



XCALLY EULA (End User License Agreement)

IMPORTANT: PLEASE READ THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT CAREFULLY BEFORE CONTINUING WITH THIS PROGRAM INSTALLATION:

XeniaLAB srl ("XENIALAB") End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and XENIALAB for the XENIALAB software product(s) identified above, which may include associated software components, media, printed materials, and "online" or electronic documentation ("SOFTWARE PRODUCT"). By installing, copying, or otherwise using the SOFTWARE PRODUCT, you agree to be bound by the terms of this EULA. This license agreement represents the entire agreement concerning the program between you and XENIALAB, (referred to as "licenser"), and it supersedes any prior proposal, representation, or understanding between the parties. If you do not agree to the terms of this EULA, do not install or use the SOFTWARE PRODUCT. The SOFTWARE PRODUCT is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The SOFTWARE PRODUCT is licensed, not sold.

1. GRANT OF LICENSE

The SOFTWARE PRODUCT is licensed as follows:

Installation and Use. XENIALAB grants you the right to install and use copies of the SOFTWARE PRODUCT on your computer running a validly licensed copy of the operating system for which the SOFTWARE PRODUCT was designed.

Any change of any kind applied on your XCALLY server (i.e. CPU, memory, network etc...) can invalidate your XCALLY assigned license: for this reason any move and change of your XCALLY server must be carefully planned and notified in advance to the XCALLY team.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS

(a) Maintenance of Copyright Notices. You must not remove or alter any copyright notices on any and all copies of the SOFTWARE PRODUCT.

(b) Distribution You may not distribute registered copies of the SOFTWARE PRODUCT to third parties. Evaluation versions available for download from XENIALAB's websites may be freely distributed

(c) Prohibition on Reverse Engineering, Decompilation, and Disassembly. You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCT, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

(d) Rental You may not rent, lease, or lend the SOFTWARE PRODUCT.

(e) Support Services XENIALAB may provide you with support services related to the SOFTWARE PRODUCT ("Support Services"). Any supplemental software code provided to you as part of the Support Services shall be considered part of the SOFTWARE PRODUCT and subject to the terms and conditions of this EULA.

(f) Compliance with Applicable Laws You must comply with all applicable laws regarding use of the SOFTWARE PRODUCT.

(g) License Transfer The SOFTWARE licenses related to any XENIALAB SOFTWARE PRODUCTS cannot be transferred in any case to any other entity, user, computer or server, without prior written permission by XENIALAB.

3. TERMINATION

Without prejudice to any other rights, XENIALAB may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such event, you must destroy all copies of the SOFTWARE PRODUCT in your possession.

4. COPYRIGHT

All title, including but not limited to copyrights, in and to the SOFTWARE PRODUCT and any copies thereof are owned by XENIALAB or its suppliers. All title and intellectual property rights in and to the content which may be accessed through use of the SOFTWARE PRODUCT is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This EULA grants you no rights to use such content. All rights not expressly granted are reserved by XENIALAB.

5. NO WARRANTIES

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6. DATA PROTECTION AND GDPR COMPLIANCE

The Company Xenialab S.r.l. agrees to deal with personal data relevant to Customer's end-users in accordance with applicable data protection laws and regulations and the following:

(a) with respect to personal data provided in connection with sales and marketing activities or use of XCally website including the support service via chat, the Xenialab and XCally Privacy Policy at <https://www.xcally.com/en/privacy.html>

(b) with respect to any personal information of European Union residents processed in connection with Services, the Data Processing Agreement (DPA) at ANNEX 1 ("European Union Data Processing Agreement"); and

(c) with respect to Services, the Xenialab and XCally Data Processing Security Details at ANNEX 2. Customer agrees to provide any notices and obtain any consent necessary for Xenialab S.r.l. to access and process personal and other data as specified in this Agreement. The Privacy Policy and the Data Processing Agreement are incorporated herein by reference.

7. LIMITATION OF LIABILITY

In no event shall XENIALAB be liable for any damages (including, without limitation, lost profits, business interruption, or lost information) rising out of 'Authorized Users' use of or inability to use the SOFTWARE PRODUCT, even if XENIALAB has been advised of the possibility of such damages.

