

Aircall PTY Ltd. Online Terms of Use

These online terms of use (“Terms of Use”) by and between [Aircall Pty Ltd, an Australian proprietary company limited by shares whose registered office is at Level 22, 19 Martin Place, Sydney NSW 2000], (“Aircall”) and Customer (as defined below), together with any and all applicable Order Form(s), Purchases, exhibits and/or schedules (each, as defined below) (collectively, the “Agreement”), constitute a binding agreement between Aircall and Customer and set forth the terms and conditions pursuant to which Customer may access and/or use the Site and the Services (each, as defined below).

Aircall last updated these Terms of Use on [] September, 2021. These Terms of Use apply to services supplied in Australia.

By clicking on the “Accept” button when subscribing to any of the Services, or otherwise using any of the Services or accessing the Site, Customer: (i) acknowledges that it has read, agreed and will comply with this Agreement; (ii) warrants and represents that: (x) its representative is at least eighteen (18) years of age or the applicable statutory age of majority to enter into a binding agreement; and (y) it has the right, power, and authority to enter into this Agreement on behalf of the Customer, and to bind Customer to these Terms of Use. IF YOU DO NOT AGREE TO THESE TERMS OF USE, YOU MAY NOT USE THE SERVICES.

1. Definitions

“Account” means the numbered account established by Aircall and associated with Customer and the Services provided to Customer under this Agreement.

“Account Information” means business contact information associated with the Account; usage records of the Services; configuration data; and Customer’s call logs generated by Aircall.

“Administrator” means the person(s) within Customer’s organization recognized by Aircall’s systems as being vested with specific rights regarding the Services, who is (are) responsible for the administration and management of Customer’s Accounts and has (have) access to specific functionalities attached thereto.

“Aircall Number” means the phone number provided to Customer by Aircall.

“Affiliate” means any entity existing from time to time that directly or indirectly controls, is controlled by, or is under common control with the subject entity.

“Aircall Dashboard” means the online portal through which the Administrator(s) controls settings, may select Customer’s Plan and monitors usage of the Account(s).

“Confidential Information” means any proprietary and/or confidential information disclosed, in the course of and during the Term of the Agreement, by one Party (the “Disclosing Party”) to another Party (the “Receiving Party”).

“Consumer” means a Customer that is a “Consumer” for the purposes of the Australian Consumer Law;

“Customer” means, the company, corporation, governmental organization, or other legal entity as well as any Affiliates of such company, corporation, governmental organization, or other legal entity which have entered into Purchases and/or Order Form(s).

“Customer Data” means the data contained in Customer’s calls, facsimiles, messages, voicemails, voice recordings, shared files, conferences, call meta-data, configuration data, or other Customer communications transmitted or stored through the Services.

“Effective Date” means the date on which Customer first subscribes to any of the Services or the date the Customer executes an Order Form.

“Fees” means, collectively, Fixed Fees, Usage Fees (as defined below) and any and all other applicable charges and fees. Fees may be indicated in USD, Euros, GBP, or AUD, or other currencies, as may be updated by Aircall in its sole discretion from time to time.

“Include” and “Including” means including without limitation.

“Intellectual Property” means all intellectual property and technology, regardless of form, including (a) published and unpublished works of authorship; (b) inventions and discoveries, including business methods, compositions of matter, methods, and processes and new uses for any of the preceding items; (c) words, names, symbols, devices, designs, and other designations, and combinations of

the preceding items, used to identify or distinguish a business, good, group, product, or service or to indicate a form of certification; (d) information that is not generally known or readily ascertainable through proper means, whether tangible or intangible; and (e) computer programs, operating systems, applications, firmware and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, and other documentation thereof.

“Law(s)”, “Applicable Laws” means any and all law, statute, regulation, rule, ordinance, administrative guidance, treaty, convention, and/or court or administrative order or ruling of any governing body with jurisdiction over the Services, the Customer and/or Customer’s use of the Services.

“Order Form” means the document that may be entered between Customer and Aircall, from time to time, to set forth certain fees, the selected Plan, the Plan Initial Term (as defined below) and other material terms associated with this Agreement and executed by Customer.

“Plan” means, any of the subscription plans for the provision of Services made available to Customer whose features and applicable Fees, if any, are listed on the Site and that Customer may select either via a Purchase or by executing an Order Form, including any Aircall Numbers, as applicable. For the avoidance of doubt the Free Trial (as defined below) shall be deemed a Plan.

“Plan Term” means collectively, the Plan Initial Term and the Renewal Term (as defined below).

“Purchase” means an order for certain Aircall’s Services, including Plans and Aircall Numbers, which is placed through the Aircall Dashboard or the Site.

“Services” means any and all of the services provided under this Agreement and/or made available to Customer by Aircall from time to time pursuant to a Purchase or Order Form.

“Services Start Date” means the date Services are made available to Customer pursuant to an Order Form.

“Site” means the Aircall.io website.

“User” means an employee, consultant, contractor or any person using or accessing the Services or Site via Customer’s Account.

