

Terms and Conditions of Support Services

1. Definitions and Interpretation

1.1 All terms used in the Agreement which are set out and defined on the first page of the Agreement shall have the meaning so given to them (whether used in plural or singular form).

1.2 In the Agreement, unless the context otherwise requires, the following terms (whether used in plural or singular form) shall have the following meanings:

“Affiliate” means any person or entity which, from time to time, directly or indirectly Controls the Customer, is Controlled by the Customer, or is under direct or indirect common Control with the Customer;

“Agreement” means the Support Services Agreement (incorporating these Terms) which has been signed by the Customer and Nviron;

“Applicable Person” means any person who or which is employed or engaged by or on behalf of the Customer from time to time (other than Nviron and its representatives);

“Contracted Days” has the meaning set out in clause 12.1;

“Control” means that a person or entity possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the Customer, whether through the ownership of voting shares, by contract or otherwise (and “Controls” and “Controlled” shall be construed accordingly);

“Controller” has the meaning given to such term in the Data Laws;

“Data Laws” means all applicable laws and regulations relating to the processing and privacy of personal data, including the General Data Protection Regulation (EU) 2016/679 and any applicable laws and regulations which supplement and/or replace such Regulation;

“Data Subject” has the meaning given to such term in the Data Laws;

“Dispute” has the meaning given to such term in clause 22.1;

“Equipment & Technologies” means the hardware, software and/or technology which are covered by the relevant Services, as set out in Schedule 3;

“Expected Usage” means, where applicable, the amount or parameters of use expected to be made by the Customer of the relevant Services (as identified in the description of the relevant Services in Schedule 1);

“Extended Term” means the longer of: (a) a period of 12 (twelve) months commencing on the expiry of the Minimum Term or (as the case may be) commencing on the date on which the previous such 12-month period expires; and (b) where the Services include or comprise the provision of any subscriptions (including Microsoft Cloud Subscriptions), the minimum duration of any such subscription remaining after the expiry of such 12-month period (and for the avoidance of doubt, where there is more than one applicable subscription then the longest such minimum duration shall apply);

“Intellectual Property Rights” means patents, rights in inventions, processes and formulae, registered design rights, unregistered design rights, trademarks and service marks (whether registered or not), goodwill, domain names, copyright, rights in software, rights in and to databases (including all applications for the foregoing) and all and any other intellectual property rights subsisting at any time in any part of the world;

“Managed Support Services” means the services described as such in Schedule 1;

“Minimum Term” means the longer of: (a) a period of 36 (thirty-six) months from and including the Commencement Date; and (b) where the Services include or comprise the provision of any subscriptions (including Microsoft Cloud Subscriptions), the minimum duration of any such subscription remaining after the expiry of such 36-month period (and for the avoidance of doubt, where there is more than one applicable subscription then the longest such minimum duration shall apply);

“Personal Data” has the meaning given to such term in the Data Laws;

“Portal” means (where applicable) the online portal made available to the Customer by Nviron in order to access and view certain functionalities (including the management of any third-party subscriptions) relating to the Services;

“Processing” has the meaning given to such term in the Data Laws (and “Process” shall be construed accordingly);

“Processor” has the meaning given to such term in the Data Laws;

“Relevant Data Subject” means a Data Subject in respect of the Relevant Personal Data; and

“Relevant Items” means such of the Equipment & Technologies which are owned by Nviron (or provided by or on behalf of Nviron), as specified in Schedule 3;

“Relevant Personal Data” means Personal Data which is Processed by a party in connection with the Agreement;

“Relevant Support” means any applicable warranties, maintenance agreements, manufacturer support, replacement parts, software provider support, software licences or updates and anything similar to any of the foregoing which are supplied by a third party and which form part of the Services provided in respect of the Relevant Items;

“Security Measures” has the meaning given to such term in clause 21.5.4;

“Services” means the services applicable to the Agreement (as shown marked on the Agreement) as more particularly described in Schedule 1;

“Services IPR” means all Intellectual Property Rights created and/or developed in connection with and/or as a result of the provision of the Services (including any guides, instruction booklets and training materials created by Nviron);

“Technical Services” means the services described as such in Schedule 1; and

“Terms” means these terms and conditions to the Agreement.

