aircall

DATA PROCESSING AGREEMENT

This Data Processing Agreement is entered into by and between:

AIRCALL, a French *SAS* having his registered offices located at 11-15 rue Saint Georges 75009 Paris, registered under number 807.437.595 RCS (hereafter « **Aircall** » **or** the « **Data Processor** »).

And

Felyx Sharing B.V. *(e.g. SAS)* having its registered offices located at Pilotenstraat 37, Amsterdam registered under number KVK 68094434. (the « **Data Controller** » or the « **Client** »)

DEFINITIONS

In this Agreement and unless defined in the Aircall Services Agreement, all capitalized terms used in this Agreement shall have the meanings given to them below:

"Aircall Inc." means Aircall.io, Inc., a Delaware corporation, registered under number 5540641, having a certificate of Authority to do business in New York, having offices located at 33 W 17th St, New York, NY 10011.

"Aircall Services Agreement" means the agreement relating to the provision and access/ use of Service concluded between parties to which this DPA is annexed.

"Agreement" or *"DPA"* means this Data Processing Agreement.

"Data Protection Laws and Regulations" means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, applicable to the Processing of Personal Data under the Agreement, including the GDPR as defined below.

"Data Subject" means the individual to whom Personal Data relates.

"GDPR" means Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

"Party" means any of the Data Controller or the Data Processor, and *"Parties"* means together the Data Controller and the Data Processor.

"Personal Data" means any information relating to an identified or identifiable Data Subject who can be identified, directly or indirectly, in particular by a reference to an identification number or to one or more factors specific to their physical, physiological, mental, economic, cultural or social identity.

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"*Process, Processing*" means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction, as described in Exhibit A.

"*Service*" or "*Product*" means the Aircall Service, as applicable with Services offered by Aircall (as defined in the Aircall Services Agreement) that Data Controller has purchased or deployed or to which Data Controller has subscribed under the Agreement.

"*Standard Contractual Clauses*" means the agreement executed by and between Aircall and its Sub-processors if necessary pursuant to the European Commission's decision of 5 February 2010 on Standard Contractual Clauses for the transfer of Personal Data to processors established outside of the European Economic Area which do not ensure an adequate level of data protection.

"*Sub-processor*" means any subcontractor engaged by Aircall to process all or part of the Personal Data for Aircall.

1. PROCESSING OF PERSONAL DATA

1.1 Client's Processing of Personal Data. Client acting as a Data Controller determines the purposes and means of the Processing of Personal Data and shall, in its use of the Service, Process Personal Data in accordance with the requirements of Data Protection Laws and Regulations. For the avoidance of doubt, Client's instructions for the Processing of Personal Data shall comply with Data Protection Laws and Regulations. Client shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Client acquired Personal Data. Client shall also inform the Data Subjects of the Processing of their Personal Data by Aircall.

1.2 Aircall's Processing of Personal Data. Aircall, acting as a Data Processor shall only Process Personal Data on behalf of and in accordance with Client's documented instructions. Client instructs Aircall to Process Personal Data for the performance of this Agreement, Aircall Services Agreement and any applicable Order Form(s) and more generally for the provision of Services.

1.3 Obligations of the Data Processor. Data Processor agrees, warrants and represents that it:

a) ensures that persons authorized to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality; further, Data Processor shall only allow access to the Personal Data to such of the Data Processor's personnel who need access to the Personal Data in order to allow the Data Processor to perform its obligations under the Aircall Services Agreement and/or applicable Order Forms;

b) informs Data Controller if an instruction infringes the GDPR or other Union or Member State data protection provisions that may be applicable;

