is completed; and
- b) for any other Service, the date on which Megaport provisions the Service, or the Billing Commencement Date of the associated Port, whichever occurs later.

**Charging Period** means the charging period applicable to Customer's Service, as specified on the Order (and if not specified, a monthly Charging Period applies).

**Confidential Information** of a party (**Discloser**) means the following information, regardless of its form or whether the other party (**Recipient**) becomes aware of it before or after the date of this Agreement:

- a) all information treated by the Discloser as confidential, (including but not limited to information regarding strategy, information regarding personnel, and any Intellectual Property or industrial, marketing or commercial information relating to or developed in connection with or in support of the Discloser's business); and
- b) disclosed by the Discloser to the Recipient or of which the Recipient becomes aware;

except information:

1. the Recipient creates (whether alone or jointly with any third person) independently of the Discloser;

2. that is public knowledge (otherwise than as a result of a breach of confidentiality by the Recipient or any other person with an obligation to keep such information confidential); or
3. acquired from a third party entitled to disclose it.

**Control** means, with respect to a party or entity, the direct or indirect ownership of more than fifty percent (50%) of the voting securities of such party or entity, or the power to direct the management of the party or entity, whether by operation of law, by contract or otherwise.

**Customer** means the entity entering into this Agreement, by accepting these terms and conditions at [portal.megaport.com](http://portal.megaport.com) or by submitting an Order.

**Early Termination Fee** means the early termination charge calculated in accordance with Clause 14 (e).

**Insolvency Event** means where an administrator, liquidator, manager and receiver or any other administrator is appointed over the assets or the business of the entity, or the entity enters into any composition or arrangement with its creditors or the entity has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events referenced herein.

**Intellectual Property** means all industrial and intellectual property rights, including registered or unregistered trademarks, patents, copyright, rights in circuit layouts, trade secrets, confidential know-how and information and any application or right to apply for registration of any of those rights.

**Intervening Event** means an event or cause which is beyond the reasonable control of the person claiming that an intervening event has occurred including, without limitation, acts or omissions of third party network suppliers, fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes or lockouts, or quarantine restriction.

**Loss** means all losses, damages, liabilities, claims, costs and expenses (including reasonable attorneys' fees).

**Megaportal** means Megaport's online customer service interface at [portal.megaport.com](http://portal.megaport.com).

**Megaport API** means the Megaport application programming interface known as the Megaport RestfulAPI.

**Minimum Term** means the minimum contract term for which Customer acquires a Service, as set out in the relevant Order, and which commences on the Billing Commencement Date.

**Order** means an order that sets out the Services that Customer requests Megaport to provide (whether in manual format or as submitted in the Megaportal or via the Megaport API).

**Personal Information** means any information (including, for example, name, date of birth, address) or an opinion, whether true or not, and whether recorded in a material form or not, about an identified individual, or an individual who is reasonably identifiable.

**Privacy Policy** means Megaport's privacy policy, a copy of which is available at [megaport.com/legal](http://megaport.com/legal).

**Regulatory Fees** means fees charged to Megaport by any foreign or domestic government or governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency or entity.

**Service** means the service(s) ordered by Customer and which Megaport agrees to provide to Customer under an Order and includes any Services which Customer self-provisions or which Customer uses via the Megaport API.

**Service Schedule** means a schedule attached to this Agreement that sets out service specific information, terms and service levels (if any) applicable to the supply of a Service under this Agreement.

**Taxes** means all applicable VAT, GST, consumption tax, use, excise, access, bypass, franchise, regulatory or other similar taxes, fees, charges or surcharges that are imposed on or based on the provision, sale or use of the Services but excluding taxes based on its net income.

#### **19. Interpretation**

In this Agreement, the following rules apply unless the context requires otherwise:

- a) headings are for convenience only and do not affect interpretation;
- b) the singular includes the plural and conversely;
- c) a gender includes all genders;
- d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- e) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- f) a reference to a clause or schedule is a reference to a clause of, or a schedule to, this Agreement;
- g) a reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document;
- h) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- i) a reference to dollars and \$ is a reference to the currency specified in the relevant Order; and
- j) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions.

