

## AIRCALL.IO, INC. TERMS AND CONDITIONS

If your billing address is located in the United States or Canada, [Aircall.io, Inc. Terms and conditions](#) apply. If your billing address is located in Australia, [Aircall PTY LTD Terms and conditions](#) apply. If your billing address is located in France, [Aircall SAS – Conditions Générales de Vente](#) apply. If your billing address is located in Spain, [Aircall SAS – Condiciones de uso en linea](#) apply. If your billing address is located anywhere else, [Aircall SAS – Terms and Conditions](#) apply.

These online terms and conditions (“T&Cs”) are entered into by and between Aircall.io, Inc., a Delaware corporation with offices at 381 Park Ave South, Floor 16, New York, NY 10016 (“Aircall”) and Customer (as defined below) (individually, a “Party”, and collectively, the “Parties”). The Agreement (as defined below) constitutes a binding agreement between Aircall and Customer and sets forth the terms and conditions pursuant to which Customer may subscribe to the Services and conditions under which Aircall provides Customer with the Services. Aircall last updated these T&Cs on April 24, 2023. A record of the previous version of the T&Cs can be found [here](#) (Version 2). By clicking on the “Accept” button when subscribing to any of the Services, entering into an Order Form or an SOW (unless otherwise provided for in such Order Form or SOW), or otherwise using and/or permitting any User to access and/or use any of the Services, Customer: a) acknowledges that it has read, agreed and will comply with this Agreement; b) agrees to be bound by the Agreement as of the earlier date of either: such subscription, entering into an Order Form or SOW, or access to and/or use of the Services (“Effective Date”); c) warrants and represents that its representative: (i) is at least eighteen (18) years of age or the applicable statutory age of majority to enter into a binding agreement, (ii) has the capacity to enter into a contract; and (iii) has the right, power, and authority to enter into this Agreement on behalf of the Customer, and to bind Customer to these T&Cs. IF CUSTOMER DOES NOT AGREE TO THESE T&Cs, CUSTOMER OR USERS MAY NOT SUBSCRIBE, ACCESS OR USE THE SERVICES. The Services provided by Aircall are intended solely for business use, to the exclusion of any other use.

### 1. Definitions

“*Account*” means the numbered account established by Aircall and associated with Customer allowing Customer to subscribe to the Services.

“*Account Information*” means the business contact and billing information associated with the Account; Customer’s email(s); usage records of the Services; configuration data; and Customer’s call and/or text logs generated by Aircall.

“*Additional Aircall Number*” means any additional Aircall Number purchased on the Aircall Dashboard by Customer during the Term.

“*Additional User*” means any additional User purchased on the Aircall Dashboard by Customer during the Term.

“*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. “*Agreement*” means the following documents listed in decreasing order of priority: (i) the Data Processing Agreement, (ii) any applicable Order Forms and/or SOW, (iii) the EULA, (iv) these T&Cs, (v) any applicable Purchases.

“*Agreement Term*” has the meaning provided in Section 13.1 of these T&Cs.

“*Aircall Dashboard*” means the online portal through which certain Users, based on the permissions associated with their User role (as further described on the Aircall Site), may: control Account settings, including by setting up, amending and updating Account Information, selecting User roles for named Users, and accessing Aircall Number and Aircall Phones Services settings; may subscribe to Services; may make Purchases, including Additional Users or Additional Aircall Numbers; may select a Plan; may set up Integrations; may review performance, and may monitor consumption and usage of the Account(s). Only ‘Owner(s)’, ‘Administrator(s)’, and ‘Supervisor(s)’ may access the Aircall Dashboard.

“*Aircall Number*” means the phone number which is assigned by Aircall to Customer or ported in at Customer’s request.

“*Aircall Parties*” means Aircall and its Affiliates.

“*Aircall Phone Services*” means the cloud-based electronic communications services provided by Aircall to Customer to make, receive, forward, record and receive transcription of (in a language as may be offered by Aircall from time to time) voice calls and voicemail

messages and/or make, receive and forward text messages, in each case, from/to using an Aircall Number. A detailed description of the Aircall calling system is available on the Site.

*"Aircall Privacy Policy"* means the privacy policy available at <https://aircall.io/privacy/>, as it may be amended by Aircall from time to time (when acting as a controller).

*"Aircall Solution"* means the software as a service application offered by Aircall, which forms an integral part of the Services, that allows Customer to access and use the Services.

*"Anti-Corruption and Trade Laws"* has the meaning provided in Section 10.2 of these T&Cs.

*"Billing Frequency"* means the billing frequency for each kind of Fees (Usage Fees, Fixed Fees or Professional Fees) as defined in the Plan selected by Customer.

*"Chargeable Time"* has the meaning provided in Section 7.3 of these T&Cs.

*"Communication Hub Add-ons"* means any and all Third-Party Products/Services offered by Aircall in its 'Communication Hub' (which may be identified as "Powered By") and purchased or ordered by and accessed or used by Customer. For clarity, the Parties agree that the terms and conditions of Section 3.3 apply to all Communication Hub Add-Ons.

*"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").

*"Customer"* means the company or other legal entity who carries out a Purchase or enters into an Order Form or SOW for the access and/or use of the Services in accordance with the terms of these T&Cs.

*"Customer Data"* means any data, text, messages, materials, communications and other information, transmitted or stored by Customer or on behalf of Customer through the use of the Services within the Aircall Solution.

*"Data Processing Agreement"* means the agreement, available at <https://aircall.io/dpa/>, as may be amended by Aircall from time to time in accordance with the rules stated therein.

*"Disclosing Party"* has the meaning provided in the definition of "Confidential Information."

*"EULA"* means the end-user license agreement by and between Aircall and the named User, whereby Aircall grants such User the right to install and use the Aircall Solution, the terms of which are available [here](#) and which is required to access and use the Services.

*"Feedback"* has the meaning provided in Section 5.5 of these T&Cs.

*"Fees"* means, collectively, Fixed Fees, Usage Fees, Professional Services Fees and any and all other applicable charges and fees arising from Aircall's provision of Services, and/or Customer's access and/or use of such Services. Fees are indicated in U.S. Dollars or other currencies, as may be updated by Aircall in its sole discretion from time to time.

*"Force Majeure Event"* means any event or circumstance beyond the reasonable control of a Party, preventing the performance of such Party's obligations, including any act of God; national emergency; delays or other issues with 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; pandemic or epidemic; strike or labor disturbance.

*"Free Trial"* has the meaning provided in Section 2.6 of these T&Cs.

*"Include"* and *"Including"* means including without limitation.

*"Initial Term"* has the meaning provided in Section 13.1 of these T&Cs.

*"Integrations"* has the meaning provided in Section 3.3 of these T&Cs.

*"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.

*"Late Payment"* means any payment which is not compliant with Section 7.9 of these T&Cs.

*"Law(s)"* or *"Applicable Laws"* means the set of rules in effect for the provision of the Services by Aircall and their use by Customer.

*"Login Details"* has the meaning provided in Section 3.2 of these T&Cs.

*"Messaging Rates"* has the meaning provided in Section 7.3 of these T&Cs.

*"Number License"* means the right given to Customer to allocate a seat to an Aircall Number, which has been ordered by Customer. Customer may not decrease the number of Number Licenses during the Initial Term or any Renewal Term.

*"Order Form"* means Aircall's ordering document for Services that may be entered into between Customer or Customer's Affiliates and Aircall, from time to time, specifying: the Services ordered by Customer, the Fixed Fees, the selected Plan, the Initial Term, the Billing Frequency, the Payment Method, and other material terms associated with these T&Cs. Any reference to "ordered" or "orders" is deemed a reference to this Order Form definition.

