

The Customer's attention is particularly drawn to the provisions of clause 11 (Limitation of liability).

1. Definitions and Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Avena: Avena Environmental Limited (Company Number 07475520) whose Registered Office is at 4 Beacon House, Turbine Way, Ecotech Business Park, Swaffham, Norfolk, PE37 7XJ.

Amendment: In-contract amendment as agreed by both parties. Changes to the agreement will only commence post-signature

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the sums payable by the Client pursuant to the Contract;

Client: the person or firm who purchases the Goods and/or Services from Avena.

Commencement Date: the date stated in the Contract or such other date as agreed in writing between Avena and the Client.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.8.

Confidential Material: any Materials deemed from time to time by Avena and the Client to be confidential and/or sensitive in nature.

Contract: the contract between Avena and the Client for the supply of Goods and/or Services in accordance with these Conditions.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

Data Protection Legislation: all applicable Data Protection and Privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy & Electronic Communications Regulations 2003 (SI2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

Force Majeure Event: has the meaning given to it in clause 14.

Hazardous Materials: any materials of a hazardous nature including without limitation, glass, metal, combustible materials, liquid, flammable or corrosive materials or containing any noxious, poisonous or polluting substances, or bio-hazardous materials or any materials that could cause any form of damage, directly or indirectly, to the processing machinery or death or personal injury to any of Avena's operatives.

Initial Period: the initial period of the Contract as set out in the Contract.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Materials: the materials to be collected and destroyed by Avena in accordance with the Contract or as agreed in writing between the parties from time to time and unless otherwise stated in the Contract, "Materials" will only comprise office papers, textile (only) clothing/garments or IT/media waste.

Services: the hire or supply of the Units, collection of the Materials from the Site, the destruction of the Materials and any other ancillary services provided by Avena to the Client comprising the following:

Service Agreement: Avena will supply the Units to the Client and arrange routine periodic collections of the Materials in accordance with the Contract;

Collection Agreement: Avena will carry out routine periodic collections of the Materials from Units owned by the Client or of sacks or boxes either supplied by Avena or the Client in accordance with the Contract;

Project Agreement: Avena will arrange collection or the Client will arrange delivery to an Avena depot of Materials in Units in accordance with the Contract.

Site: the location where Avena will collect the Materials and/or deliver the Goods.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Unauthorised Materials: any materials which do not fall within the definition of Materials or constitute mixed materials as referred to in clause 7.1(m).

Units: the consoles, bins, boxes, sacks or any other storage containers or equipment either owned by Avena and provided to the Client or supplied by the Client to Avena as set out in the Contract or as agreed in writing between the parties from time to time.

1.2 Interpretation:

- A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- A reference to a party includes its personal representatives, successors and permitted assigns.
- A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- A reference to writing or written includes email.
- Where the Client is more than one person the liabilities and obligations under the Contract are joint and several.

2. Basis of Contract, Commencement and Duration

- In consideration of the payment of the Charges by the Client, Avena will provide the Services to the Client in accordance with the Contract.
- Any order constitutes an offer by the Client to purchase the Services in accordance with these Conditions.
- Any order placed by the Client shall only be deemed to be accepted when Avena issues a Client Service Contract which is signed by the Client at which point and on which date the Contract shall come into existence.
- The Contract shall commence on the Commencement Date and continue for the Initial Period and thereafter be automatically renewed for consecutive periods each equivalent in time to the Initial Period (the **Renewal Period**) until either party gives the other not less than 3 months nor more than 6 months prior written notice to terminate the Contract, such notice to expire at the end of the Initial Period or a Renewal Period.
- Any drawings, descriptive matter or advertising media issued by Avena or used in the sales process, for example, without limitation, any security or recycling commitments by Avena and any descriptions of the Services contained in Avena's marketing literature or presentations are for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force and are not to be used by the Client without the prior written consent of Avena.
- These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate under any purchase order, confirmation of order, specification, policies or other document, including any prior agreement(s) or terms and conditions signed by either party or which are implied by trade, custom, practice or course of dealing.
- Any quotation given by Avena shall not constitute an offer and is only valid for a period of 10 Business Days from its date of issue.
- Avena may engage a sub-contractor for the purpose of fulfilling the Contract.