1.3 In the Agreement (except if and to the extent that the context otherwise requires):

- 1.3.1 references to a numbered clause are to a clause of these Terms so numbered; and
- 1.3.2 references to a numbered Schedule are to a schedule to the Agreement so numbered and references to a numbered paragraph are to a paragraph so numbered of the Schedule in which such paragraph reference appears (or of another Schedule if so stated). the words ‘including’ and ‘include’ and words of similar effect shall be deemed have the words “without limitation” following them;
- 1.3.3 the words ‘other’, ‘otherwise’ and ‘such as’ are illustrative and shall not limit the sense of the words preceding them;
- 1.3.4 the words ‘other’, ‘otherwise’ and ‘such as’ are illustrative and shall not limit the sense of the words preceding them;
- 1.3.5 references to persons shall include natural persons, firms, companies, associations and corporate or unincorporated bodies (whether or not having separate legal personality);
- 1.3.6 words importing the singular shall include the plural and vice versa;
- 1.3.7 references to ‘writing’ or ‘written’ include email; and
- 1.3.8 any reference to any legislative provision is a reference to it as it is in force from time to time (taking account of any amendment, extension or re-enactment) and includes any subordinate legislation for the time being in force made under it.

1.4 The Schedules to the Agreement (and these Terms) form part of the Agreement and shall have full force and effect as if set out in the body of the Agreement. Any reference to the Agreement shall include its Schedules and these Terms.

1.5 In the event of any inconsistency between the provisions of these Terms and any of the Schedules to the Agreement, then these Terms shall prevail.

1.6 The headings in the Agreement (including, for the avoidance of doubt, in these Terms) are for ease of reference only and shall not affect their construction or interpretation.

2. Commencement and Duration

2.1 The Agreement shall commence on the Commencement Date and (unless terminated earlier pursuant to clause 0) shall continue for the Minimum Term and thereafter for each Extended Term unless and until terminated pursuant to clause 2.2.

2.2 Each party shall be entitled to terminate the Agreement on the expiry of the Minimum Term or on the expiry of any Extended Term (as the case may be) by giving not less than 90 (ninety) days’ prior written notice to the other.