2. Description of Aircall Services

Aircall offers a cloud-based calling system that includes enterprise-class call handling and that integrates with a growing list of third-party applications not affiliated with Aircall (the “Integrations”). A non-exhaustive description of the Aircall calling system is available on the Site.

3. Quality, Maintenance and Accessibility

3.1 General Terms. Aircall may be required to suspend access and/or use of Services and/or the Site to enable maintenance, improvements, upgrading operations of the Services and/or Site, or where required by Law including in the event of an emergency. Aircall will endeavour to provide advance notice to Customer where practicable and carry out such maintenance, where possible, outside of regular business hours. The Services are designed to be available with minimal disruptions outside of regularly scheduled maintenance times. Aircall may modify, enhance and/or replace features of the Services from time to time, with or without notice or posting to the Site, provided it shall not materially reduce the key functions, features and/or the security of the Services during the Term (as defined below) without obtaining Customer’s written pre-approval except Customer’s written pre-approval shall not be required in the event such modifications, enhancements or replacements are mandated by applicable Law.

3.2 Equipment Requirements. Customer acknowledges and agrees that the standard functioning of the Services is dependent on Customer maintaining adequate access to the Internet, the availability of an adequate power supply and the use of correct equipment configuration. Customer also acknowledges and agrees that a number of factors outside of Aircall’s control may impact the quality of Customer’s communications and the access and/use of the Services including Customer’s local network, public Internet lines, the public switched telephone network, Customer’s Internet service provider and/or local network hardware. Aircall takes no responsibility and shall not be liable for any disruption, interruption or delay caused by any failure in any of these items or any other item over which Aircall has no control.

3.3 Accessibility. Customer, Users and/or Administrators (or Aircall at Customer's request) will choose a unique password and username (collectively, "Login Details") for each User or Administrator. Customer acknowledges and agrees that Customer is prohibited from sharing Login Details with any third party. Customer will be responsible for the confidentiality and use of the Login Details. Customer will also be responsible for the content of all electronic communications (including any liability arising from any prohibited or restricted content), including those containing business information, Account Information, account registration, account holder information, financial information, Customer Data, and all other data of any kind entered electronically through the Services. Any and all electronic communications transmitted via Customer's Account will be deemed to have been sent by Customer. Aircall may terminate any of the Services and/or this Agreement if it believes in its sole discretion that Customer has breached its obligations contained in this Section

3.4. Aircall is not responsible for any breach of security caused by Customer's failure to maintain the confidentiality and security of any of the Login Details. Customer agrees to notify Aircall immediately in the event of loss, theft or disclosure of any or all of the Login Details, if Customer believes the confidentiality or security of any or all of the Login Details has been compromised in any way or in the event of Customer learning about a possible or actual unauthorized access to and/or use of the Site and/or the Services. To the extent permissible by Law, Customer shall be liable for any and all expenses, damages, losses and costs, including reporting costs, notice costs, recovery and remediation of data security system issues, usage charges and fines, fees, civil judgments, and reasonable attorneys' fees resulting from Customer's failure to safeguard Customer's Login Details and information and data as set forth herein.

4. Intellectual Property

4.1 Limited License. Subject to, and conditional upon Customer's continued and full compliance with all of the terms and conditions in this Agreement, Aircall grants to Customer and its Users and Administrators, during the Term, a revocable, non-transferable, nonexclusive, limited license and right to access and use the Services and the Site solely for its internal business purposes.

4.2 Restrictions. Customer shall not and shall cause its Users and Administrators not to: (i) sublicense, sell, rent, lease, transfer, assign, distribute, or otherwise commercially exploit or make the Services, or any part thereof, available to any third party other than to Users and/or Administrators; and (ii) modify, make

adaptations or derivative works of, disassemble, reverse compile, or reverse engineer the Services or any part thereof, and shall not build a similar or competitive product or service. Customer shall not and shall cause its Users and Administrators not to use the call recording functionality in the event credit card, debit card or other payment information is made available to Customer, User, and/or Administrator during a call.

4.3 Aircall Ownership. Customer acknowledges and agrees that: (i) Aircall and its Affiliates own all rights, titles and interests in and to all Intellectual Property rights in the Services and in the Site as well as any content thereof or therein; (ii) the limited license granted to Customer in Section 4.1 does not convey any rights in the Services express or implied, other than those expressly granted herein. All rights not expressly granted to Customer are reserved by Aircall and its licensors. The Services may contain open source software or code and Customer acknowledges that misuse of the Services may infringe upon third-party's IP rights.

4.4 Customer Data. Customer grants Aircall and its Affiliates a limited, personal, non-exclusive, royalty-free license to use, copy, transmit, distribute and store the Customer Data to the extent necessary or desirable for Aircall to provide Customer with the Services and improve the Services. Aircall shall only disclose or provide the Customer Data to parties who need to access it in order for Aircall to provide the Services in accordance with this Agreement, or where Aircall is obliged by law to provide Customer Data to law enforcement and/or other authorised agencies. Customer also hereby grants Aircall the right to use and reproduce Customer's name, logo and trademarks to identify Customer as an Aircall customer on the Site and other marketing materials. Customer may decide in its sole discretion to integrate the Services with the Integrations. Such Integrations are not Aircall products, and all use of Integrations is solely between Customer and the applicable third-party. If an Integration is enabled from Customers' Aircall workspace, Customer should be mindful of any Customer Data and/or Customer Confidential Information that will be shared with the third-party provider and the purposes for which the provider requires access. Customer warrants and represents that that it has obtained all necessary consents and licenses to transfer Customer Data from the Services to the Integrations and/or from the Integrations to the Services and that it shall be solely responsible for the processing and use of such data by the Integrations in accordance with applicable laws. Aircall will not be responsible for any use, disclosure, modification or deletion of Customer Data and/or Customer Confidential Information that is transmitted to, or accessed by, an Integration.