# Addendum

## Singapore

### Introduction

The Global Service Agreement is amended to give effect to the terms set out below for all Services that are provided in Singapore under an Order governed by Singapore law. In the event of an inconsistency or a conflict between the terms of this Addendum and the Global Services Agreement, the terms of this Addendum prevail.

### 1. Charges and Payment

If Customer has paid an amount on an invoice that Customer later wishes to dispute, Customer must notify Megaport within one (1) year after the relevant invoice date. Megaport will conduct an objective and complete review of Customer's claim and provide a written response within thirty (30) days.

### 2. End User Service Information

- a) Megaport may obtain information from Customer as a result of Customer's use of the Services (**Customer Information**). Customer consents to the use of Customer Information by Megaport or any third party who provides services to Megaport in connection with the Services for the purposes of administering, billing, providing and provisioning any Service, market research, marketing and promotional activities, network and service enhancement, security and risk management and to respond to any emergency which threatens any life or property.
- b) Customer may give its consent to the use of Customer Information for other purposes, or withdraw its consent at any time without charge, by giving Megaport written notice in accordance with this Agreement.

### 3. Disputes

All disputes shall be finally resolved in the following manner:

- a) by referring the dispute to the Small Claims Tribunal, if the dispute falls within the jurisdiction of that tribunal;
- b) if the parties agree, by jointly referring the Dispute to arbitration in Singapore in accordance with the Arbitration Rules of the Singapore Arbitration Centre for the time being in force; or
- c) by referring the Dispute to any court of competent jurisdiction and for this purpose, the parties agree to submit to the jurisdiction of the Courts of the Republic of Singapore.

# Addendum

## Germany

### 1. Introduction

The Global Service Agreement is amended as set out below for all Services that are provided in Germany under an Order governed by German law. In the event of an inconsistency or a conflict between the terms of this Addendum and the Global Services Agreement, the terms of this Addendum prevail.

### 2. Credit and Security

Clause 5(a), sentence 2 is replaced by the following: Megaport may transfer information on outstanding claims to credit reporting agencies according to §28a Federal Data Protection Act (*Bundesdatenschutzgesetz*, BDSG).

### 3. Services

Clause 6(b) is amended by inserting the following sentence at the end of the clause: To the extent, however, that the failure to meet a service level materially affects the value of the services that Customer receives under an Order, Customer's statutory rights in respect of such failure (e.g. any statutory right to reduce, withhold or reclaim all or part of the service fees paid or secured) continue to apply. For the avoidance of doubt, Clause 10 remains unaffected.

Clause 6(c) is replaced by the following clause: Megaport may replace or modify an existing Service at any time provided that the replacement or modification does not result in a material change of the content, quantity or quality of the service or would otherwise be unacceptable to a reasonable customer. Megaport may replace or modify an existing Service in all other cases, if it is required by law to do so or if it is necessary to enable or facilitate (i) an upgrade to networks or services in line with technical progress; or (ii) the interfacing of networks. In these circumstances, Megaport will provide at least six weeks' prior notice in text form of the change and Customer may terminate the affected Service within six weeks of receipt of such notice, with effect on the effective date of the change. For the avoidance of doubt, Clause 14 remains unaffected.

### 4. Customer responsibilities

Clause 7(c), sentence 2 is replaced by the following: Customer must pay all charges in connection with the usage of a Service, even if that usage was not authorised by Customer, unless Customer provides sufficient evidence that Customer is not responsible for the use.

### 5. Charges and Payment

Clause 8(d) is replaced by the following: If Customer does not pay an invoice in full by the due date, Megaport may charge Customer a default fee ("*Verzugszinsen*") on the unpaid amount on a daily basis from the due date until payment is made at the rate of nine per cent (9%) above the base rate of the European Central Bank. For the avoidance of doubt, any other rights that Megaport may have with respect to such default under this agreement or by law remain unaffected.

Clause 8(f) is amended by the following: Megaport will provide Customer with at least six weeks' prior written notice of any increase to the charges as permitted above. Customer may terminate any affected Service within six weeks of receipt of such notice, with effect on the effective date of the increase.

### 6. Liability

Clause 10 is replaced by the following:

- a) Megaport is liable for acts committed with intent or negligence resulting in injury to life, body or health without limitation. In the event of other damages, Megaport is liable if the damage results from an act committed with intent or gross negligence.