- 2.3 For the avoidance of doubt, where any notice served by a party pursuant to clause 2.2 is not served in sufficient time to give the full period of notice (as required by such clause) prior to the expiry of the Minimum Term or (as the case may be) the relevant Extended Term, then such notice shall not take effect until the expiry of the Extended Term which follows the date of service of such notice.
- 2.4 Where the Services include or comprise the provision of any subscriptions (including Microsoft Cloud Subscriptions):
- 2.4.1 if the Customer wishes to amend or substitute any such subscription, then it shall give Nviron not less than 30 (thirty) days' written notice prior to the expiry of the relevant subscription period, specifying which subscription, specifying the changes required; and
- 2.4.2 if the Customer wishes to terminate any such subscription (without terminating the Agreement or any other such subscriptions), then it shall give Nviron not less than 90 (ninety) days' written notice prior to the expiry of the relevant subscription period, specifying which subscription(s) are to be terminated.
- 2.5 For the avoidance of doubt, all such subscriptions shall automatically renew for the relevant subscription period unless and until (as applicable) the Customer gives notice of termination of the Agreement pursuant to clause 2.2 (or the Agreement otherwise terminates in accordance with its terms), the Customer gives notice of termination of any specific subscriptions pursuant to clause 2.4.2, or the Customer gives notice to amend or substitute any specific subscriptions pursuant to clause 2.4.1. The Customer acknowledges and agrees that, in such circumstances, the Minimum Term and/or the Extended Term (as applicable) may be affected accordingly.
- 3. Supply of the Services**
- 3.1 In consideration of the payment by the Customer of the Charges in accordance with clause 6, Nviron shall, with effect from the Commencement Date, supply the Services to the Customer.
- 3.2 Subject always to the relevant provisions of the Agreement (including clause 4.5) Nviron shall supply the Services with reasonable skill and care.
- 3.3 Nviron shall, in supplying the Services, comply with all applicable laws in force from time to time relating to such supply.
- 4. Nature and Scope of the Services**
- 4.1 The Customer acknowledges and agrees that (save if and to the extent otherwise agreed in writing by Nviron or stipulated as part of the Services):
- 4.1.1 Nviron is under no obligation to provide the Services at the Location, or at or from any other particular locations;
- 4.1.2 Nviron is under no obligation to provide the Services at any particular time or times; and
- 4.1.3 subject to clause 4.1.2, the Services shall be provided during normal working hours on Nviron's normal working days (08.00 – 18.00 weekdays excluding bank and public holidays) unless Nviron elects, at its absolute discretion, to provide the Services outside of those hours from time to time.
- 4.2 Any dates quoted for supply or completion of any particular aspect of the Services are approximate only, and the time of supply or completion may not be made of the essence by notice. No warranty is given by Nviron that the Services shall be provided on a continuous basis or on any specific dates during the term of the Agreement (except if and to the extent otherwise agreed by Nviron in writing).
- 4.3 For the purposes of the Agreement, the Customer acknowledges and agrees that (except if and to the extent otherwise set out in a separate written agreement which is signed by both parties):
- 4.3.1 Nviron's responsibility for providing services is limited to the Services as set out in the Agreement;
- 4.3.2 each element of the Services is limited to the scope of the hardware and/or software specifically referred to in respect of such Services; and
- 4.3.3 accordingly, Nviron shall not be required to undertake any other services or have any responsibility for any other services, or for any hardware or software not so specified.
- 4.4 For the avoidance of doubt (but without prejudice to any other provision of the Agreement), matters which are specifically excluded from the scope of the Services are set out in Schedule 2.
- 4.5 Without prejudice to clauses 4.3 and 4.4, the Customer acknowledges and agrees that (save if and to the extent otherwise agreed in writing by Nviron or expressly stipulated in the Agreement):
- 4.5.1 the Technical Services are limited to advising on IT infrastructure matters only and Nviron does not take any responsibility for advising or assisting in respect of any of the Customer's software applications; and
- 4.5.2 Nviron is not required to maintain, upgrade, renew or replace the Customer's IT hardware infrastructure or any of the Customer's software applications.
- 4.6 Where the Services include or comprise Microsoft Cloud Subscriptions, the Customer authorises Nviron (in accordance with the terms and conditions of the Customer's Microsoft Customer Agreement) to act as the Customer's Microsoft Partner to place orders for Microsoft licenses and other services on its behalf through the CSP (Cloud Solution Provider) program. For the avoidance of doubt, the Customer shall be responsible for compliance with all applicable terms and conditions relating to such licences and services and for payment of all associated charges.
- 4.7 The Customer shall, promptly upon request by Nviron, provide Nviron with such administrative access to the Customer's tenancy or administrative platform which Nviron requires from time to time in order to provide the Services.