4.5 Feedback. Aircall may ask for or collect and/or Customer may provide, written suggestions, feedback or comments from time to time as part of Customer's, Users', and/or Administrators' use of the Services (collectively, "Feedback"). Customer acknowledges and agrees that such Feedback shall be deemed the property of Aircall and its Affiliates. Aircall and its Affiliates shall exclusively own all now known or hereafter existing rights to the Feedback throughout the universe in perpetuity and shall be entitled to use the Feedback for any purpose whatsoever, commercial or otherwise, without compensation to the provider of the Feedback.

5. Permissible Use Policy

Any and all access to and/or use of the Services by Customer, its Users and/or Administrators is conditioned upon compliance with the following Permissible Use Policy ("PUP"). Customer shall not and will cause its Users and Administrators not to use the Aircall Services to:

- a) circumvent or disable any technological features or security measures implemented in the Services;
- b) violate any Law, published policy, or any applicable third-party policy or requirement communicated or otherwise made available by Aircall;
- c) violate or infringe upon Aircall's or a third party's Intellectual Property, privacy, or other tangible or intangible rights and/or use, without a valid license, any material or content that is subject to third-party proprietary rights;
- d) transmit any illegal content;
- e) use the Services for benchmarking or for any other purpose other than as necessary to use the Services Customer is authorized to use;
- f) stalk, harass, harm another individual, engage in spamming, phishing, pharming or other unsolicited advertising, marketing or other activities in connection with any unsolicited communications (commercial or otherwise) including unsolicited or unwanted phone calls or voicemails;
- g) engage in a fraudulent activity to the prejudice of third-parties or otherwise use the Services to bypass phone identification systems;

h) perform “robocalls” or abusive practices, including enabling bulk call-in lines, auto-dialing or “predictive” dialing or undertake any other activity restricted by any statute, regulation or binding code (including the Spam Act and Reducing Scam Calls Code);

i) use any type of spider, virus, worm, trojan-horse, time bomb or any other codes or instructions that are designed to distort, delete, damage, emulate or disassemble the Services;

j) expose any third party to material that is offensive, harmful to minors, indecent or otherwise objectionable in any way, regardless of whether such activity is lawfully permitted;

k) send any communications, including email messages on behalf of, or purporting to originate on behalf of Aircall; and

l) trunk or forward Customer’s Aircall number to another phone number(s) capable of handling multiple simultaneous calls, or to a private branch exchange (“PBX”) or a key system.

In addition to the above restrictions and in order to provide the best pricing, support and Services, Aircall reserves the right to: (i) impose limits on Customer and/or its Users’ and Administrators’ usage of the Services; (ii) charge Customer the applicable per minute rate; (iii) or to terminate the Services, in each case notwithstanding Customer’s purchase of an unlimited minute plan, if Aircall believes, in its sole reasonable discretion, that Customer’s and/or its Users’ and/or Administrators’ usage, including the total number of calls made and/or minutes used by Customer and/or its Users and/or Administrators, is not consistent with normal, fair, and reasonable use of such Services. Wherever reasonably possible, Aircall will provide Customer with a written notice before taking any such action, and may allow a reasonable period to allow Customer to modify such use.

The restrictions contained in this Section 5 are not exhaustive or exclusive. Aircall may impose additional restrictions upon notice or posting to the Site from time to time. Aircall may suspend or terminate the Services and/or this Agreement in accordance with Section 13.2 and 13.3 if, in Aircall’s sole discretion, Customer’s, its Users’ and/or Administrator’s use of the Services violates the terms of the PUP. Notwithstanding anything set forth in this Agreement and in addition thereto, Customer’s use of the call recording functionality must comply with any and all local laws and regulations including local notice requirements thereof.

6. Aircall Numbers

6.1 Usage Rules. As part of the Services, Aircall may make available Aircall Numbers to Customer in multiple countries. Aircall has agreements in place with regulated providers of electronic communications which provide Aircall with phone numbers from multiple countries. The provision of Aircall Numbers is subject to the numbering rules and regulatory practices applicable in the countries where Customer, Users and/or Administrators are located as well as in the relevant country(ies) from which the Aircall Numbers were purchased. Australian Aircall Numbers are issued and may only be used in accordance with the Telecommunications Numbering Plan, a regulatory instrument maintained by the Australian Communications and Media Authority in accordance with the Telecommunications Act 1997. Aircall is required to supply certain information, including names, addresses and telephone numbers, to Telstra, so that Telstra can maintain a public database known as the Integrated Public Number Database ("IPND"). Such rules and regulatory practices may change or be amended from time to time, and Aircall therefore reserves the right to modify the terms hereunder to the extent necessary to comply with such changes or amendments. Customer may purchase Aircall Numbers and assign them to an Account subject to the allocation requirements displayed upon Customer's subscription to any Services. Customer shall use the Aircall Numbers in compliance with any and all applicable Law including such applicable allocation requirements. To the extent permitted by applicable Law, Aircall reserves the right to cancel the subscribed Aircall Numbers.