- b) Megaport is liable for damages arising from any intentional or negligent breach of essential contractual duties. An essential duty of contract is a duty (i) the fulfilment of which is essential to the proper execution of the contract; (ii) the non-execution of which endangers the purpose of the contract; and (iii) the execution of which the customer may trust. In such cases liability is limited to typically foreseeable damage.
- c) Megaport is liable for any claims (i) under the German Product Liability Act (Produkthaftungsgesetz); (ii) based on fraudulently concealed (arglistig verschwiegen) defects; or (iii) arising from any warranty that Megaport has granted.
- d) The liability of Megaport for all other damages is excluded.
- e) § 44a Telecommunication Act (Telekommunikationsgesetz, TKG) remains unaffected.

#### **7. Changes to this Agreement**

Clause 15(a) is replaced by the following: Megaport may change the terms of this Agreement (other than the charges) at any time by giving Customer six weeks' prior notice in text form (**Notice Period**), including (but not limited to) cases in which Megaport is required by law or by public authorities to change the terms of this Agreement. If Customer does not agree with the change, Customer may contradict the change by giving Megaport notice in text form prior to the expiry of the Notice Period. If Customer provides such notice, the terms of this Agreement remain in force (to the extent they are enforceable) and Megaport may terminate the affected Service within fourteen (14) days after the expiry of the Notice Period. If Customer takes no action during the Notice Period and continues to receive the Service, Customer will be deemed to have accepted the changes.

# Addendum

## United Arab Emirates

### 1. Introduction

The Global Service Agreement is amended to give effect to the terms set out below for all Services that are connected to a data centre located in the United Arab Emirates (**UAE**), being “UAE-ended services”.

### 2. Supply

Customer acknowledges and agrees that all UAE-ended services are supplied outside the UAE between entities that are not UAE entities. Megaport is not supplying, and has no obligation to supply, any local telecommunications service in the UAE. To the extent that Customer wishes a UAE subsidiary to benefit from the Services, Customer is responsible for arranging any internal supply of the Services to that subsidiary. Customer is responsible for arranging to acquire any local cross-connection services required in the data centre located in the UAE from a local UAE entity.

### 3. No redundancy

All connections associated with this location are single path, therefore no redundancy is currently provided.



# Addendum

## France

### 1. Introduction

The Global Service Agreement is amended as set out below.

Changes made to clause 8.(d), 11.(b) and 14.(c).2 apply where the Services are provided in France, regardless of the law governing the Order (which may be governed by French law or foreign law).

New clause 10.(d) apply where an Order is governed by French law pursuant to clause 17.(c) of the Global Services Agreement.

In the event of an inconsistency or a conflict between the terms of this Addendum and the Global Services Agreement, the terms of this Addendum prevail.

### 2. Charges and Payment

Clause 8.(d) is replaced by the following:

If Customer does not pay an invoice in full by the due date then, in addition to any other rights Megaport has under this Agreement, Megaport may charge Customer default interest on the unpaid amount on a daily basis from the due date until payment is made at the annual interest rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of the half year in question (the reference rate), plus ten (10) percentage point. Standard administrative costs (€40 at 1st January 2019) to recover unpaid amounts may be added to this default interest.

### 3. Liability

A new clause 10.(d) is added after clause 10.(c) of the Global Services Agreement:

10.d) Notwithstanding any other terms and provisions of this Agreement, neither party may limit its liability in respect of any damage caused by physical injury (dommage corporel), wilful misconduct (dol) or gross negligence (faute lourde).

### 4. Intellectual Property

Clause 11.(b) is replaced by the following:

If any improvements or changes are made by anyone to the Services during the time Megaport is providing the Services, Megaport will own the Intellectual Property in those improvements or changes and Customer must do all things reasonably within its power to assign to Megaport all Intellectual Property in such improvements or changes. In particular, Customer assigns all its Intellectual Property to Megaport on any improvements or changes to the Services made by Customer, including without limitation the following rights:

- a) the right to reproduce in full on any medium any such improvements or changes;
- b) the right to adapt, correct, enhance, maintain, decompile, modify, assemble, transcribe, arrange and translate any such improvements or changes;
- c) the right to distribute any such improvements or changes in any manner whatsoever, by any processes hitherto known or unknown, in particular by any current or future telecoms networks such as internet, by any means of broadcast as well as by any means of telecommunications;
- d) the right to market any such improvements or changes, including rental and lending free of charge or for a fee;

- e) the right to use and exploit any such improvements or changes for personal use or for the benefit of third parties, for a fee or free of charge.

