

Version 1.1

Uncontrolled if printed

Supersedes previous iterations

**TERMS & CONDITIONS OF BUSINESS
and
CUSTOMER LICENSE AGREEMENT**

Between

EARTEX LIMITED (Eave)

and

the CUSTOMER

TERMS & CONDITIONS OF BUSINESS

- (A) The Company provides an integrated device and software solution to provide hearing conservation in the workplace (the **Eave Solution**).
- (B) The Customer wishes to use the Eave Solution in its business operations.
- (C) The Company has agreed to provide the Eave Solution to the Customer on the terms and conditions of this Agreement.

1 INTERPRETATION

1.1 In this agreement the following expressions shall apply (save where the context otherwise requires):

- (a) **Account** means a Customer's registered account with the Eave Solution.
- (b) **Agreement** means the agreement formed between the Company and the Customer, including this Customer Licence Agreement and all attached Proposals.
- (c) **Beacon** means the disposable device emitting a Bluetooth signal which tags data to a static location.
- (d) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the United Kingdom.
- (e) **Company** means Eartex Limited incorporated and registered in England and Wales with company number 09883498 whose registered office is at 145 City Road, EC1V 1AZ
- (f) **Customer** means the customer listed on the Quote and/or Proposal and/or Purchase Order, to whom the Eave Solution is being provided.
- (g) **Customer Site** means a workplace or site owned or operated by the Customer at which the Eave Solution shall be used by the Customer.
- (h) **Data Protection Legislation** means, for such time as they are in force in England and Wales, the DPA, the UK GDPR and all related legislation which may supplement, amend, implement or replace them and which relates to the protection of individual's rights in their personal data and the protection of their privacy.
- (i) **Data Subject** shall have the meaning of 'data subject' set out in the Data Protection Legislation.
- (j) **DPA** means the Data Protection Act 2018;
- (k) **Eave Devices** means the Headsets, Beacons, Hubs and any other such hardware devices as may be introduced by the Company from time to time as part of the Eave Solution.
- (l) **Eave Platform** means the Eave online platform, known as 'Peak', accessible via the Website.
- (m) **Eave Solution** means the Company's integrated hardware technology and platform software system, comprising of the Eave Devices and Eave Platform.

- (n) **Fee** means the aggregate fees charged by the Company to the Customer for its use of the Eave Solution, which may, without limitation, comprise the Product Fee, Subscription Fee, Setup Fee and any other fees payable in respect of the Eave Solution and/or Support Services.
- (o) **Force Majeure** means an event or cause beyond the reasonable control of the party claiming force majeure. It includes each of the following, to the extent it is beyond the reasonable control of that party:
 - (i) act of God, lightning, storm, flood, fire, earthquake or explosion cyclone, tidal wave, landslide, adverse weather conditions;
 - (ii) epidemic or pandemic;
 - (iii) act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
 - (iv) the effect of any change in applicable laws, orders, rules or regulations of any government or other competent authority; and
 - (v) embargo, inability to obtain necessary materials, equipment or facilities, or power or water shortage.
- (p) **Headset** means the “FocusLite” noise protection headsets worn by persons on the Customer Site.
- (q) **Hub** means the central device to which Headset data is wirelessly transmitted prior to uploading all Operative Data to the Eave Platform.
- (r) **Individual Operative** means any person on a Customer Site using a Headset
- (s) **Initial Term** means the initial period of 12 months (or such other time period as listed on the Proposal and/or Quote and/or Purchase Order or otherwise agreed between the parties) from the date of commencement of this Agreement.
- (t) **Intellectual Property** means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property.
- (u) **Personal Data** has the same meaning as set out in the Data Protection Legislation.
- (v) **Processing** shall, when used in the context of activity relevant to Data Protection Legislation, have the meaning set out in that Data Protection Legislation.
- (w) **Product Fee** means the fee for the purchase of the Eave Devices.
- (x) **Proposal** means a written confirmation of the services and Eave Devices to be provided by the Company to the Customer, such as a Purchase Order, or as otherwise agreed by the parties in writing.
- (y) **Reports** means the reports generated by the Eave Solution based on the Operative Data.
- (z) **Setup Fee** means an upfront fee for the setup of the Eave Solution and Eave Devices at a Customer Site and training for use.
- (aa) **Subscription Fee** means a monthly subscription fee for the use of the Eave Platform and any associated Support Services, on a per Operative basis.