6.2 Portability. In using the Services, Customer may request an Aircall Number or may port its existing numbers ("Existing Number") into Customer's Account subject to the terms and conditions herein. In order to request the porting of an Existing Number into an Account, the Account Administrator for the Account into which Customer wishes the Existing Number to be ported must complete all steps listed on the Site and provide all information requested by Aircall, any other relevant service provider and/or third party from time to time. Customer must provide accurate and detailed information to Aircall, any other relevant service provider, and/or third party in order to port a number into an Account and Customer represents and warrants that such information is and will be at all times accurate, true and up-to-date. Customer acknowledges and agrees that as part of the porting process, Aircall, any other relevant service provider and/or third party must, as part of its compliance with applicable Laws and industry standards, follow certain processes and that therefore the completion of any number porting request may be delayed for reasons outside of Aircall's control. Aircall must, by Law, comply with all valid porting requests. Phone numbers may be ported-out

of an Account in connection with acts or omissions of the Customer or third parties acting on its behalf and Customer acknowledges that: (i) it may be difficult or impossible for Aircall to prevent such porting out of numbers from an Account; (ii) Aircall may not be able to retrieve a phone number ported out of an Account; and (iii) Aircall shall not be liable for any such porting out. Upon termination or cancellation of an Account, all telephone numbers associated with the Account may, where and in a manner permitted by Law, be released by Aircall if such numbers have not been ported to another provider prior to such cancellation or termination. Customer acknowledges and agrees that it is solely responsible for coordinating with its new third-party provider to port out any telephone numbers prior to termination or cancellation of Customer's Account and/or termination of this Agreement.

7. Pricing and Invoicing

7.1 Free Trial. Customer may elect to try the Services for a period of up to five (5) business days from the Effective Date and shall be permitted to make outbound calls for a total of up to forty (40) minutes (such trial of the Services, the "Free Trial"). At the end of the Free Trial period, Customer may purchase additional products and services not included in the Free Trial by selecting a Plan.

7.2 Fixed Fees. Customer may select a Plan on either a monthly basis or an annual basis, and, based on Customer's billing address, the corresponding currency for such Plan will be applied, in Euros, GBP, AUD or USD (for example if Customer's billing address is located in the United States the applicable currency shall be USD). In the event Customer's billing address is not located in either the United States, European Union, the United Kingdom, or Australia, Customer may select between USD and EUR only, unless otherwise decided by Aircall from time to time. Unless otherwise provided for in the relevant Order Form, the fees to be paid by Customer that are associated with such Plan shall be indicated on the Site (such fees, the "Fixed Fees"). Additional Aircall Numbers purchased by Customer either via the Aircall Dashboard or listed in the relevant Order Form, as applicable, shall also be deemed Fixed Fees and will be invoiced at the same billing frequency as the Aircall Numbers purchased in the original Plan on a prorata basis. For the avoidance of doubt, fees associated with outbound calls or inbound calls (where applicable) shall not be included in the Fixed Fees. Fixed Fees may be updated by Aircall from time to time, and Aircall shall provide notice of such update prior to its implementation. Notice shall be provided to the customer either at the email address associated with the Customer's Account or via a pop-up on the Site, as

decided by Aircall in its sole discretion. Such updated Fixed Fees shall be effective on the first day of the next Renewal Term.

7.3 Usage Fees. The fees to be paid by Customer that are associated with outbound calls and/or inbound calls, where applicable, shall be calculated by multiplying the per-minute rate applicable to such calls (“Per-Minute Rates”) with the Chargeable Time (as defined below) (such fees, the “Usage Fees”). Usage and the duration of calls shall be calculated as follows: (i) in full-minute increments; (ii) calls shall be rounded up to the next full minute increment at the end of each call for invoicing purposes; (iii) calls will be deemed to begin (A) for outbound calls when a connection to the number Customer is trying to reach is established and recorded in Aircall’s system, and (B) for incoming calls when a signal connection from the caller is recorded in Aircall’s system; (iv) calls will be deemed to end when Customer or Customer’s correspondent have ended the call or where the call has ended due to a technical malfunction, but a call shall not be deemed ended until Customer’s signal of a call disconnect is recorded in the Aircall system; (such calculation of the duration of calls as detailed in (i) through (iv) included, “Chargeable Time”). Other than in respect of untimed local calls, emergency calls or other call types subject to regulated pricing, Aircall may change the Per-Minute Rates at any time and will endeavor to provide notice of such change prior to its implementation. Such change shall be effective on the first day of the next Renewal Term. Customer may request the Per-Minute Rates currently applicable by sending a request to sales@aircall.io.