This assignment of Intellectual Property is valid for the entire world, and for the duration of the legal protection of the Intellectual Property for the benefit of their authors, heirs or beneficiaries or representatives according to the terms of any French and foreign legislation and international conventions relating to Intellectual Property currently or subsequently in force, including any extensions that may be made to the term of such protection.

## **5. Termination**

Clause 14.(c)2 is replaced by the following:

2. all Services immediately by notice in writing if the other party suffers an Insolvency Event, subject to mandatory applicable laws on insolvency proceedings which may prevent either party from terminating the Services in such a case.

# Addendum

## Austria

### 1. Introduction

The Global Service Agreement is amended as set out below for all Services that are provided in Austria under an Order governed by Austrian law. In the event of an inconsistency or a conflict between the terms of this Addendum and the Global Service Agreement, the terms of this Addendum prevail.

The Parties confirm that Customer does not qualify as an “end-user” (meaning a user not providing public communications networks or publicly available communications services as defined in Art. 3 Lit. 5 of the Austrian Telecommunications Act).

### 2. Services

Clause 6(c) is replaced by the following Clause: Megaport may replace or modify an existing Service in accordance with the following provisions: The essential information about the modifications that are not exclusively favourable shall be communicated by Megaport in written form at least one month before the modifications take effect (the full text of the modifications shall be made available upon request); together therewith Megaport shall give the information about the entitlement to terminate the contract until that time free of charge. However, modifications which become necessary solely as a result of an ordinance issued by the regulatory authority and which are not exclusively favourable do not entitle to such termination.

### 3. Charges and Payment

Clause 8(d) is replaced by the following: If Customer does not pay an invoice in full by the due date, Megaport may charge Customer a default fee (“Verzugszinsen”) on the unpaid amount from the due date until payment is made at the rate of nine point two (9.2) percentage points above the base rate of the Austrian National Bank. For the avoidance of doubt, any other rights that Megaport may have with respect to such default under this agreement or by law remain unaffected.

Clause 8(f) is replaced by the following Clause: Megaport may vary the charges in accordance with the following provisions: The essential information about the variations that are not exclusively favourable shall be communicated by Megaport in written form at least one month before the variations take effect (the full text of the variations shall be made available upon request); together therewith Megaport shall give the information about the entitlement to terminate the contract until that time free of charge. However, variations which become necessary solely as a result of an ordinance issued by the regulatory authority and which are not exclusively favourable do not entitle to such termination.

### 4. Liability

Clause 10 is replaced by the following:

- a) Megaport is liable for acts committed with intent or negligence resulting in injury to life, body or health without limitation. In the event of other damages, Megaport is liable if the damage results from an act committed with intent or gross negligence.

- b) Megaport is liable for any claims (i) under the Austrian Product Liability Act (Produkthaftungsgesetz); or (ii) arising from any warranty that Megaport has granted.
- c) The liability of Megaport for all other damages is excluded.

## **5. Changes to this Agreement**

Clause 15(a) is replaced by the following: Megaport may change the terms of this Agreement (other than the charges and Services) at any time by giving Customer one month's prior notice in text form (Notice Period), including (but not limited to) cases in which Megaport is required by law or by public authorities to change the terms of this Agreement. If Customer does not agree with the change, Customer may contradict the change by giving Megaport notice in text form prior to the expiry of the Notice Period. If Customer provides such notice, the terms of this Agreement remain in force (to the extent they are enforceable) and Megaport may terminate the affected Service within fourteen (14) days after the expiry of the Notice Period. If Customer takes no action during the Notice Period and continues to receive the Service, Customer will be deemed to have accepted the changes.