In no event will XENIALAB be liable for loss of data or for indirect, special, incidental, consequential (including lost profits), or other damages based in contract, tort or otherwise.

XENIALAB shall have no liability with respect to the content of the SOFTWARE PRODUCT or any part thereof, including but not limited to errors or omissions contained therein, libel, infringements of rights of publicity, any case of data privacy violation due to inadequate use of the software, trademark rights, business interruption, personal injury, moral rights or the disclosure of confidential information. XENIALAB shall have no liability with respect to the integration, connection or usage of the SOFTWARE PRODUCT together with any other software or hardware products.

In no event shall XENIALAB be liable for any complaints or damages due to any kind of interaction performed with the XCALLY software or any kind of modules related to XCALLY.

In particular XENIALAB shall have no liability with respect to any kind of unwanted phone call, chat, sms, fax, email or social media post, sent or received to/by any person or any kind of organization.

In no event shall XENIALAB be liable for any unwanted phone call or other interaction performed with the XCALLY software or any kind of modules related to XCALLY, like Tiger Dial, Cally Square and all the current and future XCALLY module used to perform such phone call or interactions.

8. FORCE MAJEURE

Xenialab shall not be liable for failure or delay in performance of any of its obligations hereunder if such delay or failure to perform is caused by circumstances beyond its control. End user shall be required to accept any delayed shipment or delivery made within a reasonable time.

9. GOVERNING LAWS; ATTORNEYS' FEES

This Agreement shall be governed by and construed and enforced in accordance with the international laws. The parties agree that any legal action or proceeding with respect to this Agreement shall be submitted by an arbitration under the rules of arbitration of the international chamber of commerce, by one arbitrator. Seat of arbitration shall be Geneva. Language of arbitration shall be English.

By execution and delivery of this Agreement, the parties submit to and accept with regard to any such action or proceeding the exclusive jurisdiction of such arbitrator. If any legal action or proceeding is initiated, the prevailing party shall be entitled to all attorney fees, court costs, and expenses in addition to any other relief to which such prevailing party may be entitled.

THIS AGREEMENT WILL NOT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS OR BY THE PROVISIONS OF ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE, THE APPLICATION OF WHICH IS EXPRESSLY EXCLUDED.

ANNEX 1 - DATA PROCESSING AGREEMENT (DPA)

This DPA is a Schedule to the End User License Agreement accepted by the Customer. The Customer is the Data Controller in respect of this DPA. Xenialab s.r.l. is the Data Processor in respect of this DPA.

1. DEFINITIONS

Data Controller: means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; in this DPA the Customer;

Data Processor: means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller; in this DPA is Xenialab and/or any other software distributors appointed by Xenialab S.r.l.;

Data Protection Laws: means, as binding on either party or the Services:

- a)** the General Data Protection Regulation (EU) 2016/679 ("GDPR");
- b)** any laws which implement any such laws (eg. D.lgs. 101/2018);
- c)** any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

Data Subject: means an identified or identifiable natural person;

DPA: This Data Processing Agreement.

International Organisation: means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries;

- Personal Data: means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- Personal Data Breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;
- Data Processing: 'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- Protected Data means Personal Data received from or on behalf of Data Controller in connection with the performance of the Data Processor's obligations under this DPA;
- Sub-Processor means any agent, subcontractor or other third party (excluding its employees) engaged by the Data Processor for carrying out any processing activities on behalf of Data Controller in respect of the Protected Data.

2. DATA PROCESSOR COMPLIANCE WITH DATA PROTECTION LAWS

The parties agree that Data Controller is a Controller and that the Data Processor is a Processor for the purposes of processing Protected Data pursuant to this DPA. The Data Processor shall at all times comply with the applicable Data Protection Laws in connection with the processing of Protected Data. Data Controller shall ensure all instructions given by it to the Data Processor in respect of Protected Data (including the terms of this DPA) shall at all times be in accordance with the applicable Data Protection Laws. The Data Processor shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of this DPA.

3. INSTRUCTIONS

3.1 The Data Processor shall only process the Protected Data in accordance with Annex 1 of this DPA

(and not otherwise unless alternative processing instructions are agreed between the parties in writing) except where otherwise required by applicable law (and shall inform Data Controller of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest).