- (bb) **Support Services** means the support provided by the Company to the Customer regarding the Customer's use of the Eave Solution and Eave Devices, as specified on the Proposal.
- (cc) **Operative Data** means any data obtained from the Eave Devices relating to the environmental noise and at-ear exposure of an Operative.
- (dd) **UK GDPR** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018
- (ee) **Website** means <https://eave.io/>.

1.2. Interpretation. The following rules apply unless the context requires otherwise:

- 1.2.1. Headings are only for convenience and do not affect interpretation.
- 1.2.2. The singular includes the plural and the opposite also applies.
- 1.2.3. If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- 1.2.4. A reference to a clause refers to clauses in this Agreement.
- 1.2.5. A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
- 1.2.6. Mentioning anything after *includes, including*, or similar expressions, does not limit anything else that might be included.
- 1.2.7. A reference to a *party* to this Agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
- 1.2.8. A reference to a *person, corporation, trust, partnership, unincorporated body* or other entity includes any of them.
- 1.2.9. A reference to *information* is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

2. PURCHASE OF EAVE DEVICES

Order

- 2.1.** The Customer shall submit a Proposal (Purchase Order) to the Company for the purchase of the Eave Devices and/or subscription to use the Eave Platform and any other services which are available to the Customer at the time. The Customer is responsible for ensuring that the terms of the Proposal (Purchase Order) are complete and accurate.

Delivery

- 2.3.** Upon receipt of the Product Fee by the Company (in cash or cleared funds) on terms agreed in the Quote and/or Proposal and/or Purchase Order, the Company shall deliver the Eave Devices to the location set out in the Proposal ("**Delivery Location**"). Delivery is completed on the completion of unloading of the Eave Devices at the Delivery Location.
- 2.4.** The Company shall ensure that each delivery of the Eave Devices is accompanied by a delivery note that shows the date of the Proposal, any relevant reference numbers, the type and quantity of the Eave Devices.
- 2.5.** Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 2.6.** If the Company fails to deliver the Eave Devices, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Eave Devices.
- 2.7.** The Company shall not be liable for any failure to deliver or any delay in delivery of the Eave Devices that is caused by a Force Majeure event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Eave Devices.
- 2.8.** If the Customer fails to accept delivery of the Eave Devices within three Business Days of the Company notifying the Customer that the Eave Devices are ready, then, except where such failure or delay is caused by a Force Majeure event or the Company's failure to comply with its obligations under the Agreement in respect of the Eave Devices:
 - 2.8.1.** delivery of the Eave Devices shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Company notified the Customer that the Eave Devices were ready; and
 - 2.8.2.** the Company shall store the Eave Devices until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 2.9.** If ten Business Days after the day on which the Company notified the Customer that the Eave Devices were ready for delivery the Customer has not accepted actual delivery of them, the Company may resell or otherwise dispose of part or all of the Eave Devices and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the Product Fee or charge the Customer for any shortfall below the Product Fee.

Title and Risk

- 2.10.** The risk in the Eave Devices shall pass to the Customer on completion of delivery.
- 2.11.** Title to the Eave Devices shall not pass to the Customer until the Company has received payment in full (in cash or cleared funds) of the Product Fee.

3. LICENCE

- 3.1.** In consideration of the Subscription Fees, the Company grants the Customer a limited, revocable, non-exclusive, non-transferable licence to use the Eave Platform, on the terms of this Agreement.
- 3.2.** The licence granted under clause 3.1 shall commence on the date listed on the Proposal for the Initial Term. At the completion of the Initial Term or any subsequent Renewal Period the Agreement shall automatically renew for a

period of 12 months (a “**Renewal Period**”) until, subject to clause 10, either party provides 70 days written notice of termination to the other party 70 days prior to the completion of the then current Renewal Period or Initial Term as the case may be.

USE OF EAVE SOLUTIONS

3.3. Eave Platform & Reports

- 3.3.1. The Eave Platform shall provide the Customer with the ability to view the Operative Data relating to noise exposure levels and other details and features as introduced by the Company from time to time.
- 3.3.2. The Company may provide the Customer with Reports based on the Operative Data uploaded to the Eave Platform over time.
- 3.3.3. The Reports may include noise exposure analytics, recommendations and other information as may be provided by the Company from time to time.
- 3.3.4. Frequency and availability of the Reports shall be as set out in the Proposal or as otherwise agreed between the parties in writing.