*"Payment Method"* has the meaning provided in Section 7.7 of these T&Cs.

*"Per-Minute Rates"* has the meaning provided in Section 7.3 of these T&Cs.

*"Permissible Use Policy"* or *"PUP"* has the meaning provided in Section 6.1 of these T&Cs.

*"Personal Data"* has the meaning as defined in the Data Processing Agreement.

*"Plan"* means any of the subscription plans for the provision of Services (except for Professional 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 shall be deemed a Plan.

*"Process"* and *"Processing"* have the meaning as defined in the Data Processing Agreement.

*"Professional Services"* has the meaning provided in Section 2.5 of these T&Cs.

*"Professional Services Start Date"* has the meaning provided in Section 13.1 (d) of these T&Cs.

*"Purchase"* or *"purchased"* means a subscription placed by Customer for certain Services (except for Professional Services), through the Aircall Dashboard.

*"Receiving Party"* has the meaning provided in the definition of "Confidential Information."

*"Recording Feature"* means the feature of the Aircall Phone Services that provides recording of Customer's phone calls.

*"Renewal Term"* means any renewal term of the Services pursuant to Section 13.1 of these T&Cs.

*"Representatives"* means a Party's Affiliates and its and their employees, officers, directors, agents, advisors, subcontractors, partners, or other representatives.

*"Services"* means any and all of the services from time to time provided under the Agreement that are offered by Aircall and/or Aircall's Affiliates to Customer. Services exclude Integrations and beta services (which beta services are governed by the Beta Services Addendum).

*"Services Start Date"* means the date Services are made available to Customer.

*"Site"* means the Aircall.io website. *"SOW"* means the statement of work that may be entered between Customer and Aircall, from time to time, which describes the terms and conditions for the provision of Professional Services as provided in Section 2.5 of these T&Cs.

*"SOW Term"* has the meaning provided in Section 13.1 (d) of these T&Cs.

*"Term"* means collectively, the Initial Term and the Renewal Term.

*"Third-Party"* means any person or legal entity who is not a Party to this Agreement or who is not an Affiliate of a Party to this Agreement.

*"Third-Party Products/Services"* means products or services that may be distributed by Aircall under this Agreement which are developed by or supplied by a Third-Party. Such Third-Party Products/Services are subject to different and separate Third-Party terms and conditions which are available upon request.

*"Third-Party Information"* means information about Third-Party Products/Services, including links to websites run by others. Aircall is not responsible for and does not endorse this Third Party Information.

*"Transcription Feature"* means the feature of the Aircall Phone Services, available only in some jurisdictions (as may be offered by Aircall from time to time), that provides transcription of the recorded calls and/or voicemails, and such feature may be provided at a Fee, in Aircall's discretion.

*"Updated Date"* has the meaning provided in Section 17 of these T&Cs.

*"User"* means any individual duly authorized by Customer and duly licensed by Aircall under Section 5.2 to use and/or access the Services. Each User must be granted a User role. *"User License"* means the right given to Customer to allocate a seat to a named User, which has been ordered by Customer. Customer may not decrease the number of User Licenses during the Initial Term or any Renewal Term.

## **2. Ordering, Purchasing & Services**

### **2.1 Ordering or Purchasing Services.**

Customer's initial request for Services can be done either via (1) a Free Trial, and/or (2) by subscribing to a Purchase, and/or (3) by entering into an Order Form and/or SOW. Each Purchase, Order Form and/or SOW will specify the Services requested by Customer, and Plan selected, together with the applicable Fixed Fees for each Service and the Services Start Date. Subsequently, Customer may purchase Additional Users or Additional Aircall Numbers on the Aircall Dashboard. Customer may also order additional User Licenses or Number Licenses during the Term. Customer may internally transfer such User License to another named User in the event the initial named User has a change of duties or is no longer employed by or providing services to Customer. Customer shall allocate a User role to each of its named Users, as further described on the Aircall Site.

**2.2 Aircall Solution.** The Aircall Solution allows Users to access and use the Services via the internet. The Aircall Solution is accessible to each User on the Site and must be downloaded on a compatible device. Customer's Users' use of the Aircall Solution and Services is governed by the PUP and is subject to acceptance of the EULA, and Customer agrees that without consent to this EULA, Aircall will not provide the Services.

**2.3 Aircall Numbers.** Aircall allocates Numbers Licenses and/or Aircall Numbers to Customer, in each case, to be issued to and used by one or more Users to access the Aircall Phone Services. The Parties expressly agree that numbering resources cannot be appropriated in any form whatsoever and Customer cannot dispose of them freely. Therefore, Customer cannot assign, transfer, rent or sell any Aircall Numbers. Customer acknowledges that the conditions of allocation and use of the Aircall Numbers may change and that Aircall may have to modify the Aircall Numbers allocated to Customer for technical reasons or due to Applicable Laws.

**a) Portability.** Aircall provides, at Customer's written request, inbound and outbound number portability of Aircall Numbers according to Applicable Laws and the applicable technical and geographical eligibility conditions. In order to benefit from inbound portability, Customer must follow all the steps indicated by Aircall from time to time and provide all the information requested by Aircall, which must be correct and complete. In rare occasions, an Aircall Number may be ported out from Customer's Account due to the acts or omissions of Customer, its Users, and/or third parties outside of Aircall's reasonable control, and Customer acknowledges in such cases that: (i) Aircall may not be able to prevent such porting out of such Aircall Number from the Account; (ii) Aircall may not be able to recover the Aircall Number ported out from the Account; and (iii) Aircall shall not be liable for such porting out.

**b) Compliance and Registration to the Aircall Telephony Service subscriber database.** Customer shall provide Aircall with true, accurate, and complete information associated with Customer's access and/or use of any Aircall Number with the Services for which Aircall is required to have an address or any other information of Customer or a User, if applicable, on record. Customer will keep such information current and provide reasonable cooperation regarding information requests from law enforcement, regulators, or telecommunications providers.

**c) Withdrawal of an Aircall Number.** Customer shall access and use Aircall Numbers in compliance with Applicable Laws and with these T&Cs. In the event that Aircall identifies or suspects that Aircall Numbers are being used in a manner that does not comply with Applicable Laws and/or these T&Cs, Aircall may suspend or terminate Customer's access and/or use of the Aircall Numbers without penalty or liability. Alternatively, at Aircall's sole discretion, Aircall may send a request for justification of use to Customer, and Customer shall provide all necessary evidence to prove that use of Aircall Numbers complies with Applicable Laws and/or these T&Cs within five (5) business days. In addition, Customer shall remain liable for any Fixed Fees incurred as a result of such suspended or terminated Aircall Number(s) and may be held liable for access and/or use of the suspended or terminated Aircall Number(s) not in compliance with Applicable Laws and/or with these T&Cs.

**2.4 Aircall Phone Services.** Aircall offers a cloud-based calling system that includes enterprise-class call handling and messaging. A non-exhaustive description of the Aircall calling, recording, transcription, and messaging system is available on the Site. The Aircall Phone Services allow Customer to receive, make and record calls, transcribe such calls, receive and send text messages, and/or transcribe voice messages, in each case, to/from an Aircall Number from/to a telephone number (for the avoidance of doubt, which may or may not be an Aircall Number) in accordance with the terms and conditions specified in the Plan chosen by Customer. Customer may deactivate the Recording Feature and/or Transcription Feature. In order to ensure optimal performance and fair usage, Aircall reserves the right to limit or reduce Customer's access or use of the Transcription Feature.