The Services shall be subject to the following conditions:

- a) Outbound calls, conference calls, and calls to premium numbers made by Customer with a local/toll-free phone to countries outside of Australia will incur Usage Fees;
- b) inbound calls to Customer are free regardless of whether they come from a foreign country or not, provided they are made to a local or geographic telephone number (non-toll-free);
- c) all inbound calls on a toll-free phone line shall incur Usage Fees;
- d) any internal calls or communications (including calls, voicemail deposits and call transfers) between Users, or between a User and an Administrator, shall be free of charge provided such calls have been made using the Services;

e) outbound calls for which Aircall receives answer supervision (i.e. connecting time) including ring time, shall incur a minimum of one (1) minute of Chargeable Time (answer supervision may also be generated by voicemail systems, private branch exchanges, and interexchange switching equipment);

f) calls forwarded to mobile phones or landlines shall be deemed outbound calls and shall incur Usage Fees, including in the event Customer has purchased an unlimited outgoing/incoming call bundle, at the then applicable rate;

g) calls received by Customer from a third party using a local/toll-free phone line which call is subsequently forwarded or transferred shall be deemed to be the same call; and

h) Services and their billing are set-up for use by a minimum of three (3) Users.

7.4 Payment. By providing a valid credit or debit card information and/or bank account information ("Payment Method"), Customer expressly: (i) authorizes Aircall and/or any other company or individual acting in Aircall's name to charge the Payment Method as follows: (x) monthly for Usage Fees; at the billing frequency chosen and specified by Customer on the relevant Order Form or Purchase, as applicable, for Fixed Fees (the "Billing Frequency"); and (y) for any and all other fees in connection with the Services including recurring payments billed on a monthly or annual basis and to continue attempting to charge and/or place holds on such Customer's Payment Method until such amounts are paid in full; (ii) agrees to update such Payment Method from time to time as necessary; and (iii) acknowledges and agrees that Aircall shall not be liable for any expired credit/debit card, insufficient funds or other charges Customer incurred as a result of such attempts to charge, and/or place holds on, such Payment Method. In the event Customer selects a Plan that includes a predetermined allotment of services, unless otherwise specifically provided as a part of such Plan, any unused allotment of such services from one billing cycle will not carry over to any future billing cycle. Customer agrees that it shall be responsible for any and all fees, if any, associated with wire transfers used for payment of invoices to Aircall. All invoices shall be paid by Customer within thirty (30) days of the invoice date.

7.5 Taxes. The Fees are exclusive of applicable taxes and surcharges required under Applicable Laws, including VAT/GST, costs/disbursements, charges, regulatory assessments, or any other duties, levies, registration fees or taxes which shall be charged additionally. The invoiced amount and/or amounts charged to the Payment Method may hence fluctuate from month to month and Customer agrees to pay any and all fees and/or taxes due.

7.6 Late Fees. If the Customer fails to make payment in accordance with this Clause 7, then Aircall shall be entitled to charge interest in accordance with this clause. Subject to any future amendment thereof, any balance remaining outstanding on any invoice after thirty (30) days of the invoice date shall be subject to the charging of interest at the rate of two (2) % per month above the then current base lending rate offered by the National Australia Bank compounded on a monthly basis, from the date on which such amount fell due until payment, whether before or after judgment. Notwithstanding any of the foregoing and in addition thereto, in the event Customer fails to pay invoices due within thirty (30) days, Aircall may, in its sole discretion, suspend Customer's access to the Services and/or terminate this Agreement in whole or in part, in accordance with Section 13.2 without any liability whatsoever and without prejudice to its right to claim all amounts due by Customer to Aircall, as the case may be.

7.7 Exchange rate. Where Customer's billing address is in Australia, Customer will be invoiced in AUD. Usage Fees will be calculated based on a conversion of the fees incurred by Customer in USD at the exchange rate applicable at the close of business on the last business day of the quarter prior to the applicable invoice date plus 3%.

8. Confidentiality

8.1 Non-Disclosure. During the Term of this Agreement the Confidential Information will be kept confidential by the Receiving Party and will not be disclosed to any other person, provided that each Party may disclose Confidential Information to its Affiliates, and its and their employees, agents, advisors and subcontractors who have a need to know, access and/or use the Confidential Information in order to perform or exercise such Party's rights or obligations under this Agreement and who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement. The Receiving Party shall use the same care and discretion, but in no event less than a reasonable degree of care and discretion, to avoid disclosure as it uses with its own similar information that it does not wish to disclose, to safeguard the Confidential Information from unauthorized disclosure.

8.2 Exceptions. The term Confidential Information does not include any information that: (i) is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party or its Representatives (as defined below) in violation of the terms hereof; (ii) is or becomes available to the

Receiving Party or any of its Representatives on a non-confidential basis from a source that is not known to the Receiving Party to be prohibited by a contractual, legal, or fiduciary obligation to the Disclosing Party from disclosing such information to the Receiving Party; (iii) is independently developed, conceived, or discovered by the Receiving Party or its Representatives; or (iv) is already known to the Receiving Party or any of its Representatives prior to disclosure of the same to the Receiving Party or its Representatives by the Disclosing Party or the Disclosing Party's Representatives. For purposes of this Agreement, "Representatives" shall mean a Party's Affiliates and its and their employees, officers, directors, agents or other representatives.