3.4. Support Services

- 3.4.1. The Company may provide certain Support Services to the Customer, which may include (without limitation):
 - (a) installation and set up the Eave Solution and Eave Devices for each Customer Site;
 - (b) training for use of the Eave Solution and Eave Devices; and
 - (c) responding to ad hoc Customer queries regarding the Eave Solution and/or Eave Devices.
- 3.4.2. The Company shall provide the Support Services to the Customer as specified on the Proposal or as otherwise agreed between the parties in writing.
- 3.4.3. Where the Customer requests any additional Support Services, the Company shall advise the Customer of the applicable Fees for those services. In the event that the Company delivers any Support Services without a specified fee being agreed in advance, the Company shall be entitled to invoice the Customer for those services at its then current day rates on the regular terms of invoicing specified in clause 4.

3.5. Use & Availability

- 3.5.1. The Customer is solely responsible for the security of its username and password for access to the Eave Platform. The Customer shall notify the Company as soon as it becomes aware of any unauthorised access to its Account.
- 3.5.2. The Customer agrees that the Company shall provide access to the Eave Platform to the best of its abilities, however:
 - (a) access to the Eave Platform may be prevented by issues outside of the Company’s control; and
 - (b) the Company accepts no responsibility for the Customer’s ongoing, uninterrupted or error-free access to the Eave Platform.

- 3.5.3. The Company reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter the Eave Platform.

4. PAYING FOR THE EAVE SOLUTION

4.1. Fees & Payment

- 4.1.1. The Company may, without limitation, charge the following Fees for the use of the Eave Solution:
- (a) the Product Fee;
 - (b) The Subscription Fee; and/or
 - (c) Setup Fee;
- 4.1.2. The pricing and frequency of any payment structures shall be as set out in the Proposal or as otherwise agreed to by the parties in writing.
- 4.1.3. The Product Fee and any applicable Set Up Fee shall be payable in advance of delivery by way of bank transfer, credit card, PayPal, or other such manner as the Company may direct from time to time.
- 4.1.4. The Customer shall be responsible for the payment of any postage and delivery fees on the Eave Devices, which shall be as set out on the Proposal.
- 4.1.5. For the Subscription Fees, the Company shall render a tax invoice to the Customer for any applicable Fees on a monthly basis (or as otherwise specified in the Proposal) payable in advance.
- 4.1.6. The Customer agrees to pay any invoice for the applicable Subscription Fees within 30 Business Days of the relevant invoice's date of issue by way of bank transfer, credit card, PayPal, or other such manner as the Company may direct from time to time. The Customer agrees that it shall have no right to access any of the Eave Solution features if it fails to make a payment when due.
- 4.1.7. The Company shall be entitled to increase the Subscription Fees at the end of the Initial Period and commencement of any Renewal Period.

4.2. Late Payment

- 4.2.1. In the event the Customer fails to pay the Subscription Fees within 30 Business Days of the due date as specified on the invoice, the Company may:
- (a) Suspend the Customer's access to the Eave Platform; and/or
 - (b) Charge the Customer interest at the rate of 8% per annum above the base rate of Barclays Bank PLC from time to time (or at the statutory rate if higher), from the due date until the date of actual payment, whether before or after judgment, on any Subscription Fees which are overdue.
- 4.2.2. If Subscription Fees are not brought out of arrears within 30 days of becoming overdue, the Company may terminate the Customer's Account without notice or liability and terminate this Agreement forthwith.
- 4.2.3. The Customer agrees that it shall be responsible for all reasonable expenses (including legal fees) incurred by the Company in collecting overdue amounts.

4.3. Currency. All Fees shall be paid in the currency specified on the Proposal and/or invoice.

- 4.4. Taxes.** For Customers in the UK, VAT is applicable to any Fees charged by the Company to the Customer. Unless expressed otherwise, the pricing of Fees shall be quoted exclusive of VAT, which shall be applied to the Fees on the Proposal and/or invoice provided.