**2.5. Professional Services.** Aircall also offers a broad portfolio of professional services, either as monthly recurring services or as non-recurring services, as further described in the applicable SOW or Order Form ("Professional Services"). Any such Professional Services are governed by these T&Cs and the applicable SOW or Order Form. Aircall personnel will be available during Aircall's regular working days and hours (minus any federal holiday). Aircall may always replace personnel that performs Professional Services for Customer with personnel of similar expertise. If Aircall's personnel is required to work at Customer's premises, Customer shall be responsible for the safety of personnel and for complying with all Applicable Laws. Customer will be deemed to have accepted the Professional Services if, following a period of ten (10) days from the date the Professional Services were provided and/or delivered to Customer, Customer has not provided Aircall with written notice that the Professional Services were defective (which notice shall state specifically the manner in which the Professional Services are defective).

**2.6 Free Trial.** Customer may elect to evaluate the Services at no cost (except for any Usage Fees, if applicable) for a trial period of up to seven (7) days from the Effective Date or such additional trial period as Aircall may grant Customer on a case-by-case basis in its sole discretion. During such trial period, Customer will be granted access to one (1) Number License and three (3) User Licenses in order to receive, make or transfer calls and/or send text messages, and shall only be permitted to make outbound calls for a total of up to forty (40) minutes (such trial of the Services, the "Free Trial"). Aircall reserves the right, at any time, to add any additional restrictions or limitations to the Free Trials without prior notice to Customer. Customer may request a current list of restrictions and limitations for Free Trials. At the end of the Free Trial period, Customer may decide to subscribe to the Services by selecting a Plan and entering into an Order Form, a Purchase and/or an SOW. If Customer fails to do so, Aircall may immediately terminate Customer's access and/or use of the Services, including any Aircall Number(s) allocated to Customer during the Free Trial. For the avoidance of doubt, access and use of the Services during the Free Trial is subject to these T&Cs, unless otherwise specifically provided.

**2.7. Customer's Affiliates.** Each Order Form and/or SOW may be signed by Customer or its Affiliate(s) and such Order Form and/or SOW shall be governed by these T&Cs. Execution of an Order Form and/or SOW, and/or issuance of any Purchase will constitute irrevocable acceptance of the T&Cs by such Affiliate, provided that Customer will remain jointly and severally liable for any and all actions or omissions of its Affiliates in connection with the Order Form, SOW, Purchase and/or these T&Cs.

**2.8 911 Services.** Aircall provides 911 services in the United States and Canada as described in its 911 Notice. Customer agrees to provide current Registered Location Information for all its Users and to update such Registered Location Information when a User's location changes in accordance with the limitations set forth in the 911 Notice. Customer agrees to notify all Users of the limitations of

911 services described in the 911 Notice.

### **3. Access to Aircall Services**

#### **3.1 Requirements.**

Customer acknowledges and agrees that:

1. In order to access and/or use the Services, each User must have adequate access to the Internet, an adequate power supply, and correct equipment configuration allowing for proper installation and use of the Aircall Solution.
2. A number of factors outside of Aircall's control may impact the quality of Customer's communications and its access and/or use of the Services including Customer's local network, available bandwidth, public Internet lines, the public switched telephone network, Customer's Internet service provider and/or local network hardware.
3. Aircall takes no responsibility and in no event shall Aircall be liable for any disruption, interruption or delay in providing the Services caused by any failure in any of the above or, more generally, in any item, factor, hardware, service, or system over which Aircall has no control.
4. Aircall reserves the right to refuse to provide the Services at its sole discretion to any Customer.
5. The Laws in some jurisdictions either (i) provide individuals with the right not to have telephone calls recorded without either consent of all parties to the call or consent of one party to the call, or (ii) set forth additional conditions for recording telephone calls, such as providing a transparency notice, accountability for demonstration of a legitimate basis, or accountability for appropriate internal compliance documentation. Aircall takes no responsibility for such consent, notice, or other required documentation, and in no event shall Aircall be liable for Customer's compliance with such Laws. Customer acknowledges and agrees that Customer is solely responsible for compliance with any consent/transparency/recording/transcription laws.

#### **3.2 Accessibility and Account Takeover.**

Customer acknowledges and agrees that Customer's Users' access to the Services is protected by an identification system that requires each User to choose a unique password and username (collectively, "Login Details"). Customer shall (and shall ensure that its Users) keep such Login Details confidential, not disclose or share Login Details with any Third-Party, and ensure that Login Details are kept private and personal. Any use of such Login Details shall therefore be deemed to be made by Customer or authorized persons. Aircall shall not be liable for any breach of security due to Customer's, or its Users' inability or failure to maintain the confidentiality and/or security of any Login Details. In the event of loss, theft or compromise of the security or confidentiality of the Login Details or in the event of suspected or actual unauthorized use of the Login Details (e.g., account takeover), Customer shall immediately notify Aircall so that Aircall can take all necessary steps to prevent or terminate the fraudulent use of the Account and/or the Services. Customer shall, in any event, remain solely responsible for the use of the Login Details and for all damages arising therefrom, including any Usage Fees resulting from use of the Services. Upon Customer's request, Aircall may, at its sole discretion and at the Customer's costs, use reasonable efforts to provide Customer with relevant information for Customer's own investigation of the suspected or actual unauthorized use of the Login Details.

**3.3 Integrations.** The Services may contain features designed to interoperate with a growing list of third-party applications not affiliated with Aircall, whether such third-party applications are web-based, mobile, offline or other software functionality (the "Integrations"). Customer may decide in its sole discretion to integrate the Services with the Integrations. Such Integrations are not Aircall products, and all enablement, access, and/or use of Integrations is solely between Customer and the applicable Third-Party provider and such use shall be governed solely by the terms and conditions of such Third-Party provider. Aircall cannot guarantee the continued availability of such Integrations, and may cease providing access to them without entitling Customer to any refund, credit, or other compensation. If an Integration is enabled from Customers' Aircall Dashboard, 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. Aircall does not endorse, is not responsible or liable for, and makes no representations as to any aspect of such Integrations, including their content or the manner in which such Third-Party provider or the Integration handles, protects, manages or processes Customer Data and/or Customer Confidential Information, or any interaction between Customer and such Third-



Party provider. Customer warrants and represents that (a) it has obtained all necessary consents and licenses to transfer Customer Data and/or Customer Confidential Information from the Services to the Integrations and/or from the Integrations to the Services and that (b) it shall be solely responsible for the processing and use of such Customer Data by the Integrations in accordance with Applicable Laws, including for any damage or loss caused or alleged to be caused by or in connection with Customer's enablement, access or use of any such Integrations, or Customer's reliance on the privacy practices, data security processes or other policies of such Third-Party provider. 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. Customer hereby irrevocably waives any claim against Aircall with respect to such Integrations. Customer may be required to register for or log into such Integrations on the Third-Party providers' respective websites. By enabling any Integration, Customer is expressly permitting Aircall to disclose Customer's Customer Data to the Third-Party provider of the Integration as necessary to facilitate the enablement, access and use of such Integration. If Customer creates an Integration for use with the Services, such Integration shall be bound by the terms of the [Aircall API License Agreement](#).

#### **4. Quality, Maintenance and Accessibility**

**4.1 Maintenance.** The Services are designed to be available with minimal disruptions outside of regularly scheduled maintenance times. Aircall may be required to suspend access, use and/or provision of Services in the following cases: a) to enable maintenance, improvements, upgrading operations of the Services, including in the event of an emergency; b) in the event of any risk to the proper functioning of the Services; or c) in the event of any detected or reported fraud and suspected or reported abuse, fraudulent or unlawful use of the Services. Aircall will endeavor to provide advance notice to Customer where practicable and carry out such maintenance, where possible, outside of regular business hours. However, in the event of an emergency, Aircall may suspend the provision of the Services without notice. Aircall shall use reasonable efforts to minimize the duration of any such suspension. 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 without obtaining Customer's prior written approval.