9. Information Security and Privacy

9.1 Privacy. Aircall will comply with all of its obligations relating to the protection of personal information and information about Customer's use of Services as required by law, including under the Privacy Act 1988 (Cth), the Australian Privacy Principles, and the Telecommunications Act 1997 (Cth). Aircall processes the personal information provided by its Customer in accordance with the Site's privacy policy as may be amended by Aircall from time to time. The privacy policy shall be available at <https://aircall.io/privacy/>.

9.2 Information Security. Aircall endeavours to use commercially reasonable technical and operational safeguards designed to protect the Customer Data and Customer's Confidential Information from unauthorized use or disclosure. Customer agrees to protect all devices permitting access to the Services using industry-standard security measures. Aircall may from time to time push software updates and patches and Customer agrees to promptly install and implement such updated, patched, and/or upgraded version of the Services. Aircall will not be responsible or liable for any damage or inoperability of the Services resulting from Customer's failure to timely implement such update, patch and/or upgrade.

9.3 Interception. Customer acknowledges that Aircall may have obligations at law to: (a) facilitate interception of communications carried by the Services by legally authorised persons; and (b) retain certain data about use of Services, and disclose that data to law enforcement and other legally authorised persons.

10. Warranties

10.1 Aircall Warranties.

10.1.1 Aircall will provide the Services using a commercially reasonable level of care. To the extent permissible by applicable Law, Aircall will pass through to Customer the relevant and applicable warranties it receives from its third-party suppliers where applicable.

10.1.2 To the extent that the Australian Consumer Law applies, where supplied to Consumers, Aircall's Services come with the following guarantees. For major failures with the Services, a Consumer is entitled:

- a) to cancel this Agreement; and
- b) to a refund for the unused portion, or to compensation for reduced value of the Services.

A Consumer is also entitled to choose a refund or replacement for major failures with Services. If a failure with the Services does not amount to a major failure, a Consumer is entitled to have the failure rectified in a reasonable time. If this is not done a Consumer is entitled to a refund for the Services, to cancel the Agreement and obtain a refund of any unused portion. A Consumer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Services.

10.2 Customer Warranties. Customer represents and warrants that it will and will cause its Users and/or Administrators to use the Services in compliance with all applicable Laws and this Agreement.

10.3 Disclaimer. NOTHING IN THIS CLAUSE EXCLUDES CONSUMER GUARANTEES UNDER THE AUSTRALIAN CONSUMER LAW. TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER AGREES THAT THE SERVICES ARE BEING PROVIDED "AS IS" AND "AS AVAILABLE," AND EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, AIRCALL MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE IN TRADE, TOGETHER WITH SIMILAR WARRANTIES, WHETHER ARISING UNDER ANY LAW OR OTHERWISE. IN THE EVENT AIRCALL MAY NOT DISCLAIM ANY SUCH WARRANTY AS A MATTER OF LAW, THE SCOPE AND DURATION OF SUCH WARRANTY SHALL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW. AIRCALL FURTHER DOES NOT REPRESENT OR WARRANT THAT THE SITE OR ANY PORTION OF THE SERVICES WILL ALWAYS

BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, CONTINUOUS, ERROR-FREE OR WILL OPERATE WITHOUT PACKET LOSS, NOR DOES AIRCALL WARRANT ANY CONNECTION TO OR TRANSMISSION FROM THE INTERNET, OR ANY QUALITY OF CALLS MADE THROUGH THE SERVICES. CUSTOMER ALSO ACKNOWLEDGES AND AGREES THAT AIRCALL CANNOT GUARANTEE THAT IP BASED COMMUNICATIONS ARE COMPLETELY SECURE, ERROR OR VIRUS-FREE.

11. Indemnification

Customer agrees to indemnify, defend and hold harmless Aircall and its Affiliates (“Aircall Parties”) for, from and against any and all losses, liabilities, damages, claims (including any and all reasonable attorneys’ fees,) as incurred, arising out of or in connection with: (i) any breach or alleged breach of this Agreement by Customer, Users and/or Administrators; (ii) Customer’s, Users’ and/or Administrators’ violation of any Law and/or the rights of a third-party; (iii) Customer’s, Users’ and/or Administrators’ failure to promptly install any updates, upgrades or patches of any software provided by Aircall; and (iv) claims relating to the Customer Data and/or claims relating to any data transferred by Customer to third parties’ applications, provided however that Customer’s liability under this indemnity will be reduced to the extent that any losses, liabilities, damages or claims are caused or contributed to by an act or omission of Aircall Parties. Further, Customer shall indemnify and hold harmless Aircall Parties against all damages, costs, and legal fees awarded against Aircall Parties by a court of competent jurisdiction in connection with such claims or agreed to in a written settlement agreement approved in writing by Aircall.