## **6. Dispute Settlement Proceedings**

Clause 17(d) is amended by inserting the following sentence at the end of the clause: Irrespective of the jurisdiction of the courts of law, users, operators of communications networks or services and interest groups may submit cases of dispute or complaint to the regulatory authority, in particular (i) in relation to the quality of the service and payment disputes which have not been settled satisfactorily, or (ii) about an alleged violation of the Austrian Telecommunications Act. Megaport shall be obliged to take part in such proceedings and answer all inquiries necessary to assess the situation as well as provide the necessary documents. The regulatory authority shall negotiate an amicable solution or communicate its opinion on the case in question to the parties.

## **7. General Information**

The following Clause 17(o) is added: Pursuant to Art. 25 Par. 4 of the Austrian Telecommunications Act, reference is made to the existence of the single European emergency number 112. Local emergency services (police, rescue services, fire brigades) can be reached free of charge in all member states of the European Union via this number.

The following Clause 23(p) is added: Megaport shall ensure that the security and integrity of the network comply with the respective state of the art and the respective statutory provisions and has taken all necessary technical and organisational measures, in particular through its business continuity management, which is intended to counteract interruptions to business activities and critical business processes, to minimize the effects of extensive disruptions and catastrophes on information and communications technology systems and to ensure that they are put back into operation as quickly as possible. This includes both preventive and reactive measures. In the event of a breach of security and/or integrity of the network, Megaport will immediately inform the competent regulatory authority and, if necessary, the public, depending on the severity of the breach.

# Service Schedules

## Port Service Schedule

### 1. Service Description

A Port (the **Service**) is a high-speed Ethernet interface that provides the physical connection Customer needs to access Megaport's other services (such as MegaIX or a virtual cross-connect (**VXC**)). Available speed options are 1Gbps, 10Gbps and 100Gbps.

Link Aggregation Group (LAG) using Link Aggregation Control Protocol (LACP) can be enabled on a single Port of 10Gbps or greater, with a maximum of eight Ports combined in one LAG. The total available bandwidth of a LAG is the sum of all constituent ports. VXC bandwidths are limited to the maximum bandwidth of single Port.

The Service is available at selected data centres.

### 2. Service Levels

The Service has a Service Availability target of 100%.

**Service Availability** is calculated per Charging Period as Uptime divided by (the number of minutes in the Charging Period less Excused Downtime), expressed as a percentage.

**Charging Period** means the charging period applicable to Customer's Service, as specified on the Order (and if not specified, a monthly Charging Period applies).

**Uptime** means the number of minutes in the Charging Period where the link state of Customer's Port is 'up', rounded to the nearest minute.

**Excused Downtime** means the number of minutes in the Charging Period, rounded to the nearest minute that the link state of Customer's Port is 'down' due to:

- 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) Megaport suspending the Service in accordance with the Agreement or the Acceptable Use Policy; or
- e) an Intervening Event.

### 3. Service credits

If Megaport fails to meet the Service Availability target in a Charging Period, then subject to the Service credit conditions set out in section 4 of this Service Schedule, Customer will be able to claim a Service credit calculated as:

                     Downtime                      x                      Recurring Charge

Charging Period

Where:

**Downtime** is calculated per Charging Period as the total number of minutes in the Charging Period less (Uptime plus Excused Downtime); and

**Recurring Charge** means the recurring charge applicable to the applicable Charging Period.

#### **4. Service credit conditions**

The following conditions apply to Service credits:

- a) where a Service credit is available, the credit is Customer's only remedy in the event of Megaport's failure to meet the Service Availability target;
- b) Customer must apply for the Service credit by giving Megaport notice of its claim within thirty (30) calendar days of the end of the Charging Period to which the credit applies;
- c) the Service credit can only be applied as a credit to Customer's Megaportal account, and cannot be redeemed for cash;
- d) the maximum Service credit available for each Service in a Charging Period will not exceed one-hundred per cent (100%) of the total Recurring Charges for that Charging Period for that Service; and
- e) Service credits are not available if Customer has failed to pay charges for the Service when due and payable.

## **MegaIX Service Schedule**

### **1. Service Description**

MegaIX is a high-speed multilateral peering service, delivered over a Port (the **Service**). Service speed may be configured in 1Mbps increments, with a maximum speed equal to the port speed of the Port (for peering within the same metro) or 10Gbps (for peering outside the metro).