**4.2 Software Updates and Patches.** 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(s) 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.

#### **5. Intellectual Property and License**

**5.1 Aircall Ownership.** Customer acknowledges and agrees that Aircall or, where relevant, its Affiliates own all rights, titles and interests in and to all Intellectual Property rights in the Aircall Solution and in the Site as well as any content thereof or therein. 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.

**5.2 Limited License, User License, Number License.** Subject to Customer's continued and full compliance with all of the terms and conditions in this Agreement, Aircall grants to Customer and its Users, as applicable and permitted by Section 2, during the Term, a revocable, nontransferable (except as otherwise provided for in Section 2.1), nonexclusive, limited license and right to access and use the Site, the Number License, the User License, the Aircall Dashboard and those certain Services duly purchased or ordered by Customer under its Plan (including any duly purchased or ordered Aircall Numbers) solely for its internal business purposes and only as permitted by this Agreement.

**5.3 Restrictions.** Customer shall and shall cause its Users to refrain from any unauthorized use of all or part of the Services, including: a) 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; b) modify, make derivative works of, disassemble, reverse compile, or reverse engineer the Aircall Solution or the Site or any part thereof; c) build a similar or competitive product or service; d) to the extent Customer is subject to the US Health Insurance Portability and Accountability Act of 1996, and its implementing regulations (HIPAA), use the Services to store or transmit any "protected health information" as defined by HIPAA, unless expressly agreed to otherwise in writing by Aircall; e) use the Recording Feature without first duly providing notice or other required documentation of the recording and/or obtaining any necessary consent to record which may be required by Applicable Laws; f) use the Recording Feature in the event

credit card, debit card or other payment information is made available to Customer and/or User during a call; andg) use which is inconsistent with or not permitted under the terms of this Agreement.

**5.4 Customer Data.** Customer grants Aircall and its Affiliates a limited, personal, non-exclusive, royalty-free license to use, copy, transmit, distribute and store Customer Data to the extent necessary for Aircall to provide Customer with the Services, improve the Services, comply with the Applicable Laws and fulfill Aircall's legitimate interests. Where applicable and in the event Customer Data contains Personal Data, Aircall is entitled to use such Customer Data to fulfill its legitimate interest within the scope and under the conditions agreed to in the Data Processing Agreement, as well as described in the Aircall Privacy Policy. Aircall shall only disclose or provide the Customer Data to parties who need to access it for the purposes described in first sentence hereof. Customer represents and warrants that it has obtained the necessary rights to upload the Customer Data into the Services and including in the case of Personal Data that such Personal Data complies with applicable data protection and privacy laws and regulations.

**5.5 Use of Marks.** Neither Party may use or display the other Party's or its Affiliates' trademarks, service mark or logos in any manner without such Party's prior written consent. Notwithstanding the foregoing, Customer hereby grants Aircall the right to use and reproduce Customer's name, logo and trademarks to identify Customer as an Aircall customer as necessary to provide the Services to Customer.

**5.6 Feedback.** From time to time, Aircall may ask for or collect and/or Customer may provide written suggestions, feedback or comments as part of Customer's or its Users' 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 be entitled to use the Feedback for any purpose whatsoever, commercial or otherwise, without compensation to the provider of the Feedback.

**5.7 Third-Party Information.** From time to time, Aircall may disclose, distribute, reference, or communicate Third-Party Information in connection with its Services including separate agreements or end-user licenses. Aircall is not responsible for and does not endorse, sponsor, or review this Third-Party Information and hereby disclaims all liability for the same.

**5.8 Third-Party Products/Services.** The licenses provided in Section 5.2 may enable access to Third-Party Products/Services and websites and the sharing of information. Customers agrees that its use of the Third-Party Products/Services, including any Communication Hub Add-Ons, is at its sole risk. Customer agrees that it will not use the Third-Party Products/Services in any manner that is inconsistent with the terms and conditions of this Agreement and that it will also comply with the terms and conditions of any separate end-user license or other Third-Party agreement which the use of such Third-Party Products/Services may be subject to, including any data processing policies.

## **6. Permissible Use Policy**

### **6.1 Permissible Use Policy.**

Customer and its Users shall not: a) circumvent or disable any technological features or security measures, in each case, implemented in the Services; b) violate any Applicable Laws (including any Laws requiring that (i) consent be obtained prior to transmitting, recording, collecting, or monitoring data or communications or (ii) compliance with opt-out requests for any data or communications), published policy, or any applicable third-party policy, industry code of conduct, or requirement communicated or otherwise made available by Aircall; c) violate, infringe or misappropriate upon Aircall's or a Third-Party's Intellectual Property, privacy, or other proprietary rights and/or, without a valid license, use any material or content that is subject to third-party proprietary rights; d) use the Services to transmit or store any content or communication that is illegal, harmful, unwanted, inappropriate, or objectionable in the recipient's jurisdiction (including, content or communications which Aircall determines (i) is false or inaccurate; (ii) is hateful or encourages hatred or violence against individuals or groups; (iii) could endanger public safety, or (iv) the sale or promotion of prohibited substances or goods); e) use the Services for purposes other than making, receiving, recording, or transferring calls or making and sending messages in the course of a business activity; f) stalk, harass, harm another individual, engage in spamming, phishing, or pharming;g) engage or facilitate unsolicited advertising, marketing or other activities in connection with any unsolicited communications (commercial or otherwise) in violation of any Applicable Laws, including unsolicited or unwanted phone calls, voicemails or text messages; h) engage in fraudulent activity to the prejudice of third-parties or otherwise use the Services to bypass phone identification systems; i) perform automated communications or engage in abusive practices, including enabling robocalls, bulk call-in lines, auto-dialing, "predictive" dialing or bulk messages\*; j) 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; k) 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; l) send any communications, including email messages on behalf of, or purporting to originate on behalf of Aircall; m) trunk or forward Customer's Aircall Number to another phone number(s) capable of handling multiple simultaneous calls or text messages, or to a private branch exchange ("PBX") or a key system; and n) fail to meet all statutory obligations related to recording of a telephone call, including obtaining consent, when required by Law. In the event of breach of the PUP, Aircall may immediately suspend or terminate all or part of the Services and/or the Agreement.\*Unless a bulk messages add-on feature is expressly stated on an Order Form or Purchase.

**6.2** In addition to the restrictions under this PUP, Aircall reserves the right, notwithstanding Customer's subscription to an unlimited communications package (e.g. unlimited domestic inbound/outbound calls, unlimited outbound calls to certain destinations, unlimited text messaging in certain jurisdictions, etc.), to: a) impose limits on Customer and/or its Users' usage of the Services; b) charge Customer the applicable messaging rate; and c) suspend or terminate all or part of the Services. Aircall may update the Permissible Use Policy from time to time and will provide notice to Customer at the email address on file with the Customer's Account. Such updates will become effective thirty (30) days after such notice to Customer.

## **7. Pricing & Invoicing**

**7.1 Fees and Currency.** Customer must select a Plan for the provision by Aircall of the Services. The Plan may be on a monthly or annual basis, or as provided for in the applicable Order Form. The Plan details the Fixed Fees applicable to the Services. Aircall will provide notice of any increase in the Fees no later than thirty (30) days before the end of the Initial Term or then-current Renewal Term, and any such increase will be effective on the first day of the next Renewal Term. Aircall determines the currency applicable to such Fees based on Customer's billing address, as provided by Customer to Aircall in any Purchase, Order Form or SOW. Where Customer's billing address is in the United States or Canada, Customer will be invoiced in USD. In the event Customer's billing address is not located in either the United States, Canada, the European Union, the United Kingdom, or Australia, Customer may select between USD and EUR only, unless otherwise decided by Aircall from time to time.

