

DATA PROCESSING ADDENDUM (“DPA”)

WHEREAS Megaport’s Services involve the provision of a software-defined network along which customers are able to transmit their raw data in the form of data packets (“**Packets**”), Megaport having no knowledge of what such Packets relate to;

AND WHEREAS the Customer (as defined below) plans to use the Services to transmit Packets which ultimately relate to individuals,

NOW THEREFOR IT IS AGREED that, to the extent applicable Privacy Laws (as defined below) regard such individuals as being ‘identifiable’ from the Packet alone and Megaport’s passive transmission of such Packet along its network as being ‘processing’ subject to such Privacy Law, this DPA will apply and be incorporated into Customer’s Agreement (as defined below), with effect from the date on which a counter-signed copy hereof is returned via email to privacy@megaport.com. (Note that if the ‘Customer’ entity signing this DPA is not yet party to an effective Agreement, this DPA will be of no force and effect, not until such time as such Agreement is entered into.)

1. INTERPRETATION

Capitalised terms herein bear the same meanings as given to them in the Agreement, save for the following terms which, for purposes of this DPA, bear the following meanings:

- 1.1 “**Agreement**” means the agreement governing Customer’s use of Megaport’s Services, comprising one or more Orders as read with the terms of the relevant ‘General Services Agreement’ and/or ‘General Reseller Agreement’, ‘Privacy Policy’ and ‘Acceptable Use Policy’;
- 1.2 “**Controller**”, “**Data Subject**”, “**Personal Data Breach**”, and “**Processing**” shall have the same meaning as in the EU’s General Data Protection Regulation 2016/679;
- 1.3 “**Customer**” means the signing party specified as such below, if and to the extent that it is also party to a valid Agreement;
- 1.4 “**Megaport**” means the relevant Megaport Ltd group entity providing the Services to Customer;
- 1.5 “**PI**” means ‘**Personal Information**’ as defined in the Agreement;
- 1.6 “**Privacy Laws**” means any laws and regulations governing the processing of PI, including but not limited to the EU’s General Data Protection Regulation 2016/679.

2. PI PROCESSING

- 2.1 **Scope:** This DPA only applies if and to the extent that Customer’s Packets relate to individuals and applicable Privacy Law regards (a) such individuals as being ‘identifiable’ from the Packet; and (b) Megaport’s passive transmission thereof along its network as being ‘processing’ subject to such Privacy Law. For clarity, because Megaport provides B2B services and the Customer is not an individual, any metadata relating to Customer’s Service usage (like Packet routing information, dates, times, quantities transmitted etc) (“**Metadata**”) does not constitute PI.
- 2.2 **Processing Details:** Customer controls its use of the Services in that it alone determines the type, quantity and routing of data it transmits using the Services. Megaport only processes Packets (a) as instructed by Customer (as reflected in this DPA, the Agreement, the configurations set by Customer via the Megaportal, and any instructions given via support tickets) or (b) as otherwise required by law (e.g. to comply with a court order to intercept or retain any Packets), in which case Megaport shall to the extent permitted by those laws, give Customer prior notice thereof.
- 2.3 **Sub-processors:** Some of the physical network infrastructure enabling the Services (i.e. the fibre optic cables and data centre cross-connects) is leased by Megaport or its Affiliates from local providers thereof. If any Privacy Law regards such arrangement as ‘sub-processing’, Customer acknowledges and agrees to this; may request details of these providers; and, if not satisfied with any of them for any legitimate reason, may terminate the relevant Service.
- 2.4 **Cross-border transfers:** Enabling data transfer (potentially including across borders) is the essence of Megaport’s Services and thus directly connected to Megaport’s performance thereof. Of course, as

Customer alone controls the data types, origins and destinations, Customer alone is responsible for implementing any legally-required appropriate safeguards for any PI it chooses to send to countries which the relevant Privacy Law regards as not having adequately protective PI-related laws (including by entering into the European Commission's standard contractual model clauses with the recipient/s in such countries).

- 2.5 **Authorised Personnel:** The Services involve automatic transmission of Packets by Megaport's systems. Manual processing is only applied to Metadata for troubleshooting purposes and to detect and prevent unlawful use of the Services. Nevertheless, in doing so, Megaport ensures that Metadata is only processed by those individuals who need to know and access it for such purposes and takes reasonable steps to ensure the reliability of those individuals.
- 2.6 **Security:** Megaport implements appropriate technical and organisational measures to secure its Services against the risk of unauthorised or accidental Packet processing or other similar risks, including measures specifically identified in the Agreement. This includes ensuring the confidentiality, integrity, availability, and resilience of its processing systems and services; restoring availability and access to Packets in a timely manner in the event of any incident; and regularly assessing the effectiveness of its security measures. Note specifically, however, that as Megaport does not encrypt the Packets (as doing so would leave the decryption keys under Megaport's control), **Customer is solely responsible for encrypting its Packets and none of Megaport, its Affiliates and officers will be liable whatsoever for any loss, harm, damages or third party claims suffered by Customer or anyone else which arises, directly or indirectly, from Customer having failed to encrypt its Packets.**
- 2.7 **Co-operation:** The Parties shall reasonably co-operate with each other to enable each other to discharge their Privacy Law obligations (including compulsory data protection impact assessments and data subject access requests), as may be applicable. It is noted however that due to the nature of the Services, Megaport does not retain any Packets to update, correct or grant access to in any event.
- 2.8 **Data Breach:** Without detracting from Megaport's obligations under the Agreement and relevant telecommunications laws, if Megaport becomes aware that a Packet-related incident constitutes a Personal Data Breach (which awareness will depend on information provided by Customer), Megaport shall reasonably cooperate and assist Customer in its investigation, mitigation and remediation thereof, as well as with any reporting obligations Customer may have under Privacy Law.
- 2.9 **Return or Deletion:** In accordance with telecommunications laws, Packets are not retained by Megaport in any form for longer than needed to provide the Services, it being noted that the Services involve mere split-second Packet transmission, not storage. Consequently, at cessation of the Services, there will be no Packets under Megaport's possession to return or destroy. Nevertheless, Megaport may provide written certification of this if requested by the Customer within 30 days of Agreement termination.
- 2.10 **Audits:** Where this DPA applies and if requested by Customer: At Customer's cost and subject to the Agreement's confidentiality obligations, Megaport shall (a) make available to Customer such information as reasonably necessary to demonstrate its compliance with this DPA, and (b) allow audits/inspections by Customer in relation to processing of Packets covered by this DPA; PROVIDED in both instances, that Megaport is given reasonable notice thereof; that Megaport's costs associated with assisting are reimbursed by Customer; and that these requests do not unreasonably disrupt Megaport's business operations, including that they be limited to normal business hours (unless Customer substantiates an emergency basis) and no more than once a year (unless Customer shows that relevant Privacy Law require otherwise).
- 2.11 **Liability:** As this DPA forms part of the Agreement, each party's liability under this DPA is still subject to the aggregate liability limitations and exclusions provided for under the Agreement, if any.
- 2.12 **Order of precedence:** In the event of any inconsistencies between the provisions of this DPA and those of the Agreement, this DPA will prevail; provided that nothing in this DPA serve to reduce Megaport's obligations to protect PI under, or to permit PI Processing in a manner otherwise prohibited by, the Agreement.

CUSTOMER: _____
Legal Name of Customer

Signature: _____

Signatory Name:

Signatory Title:

DATE:

MEGAPORT

Signature: *Vincent English*
Vincent English (Jan 27, 2021 12:25 GMT+10)

Signatory Name: Vincent English

Signatory Title: CEO

DATE: Jan 27, 2021