12. Limitation of Liability

TO THE EXTENT PERMITTED BY LAW AIRCALL AND ITS AFFILIATES CUMULATIVE LIABILITY SHALL NOT EXCEED THE TOTAL AMOUNTS PAID OR PAYABLE BY CUSTOMER DURING THE TWELVE (12) MONTHS PRIOR TO THE CLAIM GIVING RISE TO SUCH DAMAGES OR [TWO HUNDRED AUSTRALIAN DOLLARS (\$200)] IF FOR A FREE TRIAL. IN NO EVENT SHALL AIRCALL OR ITS AFFILIATES BE LIABLE FOR: (I) ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, REPUTATIONAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND SUCH AS LOSS OF DATA OR PROFIT, OR BUSINESS INTERRUPTION, LOSS OF BUSINESS OPPORTUNITY, HARM TO THE IMAGE OR REPUTATION, WHETHER IN ANY OF THE FOREGOING, ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER THEORY OF

LIABILITY EVEN IF AIRCALL OR ITS AFFILIATES HAVE BEEN NOTIFIED ORALLY OR IN WRITING OF THE POSSIBILITY OF SUCH DAMAGES. ANY CLAIM OR CAUSE OF ACTION RESULTING FROM CUSTOMER'S USE OF THE SITE AND THE SERVICES MUST BE PROVIDED OFFICIALLY IN WRITING TO AIRCALL BY REGISTERED MAIL WITH RECEIPT ACKNOWLEDGEMENT ADDRESSED TO ITS HEAD OFFICE WITHIN ONE (1) YEAR AFTER THE CLAIM OR CAUSE OF ACTION HAS ARISEN OR IT SHALL BE DEEMED WAIVED BY CUSTOMER. NOTHING IN THIS CLAUSE EFFECTS OR LIMITS AIRCALL'S LIABILITY TO CONSUMERS UNDER CLAUSE 10 OF THIS AGREEMENT.

13. Term, Suspension and Termination

13.1 Term. This Agreement will commence on the Effective Date and shall continue until the expiration of the last Purchase, the expiration of the applicable Order Form, or unless terminated earlier in accordance with the terms herein (the "Term"). Access to the Plan shall start on the date Customer places a Purchase or the Services Start Date, as applicable, and will continue for the duration set forth in the Purchase or in the Order Form, as applicable (the "Plan Initial Term", also referred to as "Order Form Term"). Thereafter, the Plan Initial Term shall automatically renew for additional periods of the same duration (each, a "Renewal Term") unless either Party provides a written notice of non-renewal to the other Party no less than thirty (30) days prior to the end of the Plan Initial Term or the then current Renewal Term. For the avoidance of doubt, in the event Customer chooses to add additional Users during the Plan Initial Term or Renewal Term, the term applicable to such additional Users will co-terminate with the Plan Initial Term or with the Renewal Term, as applicable.

13.2 Suspension. Aircall may suspend Users' and/or Administrators' use of any Service (other than where such suspension is prohibited by law) if such use is determined by Aircall, in its sole but reasonable discretion, to be (i) in violation of the terms of the Agreement (including in case of non-payment on the due date) or of the Applicable Laws or any policy provided or made available to Customer in writing; (ii) resulting in a degradation of the Service; (iii) otherwise damaging or likely to damage the rights or property of Aircall or third parties, until such violation, degradation, or damage has been remedied. Except in the event legally prohibited or commercially unfeasible, Aircall will use reasonable endeavors to provide Customer with prior notice before any suspension detailing the causes and the expected duration of such suspension. Aircall reserves the right, in its sole

but reasonable discretion, to delete, remove or block access to, all or part of any Customer Data that may violate or infringe the Applicable Laws, the Permissible Use Policy, or any third-party rights, or otherwise expose or potentially expose Aircall to civil or criminal liability. Suspension will not relieve Customer of its obligation to pay the Fees and the costs associated with the reactivation of the Services. Aircall shall not be responsible for any damages arising from the Service suspension under this Section 13.2. During the suspension period, Customer and Aircall will use their best endeavours to minimize any inconvenience caused by such suspension of the Services.

13.3 Termination. Either Party may terminate this Agreement and any Services purchased hereunder in whole or part by giving written notice to the other Party if: (i) the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after receipt of such notice; (ii) if the other party has insolvency, receivership or bankruptcy proceedings commenced by or against it (subject to applicable Laws); (iii) following the written recommendation of a government or regulatory agency following a change in applicable Law. Aircall may terminate this Agreement, Purchase, and/or any Order Form upon providing the Customer with thirty (30) days' notice in writing at any time and for any reason without any liability whatsoever provided that Aircall shall refund Customer a pro-rata portion of any unused prepaid Fees covering the remainder of the Plan Initial Term or Renewal Term, as applicable, from the effective date of such termination.

13.4 Effects of Termination. Upon termination of this Agreement Customer must pay to Aircall immediately and without further notice, and in any case no later than thirty (30) days thereof, any accrued fees, charges, including any outstanding Fees. Upon termination or expiration of this Agreement for whatever reason, Customer shall immediately cease to have access to and use of the Services.