- 4.8 Nviron gives no warranty in respect of the availability or functionality of the Portal and (for the avoidance of doubt) Nviron shall have no liability to the Customer if the Customer is unable to access the Portal at any time or if the Portal is otherwise unavailable or not properly functioning at any time for any reason. Nviron may, without liability to the Customer, terminate the provision of the Portal at any time on giving notice to the Customer.
- 5. General Obligations of the Customer**
- 5.1 The Customer shall comply with the Customer's responsibilities as set out in Schedule 6.
- 5.2 The Customer shall (and where applicable shall procure that any Applicable Person shall), at no cost to Nviron:
- 5.2.1 where applicable, ensure that the Location is safe and is adequately prepared for the supply of the Services and for the efficient delivery, unloading and installation of the Relevant Items;
- 5.2.2 provide Nviron with all assistance, information, criteria and specifications reasonably required by Nviron to enable it to supply the Services;
- 5.2.3 (except if and to the extent otherwise expressly stated to be the responsibility of Nviron in respect of any applicable Services) obtain and maintain for the term of the Agreement any licences, registrations, permits, authorisations or approvals necessary to enable Nviron to supply the Services;
- 5.2.4 co-operate with Nviron in good faith in all respects in connection with the supply by Nviron of the Services; and
- 5.2.5 provide Nviron with:
- 5.2.5.1 such access to the Location and Applicable Persons;
- 5.2.5.2 such drawings, designs, specifications, information, materials and criteria; and
- 5.2.5.3 such facilities and utilities (including computer facilities, telecommunications and other resources),
- which (in each case) Nviron requires in order supply the Services and, where applicable, to deliver and install the Relevant Items in accordance with the Agreement.
- 5.3 For the avoidance of doubt but without prejudice to the generality of clause 5.2, the Customer shall (as between the parties) be solely responsible for the quality and accuracy of all data, images and information received by Nviron from (or on behalf of) the Customer in connection with the Services.
- 5.4 The Customer shall comply with all applicable laws and regulatory requirements relating to its obligations under, or as contemplated by, the Agreement.
- 5.5 The Customer shall indemnify Nviron in full on demand and shall keep Nviron indemnified and held harmless against all actions, claims, damages, losses and expenses arising as a result of or in connection with any claim that any data, materials, information or images provided by the Customer or on its behalf (whether or not actually held on the servers provided by Nviron in connection with the Services) infringes the rights of any third party (including any third party's Intellectual Property Rights).
- 5.6 If, at any time, the Customer fails to comply with its obligations under the Agreement (including this clause 5 and its responsibilities as set out in Schedule 6) then, without prejudice to any other right or remedy available to Nviron:
- 5.6.1 Nviron shall have no liability for any associated delays in performing or completing the applicable Services and the time for performance or completion of the applicable Services shall be deemed to be extended on a pro-rata basis to the extent necessary to accommodate the period of any such delays;
- 5.6.2 Nviron shall not be obliged to provide any services (including in respect of the Services) if and to the extent relating to matters for which the Customer has failed to comply with its obligations; and
- 5.6.3 if and to the extent that Nviron does agree to provide any such services:
- 5.6.3.1 the Customer shall pay Nviron's reasonable additional charges for such services; and
- 5.6.3.2 (without prejudice to clause 5.6.3.1) the provisions of the Agreement (including clause 15) shall apply to any such services and references to the Services shall be construed accordingly.
- 5.7 The Customer shall be solely responsible for choosing the level of services required which are adequate for its requirements and for ensuring that the Services are suitable for those purposes (even if guidance and recommendations are purported to be given by Nviron).
- 5.8 Where the Customer uses the Portal, it shall at all times comply with the terms and conditions applicable to such use. The Customer shall indemnify Nviron in full on demand and shall keep Nviron indemnified and held harmless against all actions, claims, damages, losses and expenses arising as a result of or in connection with any breach of such terms and conditions by the Customer (including any of its personnel and contractors).
- 5.9 The Customer shall ensure that all Portal log-in credentials, accounts, passwords or other access information are kept secure and confidential and are not disclosed to any third party. The Customer shall be solely responsible for all actions undertaken using the Portal related to any unauthorised use of such log-in credentials, accounts, passwords or other access information.
- 5.10 The Customer shall be fully responsible for all use of the Portal by its personnel and contractors and for all actions undertaken by its personnel and contractors in connection with such use (including for any additional products, services, software licences or subscriptions ordered using the Portal). For the avoidance of doubt, the Customer shall be solely liable to pay for all applicable charges for any such additional products, services, licences or subscriptions which are ordered using the Portal.
- 5.11 Except if and to the extent expressly stated in writing to form part of the

