

MEGAPORT SERVICES - DATA PROCESSING ADDENDUM (“DPA”)

WHEREAS Megaport’s Services constitute ‘Network-as-a-Service’ and essentially involve the provision of a software-defined network along which raw data in the form of data packets (“**Packets**”) can be transmitted, Megaport having no knowledge of what such Packets relate to; AND WHEREAS the Customer (as defined below) envisages the Services being used to transmit Packets which ultimately relate to individuals,

NOW THEREFOR IT IS AGREED that, to the extent applicable Privacy Laws 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 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 “**Group**” means the Megaport Ltd group of companies;
- 1.5 “**Megaport**” means the relevant Group entity providing the Services to Customer;
- 1.6 “**PI**” means ‘**Personal Information**’ as defined in the Agreement;
- 1.7 “**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 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 the Services are used by corporate entities, not individuals, any metadata relating to Service usage (like Packet routing information, dates, times, quantities transmitted etc) (“**Metadata**”) does not constitute PI.
- 2.2 **Processing Details:** As detailed in the Agreement, Customer controls the use of the Services in that (as between the parties), 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 via Customer’s Megaportal account, 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 **Authorised Personnel:** As detailed in the Agreement, the Services involve automatic transmission of Packets by Megaport’s systems. Manual processing is only applied to the Metadata, and only for purposes of troubleshooting 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.

- 2.4 **Sub-processors:** The Services are performed by Megaport and its Affiliates only (who are all ultimately 100% owned by Megaport Ltd). Megaport (Services) Pty Ltd owns and operates the Megaportal, API and network automation code, whilst certain other Affiliates may employ the relevant network engineers and software developers. See www.megaport.com/legal/megaport-group-entity-details for a list of all Affiliates and their details. Customer agrees to the use of Sub-processors provided they are bound to written contracts providing at least the same level of protection for PI as set out in this DPA. If Customer is not satisfied with any Sub-processor for any legitimate reason, it may terminate the relevant Service (unless the Service is still subject to an agreed fixed term in which case it may only terminate the Service if it has set out those reasons in a formal objection sent to privacy@megaport.com and Megaport has failed to adequately address its concerns within 30 days thereafter). Note that non-Group entities are only used as physical infrastructure suppliers or as 'remote hands' to physically install equipment in the data centres, neither of which involves any customer data processing.
- 2.5 **Cross-border transfers:** Enabling data transfer (potentially including across borders) is the essence of Megaport's Services and because (as between the parties) Customer alone controls the data types, origins, destinations and recipients, Customer alone is responsible for implementing any legally required appropriate safeguards for any PI it chooses to send to recipients in countries which the relevant Privacy Law regards as not having adequately protective PI-related laws.
- 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), as between the parties, **Customer is solely responsible for ensuring that the Packets are encrypted 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 arise from the Packets not having been properly encrypted.**
- 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 notification and remediation obligations under the Agreement and relevant telecommunications laws, if Megaport becomes aware that a Packet-related incident also constitutes a Personal Data Breach, Megaport shall notify the Customer without undue delay and 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:** This DPA will prevail in the event and to the extent of any inconsistencies between it and the Agreement; 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

Vincent English

Vincent English (Oct 25, 2021 13:15 GMT+10)

Signature: _____

Signatory Name: Vincent English

Signatory Title: CEO

DATE: **Oct 25, 2021**