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c) takes all measures to ensure the security of processing, as further specified under letter d) below;
d) assists the Data Controller in ensuring compliance with the obligations relating to the security of the Personal Data, Client's notification & communication obligations in case of Data Breach, conducting data privacy assessment and consulting the supervisory authority if need be, taking into account the nature of Processing and the information available to the Data Processor. Specifically, Data Processor shall, while taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of Processing as well as the risks of varying likelihood and severity for rights and freedoms of Data Subjects resulting from the Processing, implement appropriate technical and organizational measures listed in Exhibit B. Those measures shall be reviewed and updated by Aircall where and when necessary;
e) cooperate with the national supervisory authority if need be;
f) makes available to the Data Controller on a reasonable basis all information necessary to demonstrate compliance with the obligations relating to Data Processors as laid down in Article 28 of the GDPR and allow for and contribute to audits, including inspections, conducted by the Data Controller or another auditor mandated by the Data Controller in the limit of 1 audit par year with a 15 days prior notice and subject to the Parties agreeing on a Data Security Testing Agreement should this audit include penetration testing ;

2. PROPERTY OF THE DATA

The Parties agree that the Personal Data gathered, Processed, hosted, backed up or stored by Aircall on behalf of the Client, under this Agreement and the Aircall Services Agreement or on its initiative are and remain the property of the Client.

3. RIGHTS OF DATA SUBJECTS

If Data Processor receives notice (whether or not from the Data Controller) of, any claim, complaint, request, direction, query, investigation, proceeding or other action of any Data Subject, court, regulatory or supervisory authority, or any body, organization or association in each case which relates in any way to the Personal Data Processed by Data Processor under this DPA (collectively, "**Regulatory Action**"), then Data Processor shall:

a) notify Data Controller with reasonable detail of the Regulatory Action, including copies of any relevant correspondence so that the Data Controller can deal with the Regulatory Action;
b) provide Data Controller reasonable co-operation and assistance by appropriate technical and organizational measures with respect to any Regulatory Action; and
c) not answer to a Regulatory Action, unless instructed otherwise by Client in writing.

4. SUB-PROCESSORS

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4.1. **Appointment of Sub-processors**. Client agrees that Aircall engages third-party Sub-processors in connection with the provision of Aircall and that the list of the Sub-processors currently engaged by Aircall is listed below. Therefore by executing the Agreement, Client authorizes Aircall to engage the Sub-processors mentioned in the Exhibit A. In case this list is modified by Aircall, Client will be informed of any intended changes so that it may reasonably object to such modification. In case Client does not send any objection to Aircall in writing within ten (10) days from receiving the information, it will be deemed to have agreed to the new Sub-processors. If Client objects, the Parties agree to meet to find a solution that will satisfy both Parties' interests.

4.2. Where Data Processor engages another Sub-processor, similar data protection obligations as set out in this DPA shall be imposed on that another Sub-processor by way of a contract.

4.3. **Liability**. Aircall shall be liable towards the Data Controller for the acts and omissions of its Sub-processors to the same extent Aircall would be directly liable if performing the Services of each Sub-processor directly under the terms of this DPA.

5. DATA BREACH

Aircall will notify Client of any unlawful disclosure of the Client's Personal Data ("Data Breach") after detection of such Data Breach by Aircall or any of its Sub-processors side. Promptly after detection of such Data Breach, and no later than 72 hours after the breach, Aircall shall also deliver to Client all details of the Data Breach: root cause, action plan, data disclosed, and list of Client's customers or staff impacted (unless Aircall proves to the Client and the involved regulators that the Personal Data has been encrypted) as a consequence of such Data Breach. Client shall inform any relevant authority and if relevant the impacted Data Subject and the Data Processor shall provide all reasonable cooperation and assistance to the Client.

6. RETURN AND DELETION OF CLIENT'S DATA

Upon the termination of the Aircall Services Agreement, Data Processor will up to thirty (30) days following such termination, permit Data Controller to export the Personal Data Processed under the Agreement, at its expense, in accordance with the capabilities of the Service. Following such period, Data Processor will delete all Personal Data stored or Processed by the Data Processor on behalf of Data Controller and their copies. Data Controller expressly consents to such deletion.

7. DURATION

This Agreement will remain into force as long as the Aircall Services Agreement.