3. Delivery of Units

- Avena shall deliver the Units to the Site or such other site as the parties may agree in writing at any time after Avena notifies the Client that the Units are ready for delivery.
- Any dates quoted for delivery of the Units or the supply of the Services are approximate only, and the time of delivery is not of the essence. Avena shall not be liable for any delay in delivery of the Units or the supply of the Services that is caused by a Force Majeure Event or the Client's failure to provide Avena with adequate delivery instructions including without limitation individual site contact details or any other instructions or information required by Avena that Avena deems that relevant to the supply of the Units or the Services.
- On delivery of any Units Avena will issue keys to the Units to the Client's nominated key holder and if the Client fails to nominate a key holder the keys will be issued to any representative of the Client at Avena's discretion and Avena shall have no liability in such circumstances as to whom the keys are issued to.

4. Repair and Replacement of Units

- Avena warrants that on delivery the Units shall be free from material defects in design, material and workmanship in respect of the use and service they are intended for.
- Subject to clause 4.3, Avena shall, at its option, repair or replace the defective Units if:
 - the Customer gives notice in writing within a reasonable time of discovery that some or all of the Units do not comply with the warranty set out in clause 4.1; and
 - Avena is given a reasonable opportunity of examining such Units.

- Avena shall not be liable for the Units' failure to comply with the warranty in clause 4.1 if:
 - the Client makes any further use of such Units after giving a notice in accordance with clause 4.2;
 - the defect arises because the Client failed to follow Avena's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Units or (if there are none) good trade practice;
 - the Client alters or repairs such Units without the written consent of Avena;
 - the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - the Units differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards; or
 - the Units are made in accordance with any particular specifications provided by the Client.
- Except as provided in this clause 4, Avena shall have no liability to the Client in respect of the Units' failure to comply with the warranty set out in clause 4.1.
- The terms of these Conditions shall apply to any repaired or replacement Units supplied by Avena.
- The Client shall be liable to pay Avena for the cost of the replacement or repair of any Units which have been sold, lost or damaged by the Client in addition to the Charges.
- The Client shall permit Avena, its employees, agents and sub-contractors at all reasonable times to have access to the Units for the purposes of inspection, repair or maintaining the Units.

5. Title and Risk in the Units and the Materials

- The risk in the Units shall pass to the Client on completion of delivery.
- Title to the Units shall not pass to the Client but shall remain with Avena at all times.
- The Client shall:
 - Store or use the Units so that they remain readily identifiable as Avena's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Units;
 - maintain the Units in satisfactory condition and keep them insured against all risks for their full price on Avena's behalf from the date of delivery;
 - notify Avena immediately if it becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(d) and
 - give Avena such information relating to the Units as Avena may require from time to time.
- The Client may not resell, lend, pledge, underlet or otherwise deal with or part with possession of the Units or use the Units other than in the ordinary course of its business.
- If the Client becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(d), then, without limiting any other right or remedy Avena may have:
 - the Client's right to use the Units in the ordinary course of its business ceases immediately, and Avena may at any time:
 - require the Client to deliver up all Units in its possession; and
 - if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Units are stored in order to recover them.
- Title to and risk in the Materials shall remain vested in the Client until such Materials have been destroyed at which point title in the shredded product shall pass to Avena.

6. Supply of Services

- Avena shall use all reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- Avena warrants to the Client that the Services will be provided using reasonable care and skill.
- Avena shall use reasonable endeavours where practically possible to ensure that any waste from the recycling process is not deposited in land fill sites although Avena makes no representation or guarantee that all materials shredded are able to be recycled. Where practically possible materials will be processed in an environmentally approved manner and recycled following all steps taken to apply the waste hierarchy pursuant to regulation 12 of the Waste (England and Wales) Regulations 2011.
- Any materials that are collected by Avena other than in the Units supplied by Avena will be charged separately to the Client on an as and when basis.
- Any materials that are being delivered by the Client to Avena's destruction centres must be pre-booked and agreed by Avena in writing (including specifying the quantity, type and weight of such materials) prior to any such delivery. Avena shall have no liability whatsoever to the Client for any materials that are not accepted by Avena into its secure storage facilities if such materials have not been pre-booked for delivery in accordance with this clause 6.5.
- Avena may change the service provision in cases whereby there is a change in compliance and/or legislation