5. INTELLECTUAL PROPERTY

- 5.1.** In consideration of the full and timely payment of all Fees due from the Customer, the Company grants to the Customer a limited, non-exclusive, non-transferable licence for the term of this Agreement, to use the Eave Solution for the Customer's own internal purposes. The copyright and any other Intellectual Property rights in the Eave Solution shall be vested in and remain the absolute property of the Company or its licensors. Nothing in this Agreement shall operate to prevent the Company from making use of any know-how, or any materials or principles, learned or developed during the performance of its obligations pursuant to this Agreement.
- 5.2.** The Customer agrees and accepts that the Eave Solution is the Intellectual Property of the Company and the Customer warrants that at all times during the term of this Agreement and for a period of 24 months following termination of this Agreement, the Customer will not:
- 5.2.1. Develop alone or with others, any derivative product which copies, mimics or emulates the function of the Eave Solution; and/or
 - 5.2.2. Directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture or algorithms contained in the Eave Solution or any documentation associated with it, save for as specifically permitted by law.
- 5.3.** Nothing in this Agreement shall have the effect of transferring, assigning or licensing any intellectual property rights from the Company to the Customer unless the contrary is specifically stated.
- 5.4.** The Company has moral and registered rights in its trademarks and the Customer shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.
- 5.5.** The Company acknowledges that any Operative Data uploaded to the Eave Platform belongs to the Customer.
- 5.6.** The Customer grants the Company an irrevocable, perpetual, non-transferable, royalty-free and worldwide licence to use any of the Operative Data submitted to the Eave Platform.
- 5.7.** All content submitted to the Company via the Eave Solution (other than the Operative Data) shall be (or shall on submission become) and remain the Intellectual Property of the Company, including (without limitation) all, source code, analytics, insights, ideas, enhancements, feature requests, suggestions or other information provided by any party. The Company shall be entitled to use any content or data (including Operative Data) uploaded to the Eave Platform to compile databases and/or to generate aggregated insights and analytics, and shall be the sole owner of any such database or aggregated insights, which it shall be entitled to use as it sees fit.

6. CONFIDENTIALITY

- 6.1.** For the purposes of this Agreement, **Confidential Information** means any written or verbal information that:
- 6.1.1. is expressly identified in this Agreement to be Confidential Information;
 - 6.1.2. is about each party's business or affairs;
 - 6.1.3. is about the conduct of each party under this Agreement and the during the term of this Agreement;

- 6.1.4. a party informs the other party that it considers it confidential and/or proprietary; or
- 6.1.5. a party would reasonably consider to be confidential in the circumstances; however Confidential does not include information that a party can establish:
- 6.1.6. was in the public domain at the time it was given to that party;
- 6.1.7. became part of the public domain, without that party's involvement in any way, after being given to the party;
- 6.1.8. was in a party's possession when it was given to the party, without having been acquired (directly or indirectly) from the disclosing party; or
- 6.1.9. Was received from a third party who had the unrestricted legal right to disclose that information free from any confidentiality obligation.

6.2. A party shall not:

- 6.2.1. use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this Agreement; or
- 6.2.2. disclose any of the Confidential Information except in accordance with clause 7.3.

6.3. Subject to clause 7.3, a party may disclose Confidential Information that a party is required to disclose:

- 6.3.1. by law or by order of any court or tribunal of competent jurisdiction; or
- 6.3.2. by any government agency, stock exchange or other regulatory body.

6.4. If a party is required to make a disclosure under clause 7.3, that party must:

- 6.4.1. to the extent possible, notify the other party immediately after it anticipates that it may be required to disclose any of the Confidential Information; and
- 6.4.2. only disclose Confidential Information to the extent necessary to comply.

7. QUALITY

7.1. The Company warrants that on delivery, the Eave Devices shall:

- 7.1.1. conform in all material respects with their description; and
- 7.1.2. be free from material defects in design, material and workmanship.

7.2. Subject to clause 9.5, if:

- 7.2.1. the Customer gives notice in writing to the Company within a reasonable time of discovery that some or all of the Eave Devices do not comply with the warranty set out in clause 8;
- 7.2.2. the Company is given a reasonable opportunity of examining such Eave Devices; and
- 7.2.3. the Customer (if asked to do so by the Company) returns such Eave Devices to the Company's place of business at the Customer's cost,

the Company shall, at its option, repair or replace the defective Eave Devices, or refund the price of the defective Eave Devices in full.