**Link Aggregation Group** (LAG) using Link Aggregation Control Protocol (LACP) can be enabled on a single Port of 10Gbps or greater, with a maximum of eight physical Ports combined in one LAG. The total available bandwidth of a LAG is the sum of all constituent ports. MegaIX within the same local metro zone can be configured to utilise the total amount of bandwidth from all Ports in a LAG.

### **2. Additional terms**

- a) Customer must have an active Port in order to use the Service. If Customer terminates the Port associated with its Service, the Service will automatically terminate.
- b) Customer will be responsible for providing (at its cost):
  1. a router which supports BGP-4;
  2. an Autonomous System number (ASN); and
  3. provider-independent IP address space.
- c) In using the Service, Customer will:

1. ensure that all frames forwarded to the Service:
    - a. use 0x0800 (IPv4), 0x0806 (ARP) or 0x86dd (IPv6) ethertypes;
    - b. have the same source MAC address;
    - c. are unicast only, excluding broadcast ARP packets and multicast ICMP v6 discovery packets;
  2. not forward frames to the Service using the following protocols:
    - a. proxy ARP;
    - b. ICMP redirect;
    - c. link local protocols such as Spanning Tree and CDP; or
    - d. directed broadcasts;
  3. not 'default route' traffic to a MegaIX participant without their consent; and
  4. not advertise any IP addresses Megaport allocates to Customer outside the MegaIX peering network.
- d) Customer acknowledges that each route advertised to the MegaIX route server will point to the MegaIX participant advertising that route.
- e) When advertising routes to the MegaIX route server, Customer will:
1. ensure that its routing policy conforms with the recommendations (as updated from time to time) of the Internet Engineering Task Force available on <http://www.ietf.org>;
  2. publish a current record of its routing policy on the Internet Routing Registry;
  3. not generate unnecessary route flaps, or advertise unnecessarily specific routes;
  4. not advertise routes it become aware of as a result of providing the Service to third parties (other than Customer's transit customers);
  5. make available its current technical contact information in the Regional Internet Registries to enable other participants to contact Customer; and
  6. only use addresses on interfaces connected to the Service that have been allocated to Customer by Megaport.

## VXC Service Schedule

### 1. Service Description

A VXC is a high-speed point-to-point Ethernet virtual circuit between two Ports (the **Service**). Service speed may be configured in 1Mbps increments, with a maximum speed equal to 10Gbps, or the speed of the slowest Port connected to the VXC.

## 2. Additional terms

- a) Customer must have one or more active Ports in order to use a Service.
- b) When Customer orders a Service, Customer will order it between a Port owned by Customer (the A-End) and another Port (the B-End). The B-End may be owned by Customer or owned by a third party. Where Customer orders a Service connected to a B-End owned by a third party, Customer acknowledges that Megaport cannot activate that Service until it has received the B-End owner's consent.
- c) Customer acknowledges that if it terminates any Port associated with the Service, the Service will automatically terminate.
- d) Customer acknowledges that if a third party B-End owner terminates a B-End associated with the Service, the Service will automatically terminate. Megaport will not be liable for the termination of the Service, but will refund any charges Customer has pre-paid for the terminated Service.
- e) Customer may change the rate limit of the Service at any time using its Megaportal account or an Order. Customer agrees to pay the charges specified in Megaportal or the Order for the change in rate limit when Customer makes the change to its account.
- f) The VXC bandwidth to some Cloud Service Providers may be limited to 5Gbps at Megaport's discretion.

## 3. Service Levels

The Service has a Service Availability target of 100%.

**Service Availability** is calculated per Charging Period as Uptime divided by (the number of minutes in the Charging Period less Excused Downtime), expressed as a percentage.

**Charging Period** means the charging period applicable to Customer's Service, as specified on the Order (and if not specified, a monthly Charging Period applies).

**Uptime** means the number of minutes in the Charging Period where the Service is Available (as defined below), rounded to the nearest minute. 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 be considered available when the 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**). 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
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Packet Error Ratio (PER)	<0.1%
Packet Loss Ratio (PLR)	<0.1%
Packet Transfer Delay (PTD)	<p>Refer to <a href="https://megaport.com/legal/packet-transfer-delay">https://megaport.com/legal/packet-transfer-delay</a></p> <p>Note that the target does not apply between Ports with a 5 minute average traffic load of more than 70% for either incoming or outgoing traffic.</p>

PER, PLR and LSP are defined in ITU-T Recommendation Y. 1561 (05/2004).