**7.2 Fixed Fees.** The fees to be paid by Customer that are associated with the Plan selected by Customer shall be indicated on the Site (such fees, the "Fixed Fees"). Fees associated with Additional Aircall Numbers and/or Additional Users and any add-on features ordered or purchased by Customer, shall also be deemed Fixed Fees. For the avoidance of doubt, fees associated with outbound calls or inbound calls (where applicable) shall not be included in the Fixed Fees.

**7.3 Usage Fees.** The fees associated with (I) outbound text messaging and/or inbound text messaging (where applicable), shall be invoiced monthly in arrears at the then-applicable rate ("Messaging Rates"), and (II) 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 (such fees, under (I) and (II), collectively, the "Usage Fees"). 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"). For the avoidance of doubt, Aircall may change the Per-Minute Rates and/or Messaging Rates at any time and will endeavor to provide notice of such change prior to its implementation. Customer may request the Per-Minute Rates and/or Messaging Rates currently applicable by sending a request to [sales@aircall.io](mailto: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 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 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 Professional Services Fees.** Customer shall be invoiced for and shall pay all fees for Professional Services in advance, unless otherwise described in the applicable SOW or Order Form, and, in each case, Professional Services are billed in five (5) hour increments (collectively, "Professional Services Fees"). All non-recurring Professional Services must be used by Customer by the end of the SOW Term and all recurring Professional Services must be used by Customer during the applicable calendar month. For the avoidance of doubt, any unused allotment of such Professional Services from one billing cycle will not carry over to any future billing cycle, be refunded, or be credited back to Customer's Account. Any travel or similar expenses (including meals and lodging) are in addition to the Professional Services Fees. Customer shall reimburse Aircall for any such reasonable travel or similar expenses incurred by Aircall's personnel in connection with the performance of Professional Services.

**7.5 Revision.** Notwithstanding anything to the contrary in Section 7.1, and in addition thereto, Aircall may revise the Fees on a yearly basis, including during the Initial Term, by providing at least thirty (30) days' prior notice of such revision. Continued use of the Services or failure to terminate the Services by giving Aircall a written notice in accordance with Section 16 "Notices" after this period of thirty (30) days shall constitute acceptance of the new Fees by the Customer.

#### **7.6 Invoicing.**

**a) General.** Aircall shall issue invoices for the Services in accordance with the Plan selected by Customer in the relevant Order Form or Purchase, based on Fees and Billing Frequency, and/or in accordance with the Professional Services Fees selected in the SOW or Order Form. Usage Fees shall be invoiced monthly in arrears at the then-applicable rate.

**b) User Licenses/Number Licenses.** Customer shall be invoiced and shall pay for all Fees associated with User Licenses and/or Number Licenses, regardless of whether (i) Customer allocated named Users to all User Licenses and/or allocated Aircall Numbers to all Number Licenses, or (ii) the number of User(s) and/or Aircall Number(s) listed on the Aircall Dashboard is lower than the number of User Licenses and/or Number Licenses.

**c) Additional Users/Additional Aircall Numbers.** Additional Users and/or Additional Aircall Numbers will be invoiced at the same Billing Frequency as either (a) Users and/or Aircall Numbers purchased in the original Plan, or (b) User Licenses and/or Number Licenses ordered on the original Order Form. Such Additional Users and/or Additional Aircall Numbers shall initially be invoiced in arrears, on a pro-rata basis, and thereafter, shall be invoiced in advance. Customer may, at any time, remove such Additional Users and/or Additional Aircall Numbers, in which case such Additional User(s) and/or Additional Aircall Number(s) will be removed from the Customer's Account upon the next billing cycle.

**d) Communication Hub Add-Ons.** Aircall shall issue invoices and Customer shall pay for the Communication Hub Add-Ons in accordance with the Plan selected by Customer in the relevant Order Form or Purchase which may include both Fixed Fees and Usage Fees.

**e) Transcription Feature.** Aircall may invoice Customer for Transcription Feature in its sole discretion based on various criteria, including Customer's usage of the Transcription Feature.

**7.7 Payment.** By (a) agreeing to ACH payment, (b) providing valid credit or debit card information, (c) providing bank account information, or (d) providing any other method of payment as provided in the relevant Order Form and/or SOW ("Payment Method"), Customer expressly authorizes Aircall and/or any other company or individual acting in Aircall's name to collect invoiced amounts from the Payment Method. Customer shall immediately update its Payment Method so that a valid Payment Method is permanently registered in the Account (including to initiate a new ACH transfer in the event the initial ACH payment is unsuccessful). Customer shall be solely responsible for the consequences for any expired credit/debit card, insufficient funds to pay invoices including charges incurred as a result of such attempts to charge, and/or place holds on, such Payment Method. Unless otherwise stated at the time of Purchase or on the invoice, payment is due in full, without deduction or set-off, within thirty (30) days of the date on the invoice. 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 payment of invoices to Aircall.

**7.8 Taxes.** The Fees are exclusive of applicable taxes and surcharges required under Applicable Laws, including VAT, 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.

**7.9 Late Fees.** In the event of any late payment or of non-payment, in whole or in part, of any invoiced amounts not subject to a good faith dispute, Aircall may charge Customer late interest fees equal to one and a half percent (1.5%) of Customer's outstanding balance per month, or the maximum rate permitted by law, whichever is highest. In addition, Aircall shall be entitled to recover from Customer all costs, fees and expenses actually incurred for the recovery of the outstanding amounts due under the Agreement, including attorneys' fees and costs. Notwithstanding any of the foregoing and in addition thereto, in the event of Late Payment, 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.

**7.10 Discounts.** From time to time in its sole discretion, Aircall may offer promotions or discounts, which constitute a variance from any listed pricing ("Discounts"). In the event that Aircall grants Customer Discounts during the Initial Term, such Discounts shall not automatically be extended to any Renewal Term.

## **8. Confidentiality**

**8.1 Non-Disclosure.** During the Agreement Term, and for an additional period of three (3) years after the Agreement Term for whatsoever reason, the Confidential Information will be kept confidential by the Receiving Party and will not be disclosed to any other person. 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, publication or dissemination as it uses with its own similar information that it does not wish to disclose, publish or disseminate, to safeguard the Confidential Information from unauthorized disclosure. The Receiving Party may disclose the Confidential Information to its Representatives 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 the Agreement. The Receiving Party shall inform each of its Representatives receiving the Confidential Information of the confidential nature of the Confidential Information and shall direct such Representatives to treat the Confidential Information confidentially in accordance with each of the terms and conditions of these T&Cs, and the Receiving Party shall be responsible for any breach of the Agreement by any of its Representatives. Notwithstanding the above, the Receiving Party may disclose Confidential Information (a) if required to do so under Applicable Law, including any subpoena or court order, provided that the Receiving Party will provide Disclosing Party with a written notice of such compelled disclosure (to the extent legally permitted and reasonable under the Receiving Party's discretion), or (b) with Disclosing Party's prior written consent. The Receiving Party will provide reasonable cooperation to the Disclosing Party (at Disclosing Party's cost) in connection with a disclosure under the previous sentence

**8.2 Exceptions.** The term Confidential Information does not include any information that: a) is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party or its Representatives in violation of the terms hereof; b) 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 or any of its Representatives; c) is independently developed, conceived, or discovered by the Receiving Party or its Representatives; or d) is already known to the Receiving Party or 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.