- 7.3.** The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from this Agreement.

8. LIABILITY

- 8.1.** Except as expressly stated in clause 9.2:

8.1.1. The Company shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

- (a) special damage, even where the Company was aware of the circumstances in which such special damage could arise;
- (b) loss of profits;
- (c) loss of anticipated savings;
- (d) loss of business opportunity;
- (e) loss of goodwill; or
- (f) loss of or damage to data.

8.1.2. to the extent that it is not excluded by clauses 8.1.1 or 8.4 or otherwise, the total aggregate liability of the Company, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to the Fee actually paid by the Customer during the Initial Term or, where the Initial Term has elapsed, during the 12 month period immediately prior to the first event which gave rise to the Customer's right to bring a claim against the Company.

8.1.3. The Customer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) the Company shall have no liability otherwise than pursuant to the express terms of this Agreement;

- 8.2.** The exclusions in clause 8.1 shall apply to the fullest extent permissible at law but the Company does not exclude liability for:

8.2.1. death or personal injury caused by the negligence of the Company, its officers, employees, contractors or agents;

8.2.2. fraud or fraudulent misrepresentation; or

8.2.3. any other liability which cannot be excluded by law.

8.3. The Company makes no guarantee that the Eave Solution shall be fit for any particular purpose or that it meets the requirements of any health and safety legislation, regulation or guidance. Use of the Eave Solution is at the Customer's own risk.

8.4. The Company shall not be liable for:

8.4.1. any loss or damage of whatsoever nature suffered by the Customer arising out of or in connection with any act, omission, misrepresentation or error made by or on behalf of the Customer or arising from any cause beyond the Company's reasonable control;

8.4.2. the Eave Device's failure to comply with the warranty set out in clause 8.1 if:

- (a) the Customer makes any further use of such Eave Devices' after giving notice in accordance with clause 9.2;
- (b) the defect arises because the Customer failed to follow the Customer's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Eave Devices or (if there are none) good trade practice regarding the same;
- (c) the Customer alters or repairs such Eave Devices without the written consent of the Company;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (e) the Eave Devices differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

8.4.3. for the loss or collection of incomplete Operative Data in the event of damage to any of the Eave Devices or user error.

8.4.4. any interruptions to the Eave Solution arising directly or indirectly from:

- (a) interruptions to the flow of data to or from the Internet;
- (b) changes, updates or repairs to the network or the Eave Solution software subject to the Company striving to minimise the interruptions that may be caused by such change;
- (c) the effects of the failure or interruption of services provided by third parties;
- (d) any event arising due to Force Majeure;
- (e) any actions or omissions of the Customer (including, without limitation, breach of the Customer's obligations set out in this Agreement) or any third parties; and/or
- (f) problems with the Eave Devices.

9. TERMINATION

9.1. The Company may terminate this Agreement on immediate written notice where the Customer fails to pay any amount due under this Agreement and fails to pay such amount within 10 Business Days of being notified in writing to do so.

- 9.2.** Either party may only terminate this Agreement for convenience by providing written notice to the other party within 90 days of the completion of the Initial Term or Renewal Period (as the case may be) as set out in clause 3.2.
- 9.3.** Either party may terminate this Agreement on immediate written notice where:
- 9.3.1. the other party commits a material breach of this Agreement, and fails to remedy such breach within 30 days of a written request from the affected party to do so;
 - 9.3.2. the other party commits a material breach of this Agreement incapable of remedy; or
 - 9.3.3. the other party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 9.4.** Upon termination of this Agreement:
- 9.4.1. the Customer shall return all Eave Devices and any other of the Company's materials in its possession to the Company at its own cost within 10 Business Days of the date of termination;
 - 9.4.2. the Company shall suspend all of the Customer's access to the Eave Solution;
 - 9.4.3. the Customer shall pay any outstanding Fees.
- 9.5.** Any termination of this Agreement for any reason shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

10. DATA PROTECTION

Processor's obligations

- 10.1.** The parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligation under the Data Protection Legislation.
- 10.2.** The parties agree that for the purposes of the Data Protection Legislation the Customer shall be the Data Controller and the Company shall be the Data Processor in respect of any Personal Data which is transferred from the Customer to the Company in accordance with this Agreement. Such Personal Data is anticipated to include information relating to the contractors and employees of the Customer, as they may be inputted into, or processed in the course of, the various services provided by the Company to the Customer. Such processing shall take place during the provision by the Company of the Eave Solution to the Customer in accordance with this Agreement.
- 10.3.** The Customer consents to the Company appointing third party processors to process the Personal Data under this Agreement. Where the Company appoints a third party to process Personal Data it shall only use Data Processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing meets the requirements of the UK GDPR and ensures the protection of the rights of Data Subjects.