7. Client's Obligations

- The Client shall:
 - ensure that the terms of any order are complete and accurate;
 - co-operate with Avena in all matters relating to the Services;
 - provide Avena, its employees, agents, consultants and subcontractors, with access to the Site and other facilities as reasonably required by Avena to provide the Services;
 - provide Avena with such information and materials as Avena may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - prepare the Site for the supply of the Services;
 - obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - comply with all applicable laws, including, without limitation, health and safety laws and laws relating to the destruction of 'bonded' or 'duty-bound' materials;
 - keep the Units at the Site in safe custody at its own risk, maintain the Units in good condition until returned to Avena, and not dispose of or use the Units other than in accordance with Avena's written instructions or authorisation;
 - comply with any additional obligations as set out in the Contract;
 - not attempt to repair or modify the Units or remove any identifying marks from the Units;
 - not remove the Units from the Site(s) without the prior written consent of Avena;
 - ensure that the Materials to be collected and disposed of shall be of the type and quantities as specified in the Contract. Unless otherwise stated in the Contract, the Materials must only comprise (a) office papers, (b) textiles (only), clothing or garments or (c) IT/media waste. If waste other than the Materials agreed in writing (**Unauthorised Materials**) is collected in the Units, Avena will advise the Client and either return the Unauthorised Materials to the Client or agree the method of disposal and Avena reserves the right to charge the Client additional charges including downtime in collection and processing.
 - ensure that different types of Materials are not mixed together in the same Units. In the event that Materials are mixed they will be class as Unauthorised Materials.
 - ensure that any Confidential Material is securely stored in the Units provided by Avena and Avena shall have no liability for any breach of security whatsoever and title in the Confidential Materials remains with the Client in accordance with clause 5.6 and the client shall take full responsibility for the security of that Material throughout the entire process. Avena shall not be liable for any breach of security whilst the client accepts responsibility for the title of the Materials.
 - ensure that the Materials do not contain any Hazardous Materials. Where the Client has included in the Materials any Hazardous Materials Avena shall be entitled, at the Client's cost, to:
 - return or arrange for the return of the Hazardous Materials to the Client; or
 - arrange for the destruction of the Hazardous Materials, if necessary by a third party with expertise in respect of the destruction of such Hazardous Materials; or
 - require the Client to collect the Hazardous Materials;
 - ensure that the Materials do not contain any materials that could cause damage including, without limitation, fire, directly or indirectly to the shredding equipment of Avena or cause death or injury to Avena's employees, agents or sub-contractors. Avena reserves the right to charge the Client additional charges to cover any breakdown or repair of Avena's shredding equipment in such circumstances;
 - insure the Units throughout the period of any Contract with Avena to their full replacement value with an insurer of repute against loss or damage by accident, fire and theft and other reasonable risks and hold on trust for Avena all insurance proceeds paid out under such policies. The Client shall notify its insurers that the Units are on hire or supply from Avena and request the insurers endorse a note of such interest on the policy of insurance naming Avena as loss payee. The Client shall indemnify Avena against any loss or damage to the Units not recoverable under the Client's insurance policy; and

- (r) as the data controller undertake all necessary due diligence enquiries of Avena as the Client is required to do so under Data Protection Legislation.
- 7.2 In the event of the unauthorised removal of the Units from the Site(s), the Client shall be responsible for all costs, claims and demands in respect of the return or reinstatement of the Units to the Site(s).
- 7.3 Avena shall have no liability, howsoever caused, for any unlawful or unauthorised access to Confidential Material stored in any Units provided by Avena while such Confidential Material is in the possession of the Client.
- 7.4 Avena shall have no liability whatsoever for the destruction of any Materials that should have been lawfully or contractually retained by the Client or where the Client should have retained any Intellectual Property Rights or Materials that should have been lawfully declared to UK Government HM Customs & Excise or any other government or legal body whether inside or outside the UK.
- 7.5 The Client agrees that they have fully disclosed to Avena all relevant matters relating to the destruction of the Materials prior to the entering into of this Contract and such disclosure shall be a continuing obligation on the part of the Client.
- 7.6 The Client shall remain liable for any breaches of Intellectual Property Rights and claims relating to the destruction of the Materials prior to their destruction even if such claims arise after the destruction of the Materials.
- 7.7 Unless otherwise agreed in writing between the Client and Avena the Client hereby declares that they are the legal owners of the Materials.
- 7.8 The Client agrees that they have full legal authority to contract with Avena for the destruction of the Materials and that the purpose of destruction is for lawful reasons.
- 7.9 If Avena's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation as set out in clause 7.1 (Client Default):
- without limiting or affecting any other right or remedy available to it, Avena shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays Avena's performance of any of its obligations;
 - Avena shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Avena's failure or delay to perform any of its obligations as set out in this clause 7.4;
 - the Client shall reimburse Avena on written demand for any costs or losses sustained or incurred by Avena arising directly or indirectly from the Client Default; and
 - for the avoidance of doubt the Charges shall continue to apply and be payable to Avena in the event of any Client Default.