**8.3 Return of Confidential Information.** At the end of the Agreement and at any time upon the written request of the Disclosing Party, the Receiving Party will promptly destroy or return to the Disclosing Party all copies of all written Confidential Information which has been provided to it or its Representatives including, but not limited to, written summaries of any oral Confidential Information provided by the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may retain copies of any Confidential Information in accordance with its record retention policies.

## **9. Information Security and Privacy**

**9.1 Privacy.** Aircall takes the privacy of its customers seriously and will use the personally identifiable information provided by

Customer in accordance with: a) the terms and conditions contained in the Data Processing Agreement, where such information constitute Personal Data (as defined in the Data Processing Agreement) and where Aircall processes such information on behalf of the Customer; and b) the conditions described in the Aircall Privacy Policy, where Aircall processes such information for the purposes and by the means determined jointly or independently by Aircall (as a data controller).

**9.2 Data Processing Agreement.** By entering into this Agreement, the Parties also enter into the Data Processing Agreement, which forms an inseparable part hereof.

**9.3 Information Security.** Aircall endeavors to use commercially reasonable technical and operational safeguards designed to protect Customer Data and Customer's Confidential Information from unauthorized use or disclosure. Where Customer Data constitutes Personal Data and its Processing by Aircall is subject to the Data Processing Agreement, Aircall shall protect such Personal Data by implementing technical and operational measures described in Exhibit B of the Data Processing Agreement. Aircall further commits to protect all other Customer Data that does not constitute Personal Data by implementing technical and operational measures materially similar to those described in Exhibit B of the Data Processing Agreement, where such Customer Data is processed and stored for the purposes of the provision of the Services and in the Aircall Solution infrastructure. Customer agrees to protect all devices permitting access to the Services using industry-standard security measures.

## **10. Representations, Warranties and Disclaimer**

**10.1 Aircall Warranties.** Aircall will provide the Services using a commercially reasonable level of care and will materially comply with applicable Laws. 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.

**10.2 Anti-Corruption and International Trade Laws.** Each Party: (a) warrants that it will conduct business in accordance with all applicable anti-corruption, anti-boycott, anti-money laundering, economic and trade sanctions, export controls, and other international trade laws, regulations, and governmental orders (collectively, "Anti-Corruption and Trade Laws") in the jurisdictions that apply directly or indirectly to the Services, including the United States, and (b) represents that it has not made, offered, promised to make, or authorized any payment or anything of value in violation of Anti-Corruption and Trade Laws. Customer will promptly notify Aircall in writing of any actual or potential violation of Anti-Corruption and Trade Laws in connection with the use of the Services and take all appropriate steps to remedy or resolve such violations, including any steps requested by Aircall. Customer represents and warrants that it has obtained and will continue to obtain all licenses or other authorizations required to export, re-export, or transfer the Services. Each Party represents that it (and, in Customer's case, its Users) is not on any government prohibited, denied, unverified-party, sanctions, debarment, or exclusion list or export-controlled related restricted party list (collectively, "Sanctions Lists"). Customer will (i) immediately discontinue its use of the Services if it is placed on any Sanctions List and (ii) remove any User's access to and use of the Services if such User becomes placed on any Sanctions List. Customer represents and warrants that it has not and will not export, re-export, or transfer the Services to an entity on any Sanctions List without prior authorization from the applicable governmental authority and, by accessing and/or using the Services, Customer represents and warrants that its access and/or use of the Services will not violate any embargoes, sanctions, trade restrictions or similar restrictions issued by any applicable governmental authority.

**10.3 Supply Chain.** Aircall will develop and implement supply chain security practices and procedures. Aircall follows a risk-based approach to actively monitor its supply chain (including, but not limited to, third-party vendors and open-source software) by undertaking due diligence on new suppliers, and ongoing monitoring of existing suppliers and vendors.

**10.4 Customer Warranties.** Customer represents and warrants that it will (and will cause its Users to) access and use the Services in compliance with all Applicable Laws and the Agreement. Customer is solely responsible for determining whether the Services are suitable for use in light of any laws and regulations that govern Customer, its industry, or its relationship with its own clients, including consumer protection, privacy, advertising, intellectual property or other laws.

**10.5 Disclaimer.** TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER AGREES THAT THE SITE, DASHBOARD, AND SERVICES ARE BEING PROVIDED "AS IS" AND "AS AVAILABLE," AND, EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THESE T&CS, 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, DASHBOARD, 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. AIRCALL DOES NOT GUARANTEE THAT VOICEMAIL MESSAGES OR RECORDED CALLS OR LIVE TRANSCRIPTION WILL BE SAVED OR BE ABLE TO BE RETRIEVED. AIRCALL IS NOT RESPONSIBLE NOR LIABLE FOR (1) ERRORS IN THE CONVERSION OF OR ITS INABILITY TO TRANSCRIBE VOICEMAIL MESSAGES OR RECORDED CALLS; (2) LOST OR MISDIRECTED MESSAGES, OR (3) CONTENT THAT IS UNLAWFUL, HARMFUL, THREATENING, ABUSIVE, OBSCENE, TORTIOUS, OR OTHERWISE OBJECTIONABLE. AIRCALL DOES NOT FILTER, EDIT OR CONTROL VOICE MAIL MESSAGES OR CALL RECORDINGS OR GUARANTEE THE SECURITY OF VOICEMAIL MESSAGES OR LIVE TRANSCRIPTION OF CALLS OR VOICEMAIL. CUSTOMER IS SOLELY RESPONSIBLE FOR AND WILL COMPLY WITH ALL APPLICABLE LAWS INCLUDING THOSE LAWS RELATING TO CONSENT AND THE RECORDING OF OR TRANSCRIPTION OF ANY CALLS OR VOICE MESSAGES. CUSTOMER AUTHORIZES AIRCALL OR A THIRD PARTY WORKING ON BEHALF OF AIRCALL TO LISTEN TO, AND TRANSCRIBE ALL OR PART OF CALLS OR VOICEMAIL MESSAGES TO AND TRANSCRIPTIONS TO ENHANCE AND IMPROVE AIRCALL'S SPEECH RECOGNITION AND TRANSCRIPTION SERVICES. AIRCALL IS NOT RESPONSIBLE FOR ANY MATERIAL OR CONTENT THAT CUSTOMER OR USERS TRANSMIT, STORE, DELETE, RECORD OR PLAY USING THE SERVICES. AIRCALL DOES NOT GUARANTEE ANY TRANSCRIPTION CREATION TIME PERIOD. AIRCALL IS NOT A PUBLISHER OF THIRD-PARTY INFORMATION, APPLICATIONS, SERVICES, OR OTHER CONTENT AND AIRCALL IS NOT RESPONSIBLE FOR ANY OPINIONS, ADVICE, STATEMENTS, OTHER INFORMATION OR SERVICES OR GOODS PROVIDED BY THIRD PARTIES. THIRD-PARTY PRODUCTS/SERVICES ARE PROVIDED "AS-IS" AND "AS AVAILABLE" AND WITHOUT ANY WARRANTIES WHATSOEVER. CUSTOMER AND ANY THIRD-PARTY PRODUCT/SERVICE PROVIDER ARE SOLELY RESPONSIBLE FOR CONTENT, WARRANTIES OR CLAIMS THAT CUSTOMER OR ANY THIRD- PARTY MAY HAVE RELATED TO THE THIRD-PARTY PRODUCT/SERVICE, SUBJECT TO LOCAL LAW. CUSTOMER AGREES AIRCALL IS A THIRD-PARTY BENEFICIARY OF ANY SEPARATE STANDARD END USER LICENSE AGREEMENT OR CUSTOM END USER LICENSE AGREEMENT APPLICABLE TO EACH THIR D-PARTY PRODUCT/SERVICE AND MAY THEREFORE ENFORCE SUCH AGREEMENT FOR ITS OWN BENEFIT.