- Services, the Customer shall be solely responsible for ensuring that, throughout the term of the Agreement:
- 5.11.1 all of the Equipment & Technologies (except the Relevant Items) are maintained as the current versions supported by the relevant manufacturer or licensor, with all applicable updates and patches applied in a timely manner; and
- 5.11.2 it has in place all applicable warranties, maintenance agreements, manufacturer support (and similar) to ensure that such hardware and software are so maintained.
- 5.12 Without prejudice to clause 5.6 and notwithstanding any other provision of the Agreement, the Customer acknowledges and agrees that it shall solely accept all risk in respect of (and accordingly shall be solely responsible and liable for) any breakdowns, defects, bugs, issues, lack of security, outdated software, lack of compatibility and any other matter if and to the extent arising out of or in connection with any failure of the Customer to comply with clause 5.11.
- 6. Charges and payment**
- 6.1 The Customer shall pay Nviron the Charges for the Services in accordance with this clause 6.
- 6.2 The Customer acknowledges and agrees that:
- 6.2.1 the Charges are based on the Expected Usage (where applicable in respect of any Services); and
- 6.2.2 in the event that the relevant Services actually provided by Nviron (based on Nviron's records) exceed the Expected Usage then the Charges for such Services shall be increased on a pro-rata basis by an amount equal to the percentage amount by such the Expected Usage has been exceeded in the relevant period. For the purposes of illustration but without prejudice to the foregoing, if the relevant Services provided exceed the Expected Usage by 10% in any relevant period then the Charges for such Services in such period shall be increased by 10%.
- 6.3 For the avoidance of doubt (but without limitation and without prejudice to any other right or remedy of Nviron), clause 6.2.2 shall apply to any additional time spent by Nviron in connection with the provision of the Services if and to the extent that Nviron is delayed in performing any aspect of the Services where such delay is caused by or contributed to by any act or omission of the Customer (including, for the avoidance of doubt, any failure of the Customer to comply with any of its obligations under clause 5) or by Nviron acting on the Customer's instructions.
- 6.4 Unless otherwise expressly stated to be fixed (or otherwise agreed in writing by the parties), Nviron may (on giving notice to the Customer at any time) increase the Charges, with effect from each anniversary of the Commencement Date, by:
- 6.4.1 a percentage amount equal to the percentage increase, if any, of the Retail Prices Index or the Consumer Prices Index (whichever is the higher) as published on such anniversary and measured in respect of the previous twelve-month period; and
- 6.4.2 an amount equal to the amount of any increase of any charges incurred by Nviron in respect of its supply of the Services (including, for the avoidance of doubt, any costs of any software licensed to Nviron which it deploys in connection with the Services).
- 6.5 For the avoidance of doubt:
- 6.5.1 any increase of the Charges pursuant to clause 6.4 shall apply to the amount of the Charges applicable as at the relevant anniversary (including as previously increased pursuant to such clause); and
- 6.5.2 all references in the Agreement to the 'Charges' shall mean the Charges as increased pursuant to clauses 6.2, 6.4 and/or 25.5 (and shall be payable by the Customer accordingly).
- 6.6 In addition to payment of the Charges set out in Schedule 5, the Customer shall reimburse Nviron for any expenses incurred by Nviron in connection with the provision of the Services.
- 6.7 In respect of Charges relating to any Microsoft Cloud Subscriptions which are provided as part of the Services and which commence part-way through a month, Nviron shall be entitled to invoice the Customer for such subscriptions on a pro-rata basis based on the number of days in such month that each subscription is in effect for (in respect of the commencement of each subscription and on termination of the Agreement). Such invoices may be raised in the relevant part-month or in the subsequent month.
- 6.8 The Customer shall pay each invoice submitted by Nviron within the Payment Period. Notwithstanding any other provision of the Agreement, the Payment Period shall not apply and payment of Nviron's invoices shall be due immediately if either party has served notice to terminate the Agreement for any reason (and regardless of whether the relevant invoice was submitted before or after the service of such notice). Payment shall be made to such bank account as is specified on the invoice.
- 6.9 Payment by the Customer shall be deemed not to have been received unless and until Nviron has received cleared funds.
- 6.10 The Charges are stated exclusive of any applicable value added tax and any other applicable taxes and duties or similar charges, which shall be payable by the Customer in addition when it is due to pay for the Charges, at the prevailing rate from time to time in force.
- 6.11 All Charges shall be paid by the Customer in full without any deduction or withholding other than as required by law. The Customer shall not be entitled to assert any rights of, set-off or counterclaim against Nviron in an attempt to justify withholding payment of any Charges in whole or in part.
- 6.12 If the Customer fails to pay Nviron any sum due pursuant to the Agreement on the due date for payment then, without prejudice to any other right or remedy available to Nviron, Nviron may:
- 6.12.1 terminate the Agreement or suspend any further supply of Services until payment has been made in full; and/or
- 6.12.2 charge the Customer interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7. Customer Contacts**
- 7.1 The Customer shall nominate a representative who shall be responsible for acting as the main point of contact for the Customer on a day-to-day basis in connection with the Agreement (including managing and co-ordinating the parties' relationship with each other and meeting with Nviron's representatives whenever desirable in order to address any significant matters).
- 7.2 As at the Commencement Date:
- 7.2.1 the representative appointed by the Customer for the purposes of clause 7.1 shall be the person specified as the Primary Contact in Schedule 7; and
- 7.2.2 other relevant points of contact for the Customer (which shall also be relevant for the purposes of escalating any Dispute in accordance with clause 22.1) are also set out in Schedule 7.
- 7.3 The Customer may change its representative referred to in clause 7.2.1 (or any other points of contact referred to in clause 7.2.2) by giving written notice to Nviron (and whenever practicable shall give reasonable notice in advance of any such change taking effect).
- 8. Variations to Services**
- 8.1 In the event that the Customer wishes to implement any changes to the Services (or wishes Nviron to provide any services in addition to the Services), then it shall so notify Nviron and Nviron shall discuss and evaluate such request with the Customer. Provided that Nviron approves the request (which approval shall not be unreasonably withheld or delayed), the changes or additional services (as the case may be) shall be implemented in such manner and in accordance with such timescales and at such cost as shall be agreed between the parties in writing. If and to the extent that such changes or additional services are so agreed, the provisions of the Agreement (including clause 15) shall apply thereto and references to the Services shall be construed accordingly.
- 9. Customer Warranties**
- 9.1 The Customer warrants and represents to Nviron that, as at the date of the Agreement and throughout its term:
- 9.1.1 it has full authority and capacity (and, where applicable, has obtained all necessary licences, authorisations or approvals from any third party) to enter into the Agreement and to receive the Services from Nviron in accordance with the Agreement (including any licences, registrations, permits, authorisations or approvals referred to in clause 5.2.3; and
- 9.1.2 the implementation of the Services in accordance with any drawings, designs, specifications, information, materials and criteria provided by the Customer will not infringe the rights of any third party (including any third party's Intellectual Property Rights).
- 10. Relevant Items**
- 10.1 This clause 0 applies to such of the Relevant Items which, at any time, are sited at the Location (and references in this clause 0 to the 'Relevant Items' shall be construed accordingly).
- 10.2 The Customer acknowledges and agrees that:
- 10.2.1 the Relevant Items shall be at the risk of the Customer from the time of delivery to the Location until such point as they are returned to Nviron's possession;
- 10.2.2 ownership of the Relevant Items shall not pass to the Customer at any time; and
- 10.2.3 Nviron (and any third party with a valid interest in the Relevant Items) may at any time remove, replace, upgrade or add to the Relevant Items (provided always that this does not materially adversely affect the provision of the Services).
- 10.3 The Customer shall at all times:
- 10.3.1 hold the Relevant Items on a fiduciary basis on trust as Nviron's bailee;
- 10.3.2 store the Relevant Items in such a way that they remain readily identifiable as the property of Nviron or its suppliers;
- 10.3.3 keep the Relevant Items in good condition, in a safe and suitable location; and
- 10.3.4 keep the Relevant Items insured on Nviron's behalf with a reputable insurer for their full price against all risks to the reasonable satisfaction of Nviron (and promptly produce evidence of such insurance to Nviron on request).
- 10.4 The Customer shall not at any time without the prior written consent of Nviron:
- 10.4.1 use any Relevant Items for any purposes other than in accordance with the guidance or instructions of the relevant manufacturer or licensor;
- 10.4.2 permit any third party or any staff of the Customer to have access to, or any use of, the Relevant Items;
- 10.4.3 undertake or attempt to undertake any updates, repairs, alterations or maintenance to the Relevant Items;
- 10.4.4 sell or sub-let the Relevant Items or part with possession or control of the Relevant Items;
- 10.4.5 move the Relevant Items from the Location;
- 10.4.6 use the Relevant Items for any purposes other than as expressly approved in writing by Nviron;
- 10.4.7 use or attempt to use any cables, accessories or documentation supplied with or forming part of the Relevant Items for any purpose other than as part of the proper authorised use of the Relevant