8. Payment of the Charges

- 8.1 The Client shall pay the Charges in accordance with the payment terms as set out in the Contract.
- 8.2 Subject to clause 8.3, the Charges will be fixed for the Initial Period.
- 8.3 Avena may increase the Charges at any time to reflect any changes in or introduction of new legislation or regulations with which it has to comply, increases in costs incurred by Avena such, but not limited to, increases in waste disposal costs, fuel costs, vehicle excise duty or insurance costs. In the event of a Charge increase, the Client shall be entitled to terminate the Contract upon 3 months written notice to Avena, such notice to be given within 5 Business Days of the receipt by the Client of the invoice with the price increase. Avena reserves the right to charge the Client an annual waste transfer note fee to assist with the administration, storage and upkeep of records held by Avena.
- 8.4 The Client shall pay each invoice submitted by Avena:
- within 30 days of the date of the invoice unless otherwise agreed in writing between Avena and the Client; and
 - in full and in cleared funds to a bank account nominated in writing by Avena, and time for payment shall be of the essence of the Contract.
- 8.5 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Avena to the Client, the Client shall, on receipt of a valid VAT invoice from Avena, pay to Avena such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 8.6 If the Client fails to make a payment due to Avena under the Contract by the due date, then, without limiting Avena's remedies under clause 12 (Termination), the Client may at the discretion of Avena either pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment at the rate of 2% per month cumulative or pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8.8 Payment by the Client of an invoice rendered by Avena or the acceptance of a unit on site or the physical acceptance of the Services at any of the Client's service location(s) is evidence of the acceptance by the Client of these Conditions irrespective of whether the Client has signed the Contract or any prior signed contracts and policies.
- 8.9 Should the Client require that a purchase order be issued in respect of the Charges the Client shall notify Avena of such in writing before the Commencement Date. For the avoidance of doubt the failure of the Client to provide Avena with a purchase order shall not void these Conditions having full force and effect but may cause delays to the provision of the Services pursuant to the Contract.
- 8.10 Avena reserves the right to suspend services in instances where either:
- the Client fails to pay and/or legal proceedings have commenced; and/or
 - Avena is informed, formally or informally, that the Client is pending Administration or has instructed Receivers Services will remain suspended until payment of invoice is settled and/or Administration/Receivership is avoided. Where this occurs, services will resume from the point of suspension. For avoidance of doubt, the contract will re-start with the remaining term being calculated from the point at which suspension was applied.

9. Data protection

- 9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not replace, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 9.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and Avena is the data processor.
- 9.3 Without prejudice to the generality of clause 9.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data and Confidential Materials (the Data) to Avena for the duration and purposes of the Contract. The signature of the Client's employees or representatives on Avena's collection document is evidence of the Client's compliance with this clause 9.3 and permission for the Materials to be removed from the Site(s) by Avena for processing by way of destruction. For the avoidance of doubt, Avena shall have no liability to the Client for the destruction of any Materials which should have been lawfully and securely retained by the Client.
- 9.4 Without prejudice to the generality of clause 9.1, Avena shall, in relation to any data processed in connection with the performance by Avena of its obligations under the Contract:
- ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of the Data and against accidental loss of the Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - ensure that all personnel who have access to and/or process the Data are obliged to keep the Data confidential;
 - not transfer any Data outside of the UK without prior destruction unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - the Client or Avena has provided appropriate safeguards in relation to the transfer;
 - the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
 - Avena complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Data that is transferred; and
 - Avena complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Data; and
 - assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.