14. Governing Law

This Agreement shall be governed in all respects by the laws applicable in the State of New South Wales, Australia. In the event of any dispute, claim, question or disagreement (the "Dispute") arising from or relating to these Terms of Use or breach thereof, the Parties shall use their best efforts to settle the Dispute by normal business discussions. Should the Dispute remain unresolved thirty (30) days after notice of the Dispute was provided by one Party to the other, the Parties may take further legal action to resolve the Dispute. These Terms of Use, the Agreement, the Services and/or the Site and any Dispute resulting therefrom,

shall be subject to the non-exclusive jurisdiction of the courts of New South Wales. The illegality, invalidity or unenforceability of any provision of these Terms of Use will not affect the legality, validity or enforceability of any other provision.

15. Force Majeure

Excluding either Party's payment obligations under the Agreement, neither Party will be responsible or liable for any failure to perform or delay in performing to the extent resulting from any event or circumstance that is beyond that Party's reasonable control, including any act of God; national emergency; third-party telecommunications networks; riot; war; terrorism; governmental act or direction; change in Laws; fiber, cable, or wire cut; power outage or reduction; rebellion; revolution; insurrection; earthquake; storm; hurricane; flood, fire, or other natural disaster; strike or labor disturbance; or other cause, whether similar or dissimilar to the foregoing, not resulting from the actions or inactions of such Party.

Only the material or geographical part of the Agreement affected by the event of Force Majeure shall be suspended during such event.

During the suspension period, the Parties will use commercially reasonable efforts to limit the duration and mitigate the consequences of such event. If the Force Majeure event lasts for more than thirty (30) days, the Parties undertake to negotiate in good faith a contract adjustment. If, following such thirty (30) day period, it becomes impossible to continue the performance of the Agreement, each Party will be entitled to terminate the Agreement by sending a written notice to the other Party.

16. Notices

Except where otherwise expressly stated in the Agreement, all notices or other communications must be in English and are deemed to have been fully given when made in writing and delivered in person, upon delivered email, confirmed facsimile, or five days after deposit with a reputable overnight courier service, and addressed as follows: to Aircall Pty Limited., c/- Level 22, 25 Martin Place, Sydney, Australia with a copy emailed to legal@aircall.io, and to Customer at either the physical address or email address associated with the Customer's Account.

Customer is solely responsible for the accuracy and completeness of Customer's physical address and email address and must immediately update such addresses on the Site upon any change. Customer acknowledges and agrees that all electronic notices have the full force and effect of paper notices.

17. Amendments

Except as otherwise provided, this Agreement may only be modified by a written amendment (provided electronically or otherwise) executed by authorized representatives of both Parties. In no event will handwritten changes to any terms or conditions, including in the applicable Order Form, be effective. Notwithstanding anything set forth in this Agreement, Aircall may update the terms of this Agreement or any of its policies from time to time, and will provide notice to Customer at the email address associated with the Customer's Account or via a pop-up on the Site, as decided by Aircall in its sole discretion. Such updates will become effective ten (10) days after such notice to Customer (such date, the "Updated Date"). In the event that any such update would be of material detriment to Customer and is not required by Law, Customer must inform Aircall of Customer's objection in writing (which shall include Customer's reason behind such objection) within ten (10) days of receiving the notice provided under this provision. If the Parties, negotiating in good faith cannot reach an agreement within thirty (30) days following the receipt of Customer's objection, Customer may terminate the portion of the Services affected by the change without penalty by written notice to Aircall. Any use of the Services after the Updated Date will be deemed Customer's acceptance of such updates to the terms of this Agreement and/or policies, as applicable.

18. General Provisions

Relationship of the parties. Customer and Aircall are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Customer and Aircall.

Waivers. Aircall's failure or delay in exercising any right herein will not operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right herein.

Entire Agreement. This Agreement, together with any Order Form(s), Purchases, exhibits and/or schedules, each of which is expressly incorporated into this Agreement with this reference, constitutes the entire agreement between the Parties and supersedes and replaces any and all prior or contemporaneous understandings, proposals, representations, marketing materials, statements, or agreements, whether oral, written, or otherwise, regarding such subject matter. In the event of any conflict between the terms of this Agreement and the terms of an Order Form, the terms of the Order Form shall prevail.

Surviving Obligations Sections 3, 4, 5, 7, 8, 10, 11, 12, 14, 15, 17, and 18 included shall survive termination of this Agreement.

Joint and several liability. For the avoidance of doubt, in the case of Customer, each Order Form may be signed by Customer or any of its Affiliates, provided Customer will remain jointly and severally liable for any and all actions or omissions of its Affiliates in connection with this Agreement.

Assignment. Customer may not assign or transfer any of its rights or obligations under this Agreement, in whole or in part, without Aircall's prior written consent. Notwithstanding the foregoing, each Customer may assign this Agreement to (i) its Affiliates, and (ii) an entity in which the Customer may be merged or consolidated, or which purchases all or substantially all assets or equity interest of the assigning party. The assignee or transferee will assume all of the rights and obligations of the assignor or transferor under the Agreement and will be deemed the signatory of the Agreement without any further changes or amendment.