**Excused Downtime** means the number of minutes in the Charging Period that the LSP is unavailable due to:

- 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 (including the B-End owner) or a fault on a third party's network (including the B-End owner's network);
- c) any failure, incompatibility or error in the configuration of the equipment or cabling (including any cross-connects) at the A-End or the B-End;
- d) Megaport suspending the Service in accordance with the Agreement or the Acceptable Use Policy; or
- e) an Intervening Event.

#### 4. Service credits

If Megaport fails to meet the Service Availability target in a Charging Period, then subject to the Service credit conditions set out in section 5 of this Service Schedule, Customer will be able to claim a Service credit calculated as:

$$\frac{\text{Downtime}}{\text{Charging Period}} \times \text{Recurring Charge}$$

Where:

**Downtime** is calculated per Charging Period as the total number of minutes in the Charging Period less (Uptime plus Excused Downtime); and

**Recurring Charge** means the recurring charge applicable to the applicable Charging Period.

#### 5. Service credit conditions

The following conditions apply to Service credits:

- a) where a Service credit is available, the credit is Customer's only remedy in the event of Megaport's failure to meet the Service Availability target;
- b) Service credits are available to Customer, the A-End owner only;

- c) Customer must apply for the Service credit by giving Megaport notice of its claim within thirty (30) calendar days of the end of the Charging Period to which the credit applies;
- d) the Service credit can only be applied as a credit to Customer's Megaport account, and cannot be redeemed for cash;
- e) the maximum Service credit available for each Service in a Charging Period will not exceed one-hundred per cent (100%) of the total recurring charges paid for that Charging Period for that Service; and
- f) Service credits are not available if Customer has failed to pay charges for the Service when due and payable.

## MCR Service Schedule

### 1. Service Description

A Megaport Cloud Router (**MCR**) (the **Service**) is a software based virtual router on the Megaport network. It may be used to join two or more independent VXC Services into a single routing domain, providing Internet Protocol (**IP**) connectivity between all of the VXCs attached to that MCR.

MCR is available at selected data centres at fixed speeds of up to 10Gbps. The speed specifies the aggregate bandwidth available to all of the connected VXCs.

### 2. Service Levels

The Service has a Service Availability target of 100%.

**Service Availability** is calculated per Charging Period as Uptime divided by (the number of minutes in the Charging Period less Excused Downtime), expressed as a percentage.

**Charging Period** means the charging period applicable to Customer's Service, as specified on the Service Order (and if not specified, a monthly Charging Period applies).

**Uptime** means the number of minutes in the Charging Period where the Customer's MCR is running and able to route packets between connected VXCs.

**Excused Downtime** means the number of minutes in the Charging Period, rounded to the nearest minute that the link state of Customer's MCR is 'down' due to:

- 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) Megaport suspending the Service in accordance with the Agreement or the Acceptable Use Policy; or
- e) an Intervening Event.

### 3. Service credits

If Megaport fails to meet the Service Availability target in a Charging Period, then subject to the Service credit conditions set out in section 4 of this Service Schedule, Customer will be able to claim a Service credit calculated as:

$$\frac{\text{Downtime}}{\text{Charging Period}} \times \text{Recurring Charge}$$

Where:

**Downtime** is calculated per Charging Period as the total number of minutes in the Charging Period less (Uptime plus Excused Downtime); and

**Recurring Charge** means the recurring charge applicable to the applicable Charging Period.

#### **4. Service credit conditions**

The following conditions apply to Service credits:

- a) where a Service credit is available, the credit is Customer's only remedy in the event of Megaport's failure to meet the Service Availability target;
- b) Service credits are available to Customer, the A-End owner only;
- c) Customer must apply for the Service credit by giving Megaport notice of its claim within thirty (30) calendar days of the end of the Charging Period to which the credit applies;
- d) the Service credit can only applied as a credit to Customer's Megaportal account, and cannot be redeemed for cash;
- e) the maximum Service credit available for each Service in a Charging Period will not exceed one-hundred per cent (100%) of the total Recurring Charges for that Charging Period for that Service; and
- g) Service credits are not available if Customer has failed to pay charges for the Service when due and payable.