## **11. Indemnification**

**11.1 Customer Indemnification.** Customer shall indemnify, defend and hold harmless 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 any third party claim relating to: (i) any use of the Services by Customer and/or Users (including any actions taken by a third party using Customer's account or by any person or entity claiming by or through Customer and/or Users) in breach of the Agreement; (ii) Customer's and/or any Users' violation of the Agreement (including any terms or policies incorporated by reference herein); and (iii) claims relating to the Customer Data and/or claims relating to any data transferred by Customer to third parties' applications. 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. In the event of such a claim, suit, or action, Aircall will attempt to provide notice of such claim, suit, or action to the contact information Aircall has for Customer's Account (provided that failure to deliver such notice shall not eliminate or reduce Customer's indemnification obligations hereunder).

**11.2 Aircall Indemnification.** Aircall shall indemnify and defend Customer 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 any third party action against Customer arising out of Customer's use of the Services in compliance with this Agreement infringing or misappropriating any copyright, patent, trademark, or trade secret of any third party (a "Claim"); provided that Customer (a) promptly provides notice to Aircall in writing of any such Claim, (b) allows Aircall control of the defense and settlement of such Claim, (c) gives Aircall reasonable assistance in connection with the defense and settlement of such Claim, and (d) once requested by Aircall, promptly cease all use of any infringing or allegedly-infringing part of the Services. The foregoing indemnity above shall not apply to the extent that the Claim is based (i) on the combination, operation or use of technology, data or process(es) not provided by Aircall Parties where such claim or infringement would not have occurred in the absence of such combination (in which case Customer shall indemnify Aircall for any such claims); (ii) any modification of the Services or any of its components by a party other than Aircall Parties; (iii) use of the Services in



combination with other products, services, components, or applications provided or made available by Customer or any third party or as a result of Integrations; or (iv) Customer's continuance of allegedly infringing activity after being notified thereof, or after being notified of modifications (to be made at no cost) that would have avoided the alleged infringement. If the Services become, or in Aircall's opinion are likely to become, the subject of a Claim, Aircall may in its discretion and at its own expense: (a) obtain for Customer the right to continue using the Services; (b) modify the Services so that they no longer infringe; or (c) terminate this Agreement and/or Order Form(s), in whole or in part, and issue a pro-rated refund of any unused portion of pre-paid Fees.

## **12. Limitations of Liability**

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF AIRCALL OR ITS AFFILIATES EXCEED THE TOTAL AMOUNTS PAID OR PAYABLE BY CUSTOMER DURING THE TWELVE (12) MONTHS PRIOR TO THE CLAIM GIVING RISE TO SUCH DAMAGES OR ONE HUNDRED DOLLARS (\$100) IF FOR A FREE TRIAL. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL AIRCALL OR ITS AFFILIATES BE LIABLE FOR 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 ACCESS OR 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.

## **13. Term, Suspension and Termination**

### **13.1 Term.**

**a) Agreement Term.** The Agreement will commence on the Effective Date and shall continue until either: the expiration of the last Purchase, the expiration of the last Order Form, the expiration of the last SOW, as applicable, or unless terminated earlier in accordance with the terms herein (the "Agreement Term").

**b) Purchase Term/Order Form Term.** Customer subscribes to the Services (except for Professional Services) for an initial term, starting on the earlier of either the Effective Date or the Services Start Date, for the duration set forth in the Purchase or in the Order Form, as applicable (the "Initial Term"). The Initial Term shall automatically renew for additional periods of the same duration 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 then current term.

**c) Term for Additional User Licenses and Additional Number Licenses.** The term applicable to additional User Licenses or Additional Number Licenses subscribed to by Customer during the Initial Term or any Renewal Term will be co-terminous with such Initial Term or with the Renewal Term, as applicable. Customer may not remove any User Licenses or Number Licenses, including any added User Licenses and added Number Licenses, during the Initial Term or any Renewal Term.

**d) SOW Term.** Provision of Professional Services shall start on the date set forth in the applicable SOW or Order Form ("Professional Services Start Date"). Aircall shall perform and/or deliver the Professional Services in a workmanlike manner in accordance with industry standards generally acceptable in the relevant industry for similar tasks and projects. Customer acknowledges that timely delivery is dependent on Customer's resource commitment and availability, timely decisions and commitments, and full availability of relevant information. SOWs for (i) non-recurring Professional Services will remain in effect for a period of twelve (12) months (unless otherwise set forth in the SOW or Order Form), and (ii) recurring Professional Services will remain in effect for a period as determined in the SOW ((i) and (ii), the "SOW Term"), in each case, unless earlier terminated in accordance with these T&Cs, the SOW or Order Form and will not automatically renew, unless otherwise provided in the SOW or Order Form. Aircall is not obligated to accept a request for additional Professional Services and may require the conclusion of a separate SOW or Order Form. Changes to the scope or content of the Professional Services may impact the agreed upon delivery dates and the Parties agree that they will discuss the impact of any such changes on planning and potential rescheduling when necessary.

**13.2 Suspension.** In addition to any other rights and remedies herein, Aircall may suspend provision, access and/ or use of Services, in



whole or in part, in the following cases, as determined by Aircall in its sole but reasonable discretion: a) Customer or any User is in violation of (i) the terms of the Agreement (including in case of non-payment on the due date), (ii) Applicable Laws, or (iii) any policy provided or made available to Customer in writing, including the Permissible Use Policy; b) in the event the Customer's or any User's access and/or use of the Services results in a degradation of the Services or otherwise damages or is likely to damage the rights of Aircall or third parties; If Customer has not complied within the delay provided by Aircall in the notice sent by Aircall to Customer, Aircall may suspend access to and provision of the Services until such violation, degradation, or damage has been remedied by Customer. Suspension will not relieve Customer of its obligation to pay Fees and any costs associated with the reactivation of the Services. Aircall shall not be liable for any damages arising from any Services suspension.

### **13.3 Termination.**

The Agreement may be terminated under the following conditions.

**a) Termination for any reason.** Aircall may terminate the Agreement and/or any Services purchased hereunder in whole or part for any reason in Aircall's sole discretion, including Customer's breach of the Agreement. Termination shall be effective as of the date of termination notified to Customer in the written notice.

**b) Termination for material breach.** If a Party breaches any material term of the Agreement and fails to cure such breach within thirty (30) days after receipt of notice of such breach by the other Party, the non-defaulting Party may immediately terminate the Agreement or the affected portion of the Services.

**c) Termination for bankruptcy/insolvency.** Subject to Applicable Laws, a Party may terminate the Agreement if such Party files or institutes a proceeding for insolvency, receivership, liquidation or bankruptcy and notifies the other Party;

**d) Termination due to legal, regulatory or judicial obligation.** Aircall may terminate the Agreement, or any part of the Services to comply with legal, regulatory or judicial obligation.

### **13.4 Effects of Termination.**

Upon termination of the Agreement or Services, Customer will immediately cease to access and use the Services and must immediately pay to Aircall without further notice, and in any case no later than thirty (30) days thereof, any accrued fees, charges, including any outstanding Fees. In the event any such termination does not result from a breach by Customer of its obligations hereunder, Aircall shall refund Customer a pro-rata portion of any unused prepaid Fixed Fees covering the remainder period from the effective date of such termination to the end of the applicable billing cycle.