- 10.4.** The Customer warrants to the Company that, at all times it has a lawful basis for the processing of personal data. Where such lawful basis is no longer valid, the Customer shall immediately inform the Company.
- 10.5.** The Company shall:
- 10.5.1. only process the Personal Data for the performance of its obligations under pursuant to this Agreement and in accordance with the written instructions of the Customer, including with regard to transfers of Personal Data to a third country or an international organisation, unless required to do so by any law to which the Company is subject; in such a case, the Company shall inform the Customer of that legal requirement before processing, unless that law prohibits such disclosure from being made;
 - 10.5.2. ensure that persons with access to the Personal Data are subject to a strict duty of confidentiality or are under an appropriate statutory obligation of confidentiality;
 - 10.5.3. ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, having regard to the state of technological developments and the costs of implementing any measures;
 - 10.5.4. ensure that, where it does engage with a third party processor in accordance with clause 10.3, it will enter into a written agreement incorporating the same data protection obligations set out in this Agreement;
 - 10.5.5. assist the Customer in responding to any request from any Data Subject which concerns the exercise of that Data Subject's right under the UK GDPR (subject to the reimbursement by the Customer of all costs reasonably incurred in the course of the same);
 - 10.5.6. assist in ensuring compliance with the Customer's obligations under Articles 32 to 36 of the UK GDPR, including in respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators, (subject to the reimbursement by the Customer of all costs reasonably incurred in the course of the same);
 - 10.5.7. notify the Customer without undue delay after becoming aware of any relevant Personal Data breach;
 - 10.5.8. at the written instruction of the Customer securely delete or return all Personal Data and copies thereof to the Customer on termination of this Agreement unless Union or Member State law requires storage of that Personal Data; and
 - 10.5.9. maintain records of all information necessary to demonstrate compliance with the obligations laid down in Article 28 of the UK GDPR and grant the Customer and its auditors access to the Company's processing facilities to conduct audits and inspections (subject to the reimbursement by the Customer of all costs reasonably incurred in the course of the same); and
 - 10.5.10. immediately inform the Customer if, in its opinion, any instruction given by the Customer infringes the UK GDPR or other Union or Member State data protection provisions.

Data Protection Indemnity

- 10.6.** Each Party agrees to indemnify and keep indemnified and defend at its own expense the other Party against all costs, claims, damages or expenses incurred by the other Party or for which the other Party may become liable due to any failure by the first Party or its employees or agents to comply with any of its obligations pursuant to this clause 10.6. In order to avail itself of this indemnity the claiming party must: promptly notify the indemnifier of any relevant claim of which the indemnified party becomes aware; not make any admission of liability or offer to

settle in respect of any relevant claim without the prior written permission of the indemnifier; grant the indemnifier full control of all relevant proceedings on request, and; provide the indemnifier with such assistance in dealing with such claims as it may reasonably request.

- 10.7.** The parties acknowledge that to the extent that either Party is a Data Processor pursuant to this Agreement it will be reliant on the other, the Data Controller, for direction as to the extent to which the Data Processor is entitled to use and process the relevant Personal Data. Consequently, the Data Processor will not be liable to the Data Controller for any claim brought by a Data Subject arising from any action or omission by the Data Processor, to the extent that such action or omission resulted directly from the Data Controller's instructions.

Ancillary Provisions

- 10.8.** Subject to and in accordance with Data Protection Legislation, the Customer consents to the Company collecting data about Customer's use of the Eave Solution and to it providing such data to any governmental or regulatory body in any fashion that it is required to do in order to comply with any applicable law and regulations.
- 10.9.** The Company shall comply with the Regulation of Investigatory Powers Act 2000 and similar or subordinate legislation or requirements made hereunder and as modified from time to time and Customer consents to the Company doing all such acts as may be required of it to comply with such requirements.