10. Confidentiality

- 10.1 Save for reference to each party being either the Client or the Supplier of the other party, each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.2.
- 10.2 Each party may disclose the other party's confidential information:
- to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10; and
 - as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11. Limitation of Liability: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 11.1 The restrictions on liability in this clause 11 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- death or personal injury caused by negligence; and
 - fraud or fraudulent misrepresentation.
- 11.3 Avena shall have no liability whatsoever for any import taxes or duties in respect of Materials collected by Avena or delivered by the Client from any country outside the United Kingdom either at the time of entry or any time thereafter.
- 11.4 Subject to clauses 11.2 and 11.3, Avena's total liability to the Client in respect of all breaches of duty occurring within any contract year shall not exceed either the limits applicable on any relevant insurance policies held by Avena or where such liabilities are not indemnified under such insurance policies then Avena's total liability to the Client in respect of all breaches of duty occurring with any Contract year shall not exceed the cap as referred to in clause 11.5.
- 11.5 In clause 11.5:
- cap. The cap is the sum of ten per cent (10%) of the total Charges in the contract year in which the breaches occurred;
 - contract year. A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it; and
 - total Charges. The total Charges means all sums paid by the Client and all sums payable under the Contract in respect of Services actually supplied by Avena, whether or not invoiced to the Client.
- 11.6 This clause 11.6 sets out specific heads of excluded loss:
- Subject to clause 11.2, the types of loss listed in clause 11.6 (b) are wholly excluded by the parties.
 - The following types of loss are wholly excluded:
 - loss of profits;
 - loss of sales or business;
 - loss of agreements or contracts;
 - loss of anticipated savings;
 - loss arising from a Force Majeure Event;
 - loss of or damage to goodwill; and
 - indirect or consequential loss.
- 11.7 Avena has given commitments as to compliance of the Units and Services with relevant specifications in clause 4 and clause 6. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.8 Unless the Client notifies Avena that it intends to make a claim in respect of an event within the notice period, Avena shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire one (1) month from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 11.9 The Client shall indemnify Avena against all or any of the following:
- any loss or damage to the Units, howsoever arising, including any loss or damage which is not recoverable under the policy of insurance referred to in clause 7.1(h) including where the Client has failed to take out such a policy of insurance;
 - any and all damage, loss, liability or expense which Avena may suffer or incur as a result of any claim by a third party arising out of or in connection with the destruction of any Confidential Material;
 - any and all damage, loss, liability or expense which Avena may suffer or incur as a result of a claim by a third party;
 - any and all damage, loss, liability or expense which Avena may suffer or incur as a result of any breach of this Contract by the Client; and
 - all costs and expenses (including legal costs on a full indemnity basis) incurred by Avena in enforcing the terms of this Contract and these Conditions.
- 11.10 This clause 11 shall survive termination of the Contract.

12. Termination

- 12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 21 days after receipt of notice in writing to do so;
 - the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.2 Without affecting any other right or remedy available to it, Avena may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment.
- 12.3 Without affecting any other right or remedy available to it, Avena may suspend the supply of Services under the Contract or any other contract between the Client and Avena if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(d), or Avena reasonably believes that the Client is about to become subject to any of them.

13. Consequences of termination

- 13.1 On termination of the Contract:
- the Client shall immediately pay to Avena all of Avena's outstanding unpaid invoices and any interest charged and, in respect of Services supplied but for which no invoice has been submitted, Avena shall submit an invoice, which shall be payable by the Client immediately on receipt;
 - the Client shall pay the amount of the Charges that would have been payable by the Client to Avena for the period between the date of termination of the Contract and the expiry of the Initial Period or the Renewal Period (as the case may be) for which Avena shall submit an invoice which shall be payable by the Client immediately on receipt;
 - the Client shall return all Units supplied to the Client to Avena in good condition. If the Client fails to do so, then Avena may enter the Client's Site and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract. Avena reserves the right to charge the Client for the replacement and/or repair costs of any Units which are not returned or are returned damaged.
- 13.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

14. Force Majeure

- 14.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a Force Majeure Event).

15. General

- 15.1 Assignment and other dealings
- Avena may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
 - The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Avena.
- 15.2 Notices
- Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email.
 - (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 10.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 15.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
 - (c) This clause 15.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 15.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 15.3 shall not affect the validity and enforceability of the rest of the Contract.
- 15.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 15.6 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, policies, representations, and understandings between them, whether written or oral, relating to its subject matter and clause 8.8 shall apply with regard to the acceptance by the Client of these Conditions.
 - (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
 - (c) Nothing in this clause shall limit or exclude any liability for fraud.
- 15.7 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 15.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 15.9 **Governing law.** The Contract 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.
- 15.10 **Jurisdiction.** 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 the Contract or its subject matter or formation.