8. ADDITIONAL TERMS FOR EU PERSONAL DATA

8.1. **Standard Contractual Clauses.** The Standard Contractual Clauses need to be executed by Aircall acting in the name and on behalf of its clients only if Personal Data is

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transferred from the European Economic Area (EEA) to a third country outside the EEA, either directly or via onward transfer, to any country or recipient: (i) not recognized by the European Commission as providing an adequate level of protection for personal data (as described in the EU Data Protection Directive), or (ii) not covered by a suitable framework recognized by the relevant authorities or courts as providing an adequate level of protection for personal data, including but not limited to Binding Corporate Rules for Processors (e.g. Privacy Shield).

8.2. **Instructions**. Unless otherwise specified in this Agreement, the Aircall Services Agreement or relevant Order Form, this Agreement and Aircall Services Agreement are Data Exporter's complete and final instructions to Aircall for the Processing of Personal Data. Any additional or alternate instructions must be agreed upon separately in writing.

8.3. **Conflict**. In the event of any conflict or inconsistency between this DPA and the Standard Contract Clauses in Attachment 1, the Clauses shall prevail.

9. NO CONSEQUENTIAL DAMAGES; LIMITATION ON LIABILITY; INSURANCE

Under no circumstances and under no legal theory (whether in contract, tort, negligence or otherwise) will either party to this Agreement, or such party's affiliates or their respective officers, directors, employees, agent's, suppliers or licensors be liable to the other party for any indirect, incidental, special, exemplary, consequential, punitive, or other similar damages, including lost profits, lost sales or business, lost data, business interruption or any other loss incurred by such party in connection with this Agreement, regardless of whether such party has been advised of the possibility of or could have foreseen such damages.

Notwithstanding anything to the contrary in the previous paragraph or this Agreement, or the Aircall Services Agreement, Data Processor's liability to Data Controller or any Third Party arising out of or in connection with breach of any provision of this Agreement by the Data Processor shall be capped at the greater of 5 times the cap provided in the Aircall Service Agreement or EUR 10.2.b

10. GOVERNING LAW AND JURISDICTION

This Agreement is governed by French Law. In order to resolve amicably any dispute that may arise with respect to the interpretation, the performance and/or the termination of this Agreement, the Parties agree to meet after the receipt of a notice sent by registered mail by one of the Parties, with the intent to solve any dispute in an amicable way. Failing for the Parties to reach an amicable settlement by signing a settlement agreement within thirty (30) days following the notification by a Party of the existence of the dispute and making an express reference to this provision, the Parties shall submit their dispute to the Paris commercial court that will have exclusive jurisdiction to settle the dispute.

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IN WITNESS WHEREOF, this Agreement is duly executed by an authorized representative of both parties as of the latest date contained in the signature block:

Aircall SAS

By: AIRCALL Employee - DOCUSIGN

Name: _____

Title: Privacy Officer

Date: 15-1-2020

Felyx Sharing B.V.

By: 10.2.e

Name: 10.2.e

Title: CEO

Date: 15/1/2020

[Signature page to Data Processing Agreement by and between Aircall and Felyx B.V. made as of August 13, 2019.]

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Exhibit A Description of the Processing

Purpose of the Processing

Details about Personal Data Processing can be found on the following page:
https://aircall.io/privacy

Nature of the operations conducted on the Personal Data

☑ Collection or recording of the Personal Data
□ Organization or structuration of the Personal Data
☑ Hosting or conservation of the Personal Data
□ Adaptation or modification of the Personal Data
□ Extraction or consultation of the Personal Data
☑ Use of the Personal Data
☑ Communication of the Personal Data by transmission, diffusion or any other way
□ Reconciliation or interconnection of the Personal Data
□ Limitation (Blocking) of the Personal Data
☑ Deletion or destruction of the Personal Data

Categories of Personal Data

- Employees, agents, advisors, independent contractors of Client
- Prospects, customers, business partners and vendors of Data Exporter (who are natural persons)
- Employees or contact persons of Data Exporter's prospects, customers, business partners and vendors