## **14. Governing Law**

All claims in connection with the Agreement, the Services and/or the Site shall be governed by the laws of the state of New York, without regard to its conflict of law provisions. Sole and exclusive jurisdiction for any dispute, claim, action or proceeding arising out of or related to the Agreement shall be in an appropriate state or federal court located in the city of New York, NY and Customer hereby unconditionally waives its right to a jury trial. A printed version of this Agreement shall be admissible in judicial or administrative proceedings. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or a portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to reflect the intent of this Agreement, and the remainder of this agreement shall continue in full force and effect.

## **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 under the Agreement to the extent resulting from a Force Majeure Event. Only the material or geographical part of the obligations affected by the Force Majeure Event shall be suspended during such event. During the suspension period, the Parties will use commercially reasonable efforts to mitigate the consequences of this Force Majeure Event. If the Force Majeure Event lasts for more than thirty (30) days, the Parties undertake to negotiate in good faith an adjustment of the Agreement. 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 or the affected part of the Services by providing written notice to the other Party.

## **16. Notices**

Except where otherwise expressly stated in the Agreement, all notices or other communications must be made in English in writing and sent to the following address: a) for Aircall: to [Aircall.io](https://aircall.io), Inc., Legal Dept., 381 Park Ave South, Floor 16, New York, NY 10016 with a copy emailed to [legal@aircall.io](mailto:legal@aircall.io) b) for Customer: at either the physical address or email address associated with Customer's Account. Customer is solely responsible for the accuracy and completeness of Customer's physical address and email address and their immediate update upon any change. Notices are deemed to have been fully given when made in writing and delivered in person, upon delivered email, or five days after deposit with a reputable overnight courier service. Customer acknowledges and agrees that all electronic notices have the full force and effect of paper notices.

## **17. Amendments**

Aircall may update these T&Cs, including changes to the rates, features of the Aircall Services or the content of the offerings selected by Customer, or to any policies, upon thirty (30) days' prior notice to Customer at the email address associated with Customer's Account. Such updates will become effective thirty (30) days after such notice to Customer. In the event that any such update affects a material part of the Agreement, Customer may, within ten (10) days of receipt of the update, notify termination of the Agreement, or the affected Services without cost or penalty and without being entitled to any compensation. Any use of the Services after the effective date will be deemed Customer's acceptance of the change.

## **18. General Provisions**

**18.1 Independence.** Customer and Aircall are independent contractors and the Agreement does not establish any relationship of partnership, joint venture, employment, franchise or agency between Customer and Aircall.

**18.2 No waiver.** Either Party'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.

**18.3 Entirety.** This Agreement 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. For the avoidance of doubt, unless and to the extent expressly agreed to in writing between Aircall and Customer, no other terms and conditions contained in Customer's purchase order or otherwise, shall be binding on Aircall.

**18.4 Priority.** In the event of any conflict between any of the provisions of the documents constituting the Agreement, the terms contained in the hierarchically superior document shall prevail.

**18.5 Survival.** Sections 1, 2.3, 3, 4, 5, 7, 8, 10, 11, 12, 13.4, 14, 15, 16 and 18 included shall survive termination of these T&Cs.

**18.6 Assignment.** Customer may not assign or transfer any of its rights or obligations under the Agreement, in whole or in part, without Aircall's prior written consent. Notwithstanding the foregoing, Customer may assign the Agreement in whole to (i) its Affiliates, or (ii) an entity in which Customer is merged or consolidated, or which acquires all or substantially all assets or equity interest of the Customer, provided, however, that (a) such assignee or transferee will assume all of the rights and obligations of Customer under the Agreement and will be deemed the signatory of the Agreement without any further changes or amendment, and (b) Customer shall remain jointly and severally liable for such assignee or transferee. Customer consents in advance to Aircall's assignment of the Agreement to any person of its choice, including any Aircall Affiliates. The assignment shall become effective against Customer upon notice of the assignment between Aircall and the assignee.

**18.7 Invalidity.** The illegality, invalidity or unenforceability of any provision of the Agreement shall not affect the legality, validity or enforceability of any other provision.

**18.8 Non-solicitation.** During the Agreement Term and for a period of one (1) year following termination of the applicable SOW or Order Form, Customer will not employ or otherwise engage Aircall's personnel, unless with Aircall's written consent and reasonable compensation.

### **18.9 911 Notice.**

**a) 911 Service Description. Access and Use.**

Aircall's 911 service operates differently than traditional 911 service. Aircall 911 service may not be available or may be limited as compared to traditional 911 service in the following respects: i) Location Information: Aircall does not automatically detect User location and will route 911 calls using Registered Location Information Users provide. In the event that a User places a 911 call, Aircall will prompt the User to confirm the current Registered Location Information. ii) Registered Location Information: Users are required to provide Aircall a physical address to be used for 911 services which may be used to dispatch police, fire, emergency medical and other emergency response resources. iii) Registered Location Information Updates: Users must update Registered Location Information when that information changes. When Users update Registered Location Information, there may be a delay before Aircall is able to update 911 call routing and 911 calls may be routed to the National Emergency Call Center as described below. iv) National Emergency Call Center: Aircall shall first attempt to route 911 calls to the local public service answering point (PSAP), where Users have provided Registered Location Information. In certain circumstances, including where Users have not provided Registered Location Information, Aircall may route 911 calls to a National Emergency Call Center rather than to the PSAP. The National Emergency Call Center will not automatically receive the caller's address and telephone number. Instead, Users should be prepared to provide agents with the name, location, and telephone number of the person calling 911 and those agents will contact the appropriate PSAP to send help. Aircall may route calls to the National Emergency Call Center when it does not have current Registered Location Information available for the User or otherwise is not able to route the emergency call to the local PSAP. v) Loss of Internet Connection: Aircall 911 service relies on Customer's and User's connection to the internet. If Customer's and/or User's connection to the internet is lost or interrupted, Customer's and/or User's will not have access to Aircall Services and therefore will not have access to Aircall 911 service while Customer's and/or User's internet connection is lost or interrupted. vi) Loss of Power: Aircall 911 service will only function when the device(s) Users are using to access Aircall have power and access to the internet. In the event of a power outage, Users will not have access to Aircall 911 service unless the device(s) Users use to access Aircall and access the internet have battery or other backup power. vii) Customers should inform all potential Users who may be present at the physical location where the Services are utilized of the important differences in and limitations of the Aircall 911 service as compared with traditional 911 and E911 services, as set in this 911 Notice. viii) If Customer is not comfortable with the limitations of the Aircall 911 service, Customer should consider having an alternate means of accessing traditional 911 or E911 services.

**b) Disclaimer of Liability and Indemnification.** Aircall relies on Third Parties to assist in routing 911 calls the appropriate authority. Aircall does not have any control over whether, or the manner in which, calls using Aircall's 911 service are answered or addressed by PSAPs, the National Emergency Calling Centre or any local emergency response center. Aircall and its Affiliates disclaim any and all liability or responsibility in the event information used to route calls is incorrect or yields an erroneous result. Neither Aircall nor its Affiliates or its or their officers, directors, employees, or agents may be held liable for any claim, damage, or loss, and Customer hereby waive any and all such claims or causes of action, arising from or relating to Aircall's 911 service unless such claims or causes of action arose from Aircall's gross negligence or willful misconduct. Customer shall defend, indemnify, and hold harmless Aircall, its Affiliates, and its and their officers, directors, employees, and agents from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, legal fees and expenses) by, or on behalf of, Customer or any third party relating to the absence, failure or outage of the 911 service, including incorrectly routed 911 calls, and/or the inability of any User to be able to use the 911 service or access emergency service personnel.