3.2 Without prejudice to section 2 of this DPA, if the Data Processor believes that any instruction received by it from Data Controller is likely to infringe the Data Protection Laws it shall promptly inform Data Controller and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.

4. SECURITY

In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with this DPA, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, the Distributor shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(a) to 32(d) (inclusive) of the GDPR.

5. SUB-PROCESSING AND PERSONNEL

5.1 The Data Processor shall:

- **5.1.1** not permit any processing of Protected Data by any agent, subcontractor or other third party (except its or its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the written authorisation of Data Controller;
- **5.1.2** prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this DPA, including an obligation to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR, that is enforceable by the Data Processor and ensure each such SubProcessor complies with all such obligations;
- **5.1.3** remain fully liable to Data Controller under this DPA for all the acts and omissions of each Sub-Processor as if they were its own;

- **5.1.4** ensure that all persons authorised by the Data Processor or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.

5.2 Data Controller authorises the appointment of the Sub-Processors listed at the website of Xenialab: the complete list can be found on the page www.xcally.com/list-of-subprocessors-1.pdf

6. ASSISTANCE

6.1 The Data Processor shall (at Data Controller's cost) assist Data Controller in ensuring compliance with Data Controller's obligations pursuant to the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to the Data Processor. The Data Processor will assist Data Controller concerning matters including, but not limited to:

- **6.1.1** the implementation of the appropriate technical and organisational security measures with due regard for the current state of the art, the cost of their implementation, and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, pursuant to Article 32 of the GDPR;
- **6.1.2** the notification of any personal data breach to the supervisory authority to the relevant supervisory authority pursuant to Article 33 of the GDPR, as well as communication of any personal data breach to the data subject, pursuant to Article 34 of the GDPR.
- **6.1.3** The preparation of any risk analysis, pursuant to Article 32 of the GDPR, and
- **6.1.4** If the conditions are met the preparation of any impact assessment, pursuant to Article 35 of the GDPR;

6.2 The Data Processor shall, taking into account the nature of the processing, assist Data Controller (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of Data Controller's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection-Laws) in respect of any Protected Data including requests for access, rectification, blocking or deletion. The Data Processor must also assist the controller by implementing appropriate technical and organisational measures, for the fulfilment of Data Controller's obligation to respond to such requests.

7. CONFIDENTIALITY

7.1 The Data Processor shall process and keep the Protected Data confidential.

7.2 The Data Processor shall not disclose the Protected Data to third parties or take copies of the Protected Data unless strictly necessary for the performance of the Data Processor's obligations towards Data Controller according to

the DPA, and on condition that whoever the Protected Data is disclosed to is familiar with the confidential nature of the Protected Data and has accepted to keep the personal data confidential in accordance with this DPA.

7.3 All terms of the DPA apply to any of the Data Processor's employees and the Data Processor must ensure that its employees comply with the DPA.

7.4 The Data Processor must limit the access to the Protected Data to employees for whom access to said Protected Data is necessary to fulfil the Data Processor's obligations towards Data Controller.

7.5 The obligations of the Data Processor under this section no. 7 persist without time limitation and regardless of whether the cooperation of the Parties has been terminated.

7.6 Data Controller shall treat confidential information received from the Data Processor confidentially and may not unlawfully use or disclose the confidential information.

8. INTERNATIONAL TRANSFERS

The Data Processor shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the European Union or to any International Organisation without the prior written consent of Data Controller.

9. DATA PROCESSING COMPLIANCE

The Data Processor shall, in accordance with Data Protection Laws, make available to Data Controller such information that is in its possession or control as is necessary to demonstrate the Data Processor's compliance with the obligations placed on it under this DPA and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28).

10. DATA BREACH

The Data Processor shall notify Data Controller without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.

11. DATA RETENTION AND DATA DELETION

On the end of the provision of the Services relating to the processing of Protected Data, at Data Controller's cost and Data Controller's option, the Data Processor shall either return all of the Protected Data to Data Controller or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires the Data Processor to store such Protected Data.