Categories of Data Subjects

- Identification and contact Information (company, email, phone, physical business address) and ID data, in particular: the identity: title, name, position, address, phone number (fixed and/or mobile), fax number, email address, birth date, internal processing code allowing identification of the customer
- Transaction-related data such as the number of the transaction, the details of the purchase, subscription, the good or service purchased;
- Data relating to the monitoring of the business relationship: requests for documentation, trial requests, purchased product, service or subscription contracted, quantity, amount, frequency, delivery address, purchase history and services, return of products, origin of sale or of the order (seller, agent, partner, affiliate), correspondence with the customer and after-sales service, exchanges and feedback from customers and prospects, person(s) responsible for the customer relationship;
- Invoices: payment terms, discounts granted, receipts, unpaid balances.
- Information relating to underwritten loans (amount and duration, lender's name);
- Any information necessary to provide the Services to the Client under the Agreement;
- Any information included in the documents provided by the Client

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List of Sub-processors

Identification of the subcontractors	Purpose / Action on the Personal Data	Location of the servers	Legal basis: GDPR / Privacy Shield / Standard contractual clauses
Amazon Web Services	Hosting	USA	Privacy Shield
Twilio	Call processing	USA	Binding Corporate Rules; Privacy Shield
Voxbone	Number rental	BE	Standard Contractual Clauses; Privacy Shield (for data transfers to the US)
Datadog	Monitoring	USA	Standard Contractual Clauses
Zendesk	Ticketing system for assistance	USA	Privacy Shield
Intercom	Messaging platform	USA	Privacy Shield
Salesforce	Customer Relationship Management	UK	Binding Corporate Rules, Privacy Shield, Standard Contractual Clauses
Pusher	Data visualization	UK / US	Privacy Shield
Stripe	Payment	USA	Privacy Shield
DocuSign	Certified signature	USA	Binding corporate rules
Segment	Generate statistics	USA	Standard Contractual Clauses
SatisMeter	Generate statistics	Czech Republic	No data transfer outside the EU.
Google Analytics and Tag Manager	Generate statistics	USA	Standard Contractual Clauses, Privacy Shield or other mechanisms permitted by Art.46 GDPR
Periscope	Generate statistics	USA	Privacy Shield
Amplitude	Generate statistics	USA	Privacy Shield

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Exhibit B

Security Standards

As of the effective date of this Agreement, Data Processor, when Processing Personal Data on behalf of Data Controller in connection with the Service, Data Processor shall implement and maintain the following technical and organizational security measures for the Processing of such Personal Data ("**Security Standards**"):

1. **Physical Access Controls:** Data Processor shall take reasonable measures to prevent physical access, such as security personnel and secured buildings and factory premises, to prevent unauthorized persons from gaining access to Personal Data.

2. **System Access Controls:** Data Processor shall take reasonable measures to prevent Personal Data from being used without authorization. These controls shall vary based on the nature of the Processing undertaken and may include, among other controls, authentication via passwords and/or two-factors authentication, documented authorization processes, documented change management processes and/or, logging of access on several levels.

3. **Data Access Controls:** Data Processor shall take reasonable measures to provide that Personal Data is accessible and manageable only by properly authorized staff, direct database query access is restricted and application access rights are established and enforced to ensure that persons entitled to use a data processing system only have access to the Personal Data to which they have the privilege of access; and, that Personal Data cannot be read, copied, modified or removed without authorization in the course of Processing.

4. **Transmission Controls:** Data Processor shall take reasonable measures to ensure that it is possible to check and establish to which entities the transfer of Personal Data by means of data transmission facilities is envisaged so Service Data cannot be read, copied, modified or removed without authorization during electronic transmission or transport.

5. **Input Controls:** Data Processor shall take reasonable measures to provide that it is possible to check and establish whether and by whom Service Data has been entered into data processing systems, modified or removed. Data Processor shall take reasonable measures to ensure that (i) the Personal Data source is under the control of the Data Controller; and (ii) Personal Data is integrated into the Service is managed by secured file transfer from the Data Controller.

6. **Data Backup:** Back-ups of the databases in the Service are taken on a regular basis, are secured, and encrypted to ensure that Personal Data is protected against accidental destruction or loss when hosted by Data Processor.

7. **Logical Separation:** Data from different Data Processor's subscriber environments is logically segregated on Data Processor's systems to ensure that Personal Data that is collected for different purposes may be Processed separately.

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