11. TUPE

- 11.1.** Both parties warrant that there will be no relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**), and each party hereby indemnifies the other party against all losses, damages, liabilities, and reasonable costs and expenses arising in connection with any claim (whether successful or not) arising under, or in connection with the application of TUPE.

12. ANTI-BRIBERY

- 12.1.** Each party shall:

- 12.1.1. comply with all applicable laws, regulations, mandatory codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010 (**Relevant Requirements**);
- 12.1.2. have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- 12.1.3. promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of any Order; and
- 12.1.4. immediately notify the other party if a foreign public official becomes one of its officers or employees or acquires a direct or indirect interest in the first party (and the first party warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of any Order).

- 12.2.** Any breach of this clause 12 shall be deemed a material breach of this Agreement.

- 12.3.** For the purposes of this clause 12 a person associated with a party includes any subcontractor of that party.

13. OUTAGES, SERVICE INTERRUPTIONS AND CHANGES TO PLATFORM

- 13.1. Outages or interruptions to the delivery of the Eave Platform may be made by the Company when in its reasonable opinion they are necessary to facilitate improvements to or maintenance of the Eave Platform. The Company will use reasonable endeavours to minimise outages and service interruptions that may be caused by any change to the Eave Platform.
- 13.2. If outages or interruptions are required as described in clause 13.1, the Company will endeavour to schedule them so as to minimise impact on the delivery of the Eave Platform and will notify the Customer of the anticipated commencement time and its estimated duration.
- 13.3. Customer requested interruptions (including, but not limited to, requests for any server to be re-booted) will be fulfilled but will not be considered a break in service for any purpose, nor will such interruptions give rise to any liability on the part of the Company. The Company makes no warranty or representation that such requests will be actioned immediately or, in the Company's sole discretion, at all.

14. MODIFICATION OF TERMS

- 14.1. The terms of this Agreement may be updated by the Company from time-to-time.
- 14.2. Where the Company modifies the terms, it will provide the Customer with no less than 30 days' written notice, and the Customer will be required to accept the modified terms in order to continue using the Eave Solution.
- 14.3. The modified terms shall come into effect the next time the Customer accesses the Eave Solution following expiry of the notice period for the updated terms.

15. ELECTRONIC COMMUNICATION AND NOTICES

- 15.1. The parties agree they intend to be bound by the terms of this Agreement if it is signed, entered into and/or exchanged electronically.
- 15.2. The Customer can direct notices, enquiries, complaints and so forth to the Company as set out in this Agreement. The Company will notify the Customer of a change of details from time-to-time.
- 15.3. The Company will send the Customer notices and other correspondence to the details that the Customer submits to the Company, or that the Customer notifies the Company of from time-to-time. It is the Customer's responsibility to update its contact details as they change.
- 15.4. A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.
- 15.5. Notices must be sent to the parties' most recent known contact details.

16. GENERAL

- 16.1. **Special Conditions.** The parties may agree to any Special Conditions to this Agreement in writing. To the extent that any Special Conditions are inconsistent with the terms of this agreement, the Special Conditions will prevail.
- 16.2. **Assignment.**
 - 16.2.1. The Customer may not assign or otherwise create an interest in this Agreement.
 - 16.2.2. The Company may assign or otherwise create an interest in its rights under this Agreement by giving written notice to the Customer.

- 16.3. Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.
- 16.4. No Joint Venture or Partnership.** The relationship of the parties to this Agreement does not form a joint venture or partnership.
- 16.5. General Assistance.** The Customer shall provide all such assistance, facilities and information to the Company as the Company may reasonably require in order to enable it to carry out its obligations under this Agreement.
- 16.6. Third Party Rights.** No term of this Agreement is intended to confer a benefit on or to be enforceable by, any person who is not a party to this Agreement
- 16.7. Waiver.** No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- 16.8. Further Assurances.** Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.
- 16.9. Governing Law.**
- 16.9.1. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 16.9.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.
- 16.9.3. The parties irrevocably agree that the courts of England and Wales are the most appropriate and convenient courts to settle any dispute or claim, and accordingly, no party will argue to the contrary.
- 16.10. Liability for Expenses.** Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this Agreement.
- 16.11. Counterparts.** This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.
- 16.12. Time.** Time is of the essence in this Agreement.
- 16.13. Severability.** Any clause of this Agreement, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.