This Schedule shall survive termination or expiry of this DPA following the earlier of the termination or expiry of this DPA in the case of all other paragraphs and provisions of this Schedule.

12. AMENDMENTS AND ASSIGNMENTS

12.1 The Parties may at any time agree to amend this DPA. Amendments must be shared in a specific written amendment.

12.2 The Data Processor may not assign or transfer any of its rights or obligations arising from this DPA without Data Controller's prior, written consent.

13. TERMS AND TERMINATION

13.1 This DPA shall enter into force on the Data Controller's acceptance of the EULA.

13.2 The DPA may be renegotiated by both parties if changes in law or disagreements in the DPA give rise to this.

13.3 This DPA is valid for the duration of the processing of the Protected Data. Regardless of the termination of the underlying contractual DPA of the Parties, the Data Processing DPA will remain in force until termination of the processing and the deletion of the data by the Data Processor and any authorized Sub-Processors.

14. INDEMNIFICATION AND LIABILITY

14.1 Data Controller shall indemnify and keep indemnified the Data Processor against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by Data Controller of its obligations under this Schedule.

14.2 Limitation of Liability and Indemnification Claims. The liability of the Data Processor under this DPA is to the widest possible extent limited in accordance with the limitation of liability agreed in the DPA.

14.3 Fines issued by the Supervisory Authority. The Parties agree that the general principle of division of liability between the Parties relating to fines imposed by any relevant Supervisory Authority is based on that the respective Party has to fulfil its obligations under the GDPR and the Act, and that any fines imposed by a Supervisory Authority should be paid ultimately by the Party which has materially failed in its performance of its legal obligations under the GDPR or the Act. Consequently, the Data Processor shall at its own costs give the Data Controller all information and assistance available required to respond to such claims.

14.4 The Data Processor shall review the requirements and instructions issued by the Data Controller regarding data processing activities performed by the Data Processor under this DPA on their behalf, and notify the Data Controller beforehand in writing if it believes that implementation of such requirements or instructions would likely constitute a violation of the GDPR or the Data Protection Regulation applicable to the Data Processor. The Data Processor shall in its written notice advise the Data Controller on how such requirements and instructions should be amended to avoid such potential violation of the GDPR or the Act by the Data Processor due to following such requirements or instructions. If the Data Controller in its written response continue requiring that the Data Processor shall implement such requirements and instructions despite the associated risks, then the Data Controller shall at their own cost indemnify and hold the Data Processor harmless against any fines imposed by any Supervisory Authority.

ANNEX 2 - DATA PROCESSING AND SECURITY DETAILS

Processing of the Protected Data by the Data Processor under this DPA shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in this Annex 2.

1. SUBJECT AND MATTER OF THE DATA PROCESSING:

The Data Processor will have access to the Personal Data of the Customer, the Named Users of the Customer and the specific information, which the Customer adds to the XCALLY Service to store the Personal Data and ensuring the Xenialab Service's availability, integrity and confidentiality, as well as to provide remote services to the Customer's users of the XCALLY Service.

2. DURATION OF THE PROCESSING:

2.1 The Data Processor may process the Personal Data for as long as the Data Controller subscribes to the Service as defined in the EULA;

2.2 The Data Processor may delete the Personal Data upon termination of the Service and shall delete the Personal Data no later than 12 months after the termination unless the Data Processor is required to retain the Personal Data for a longer period of time according to legal requirements.

3. NATURE AND PURPOSE OF THE

The Data Processor shall process data including Personal Data to perform the Service as described in the EULA.

4. TYPE OF PERSONAL DATA

The personal data which may be managed by Xcally are, e.g.: name, address, email, birthdate, telephone and fax numbers, company, address, country, social profile.

5. CATEGORIES OF DATA SUBJECTS

Employees of the Data Controller, any external consultant dealing with personal data on behalf of the Data Controller.

6. SPECIFIC PROCESSING INSTRUCTIONS

The Service is automated, and processing will only take place upon command of the Data Controller.

Support services by the Data Controller will only take place upon specific request by the relevant person at the Data Controller.

7. SUB-PROCESSORS:

The current and updated list of Sub-processors can be found on the page www.xcally.com/list-of-subprocessors-2.pdf