- Items as referred to in clause 10.4.6;
- 10.4.8 remove, destroy, damage deface, obstruct, alter or add to:
- 10.4.8.1 any cables, accessories or documentation supplied with or forming part of the Relevant Items; and/or
- 10.4.8.2 any identifying or proprietary notices affixed to the Relevant Items (including any trade marks or trade names of Nviron or of the manufacturer or supplier of the Relevant Items);
- 10.4.9 do (or permit to be done) any act or thing which will or may jeopardise the right, title and/or interest of Nviron in the Relevant Items;
- 10.4.10 create or allow the creation of any mortgage, charge, lien or other security interest in respect of the Relevant Items;
- 10.4.11 suffer or permit the Relevant Items to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process; or
- 10.4.12 combine the Relevant Items with any other equipment or software.
- 10.5 The Customer grants Nviron, its suppliers, agents and representatives an irrevocable licence at any time (both during and after the term of the Agreement) to enter the Location or any of the Customer's other premises where the Relevant Items are (or may be) located in order to inspect, access, maintain and/or remove them.
- 10.6 For the avoidance of doubt (but without prejudice to the generality of clause 17.6) on termination of the Agreement, howsoever caused, the Customer's obligations and Nviron's rights contained in this clause 0 shall remain in effect.
- 11. Support for Relevant Items after the Minimum Term**
- 11.1 Notwithstanding any other provision of the Agreement, the Customer acknowledges and agrees that:
- 11.1.1 some or all of the Relevant Items may be 'End of life' and/or 'End of Support' at the expiry of the Minimum Term;
- 11.1.2 whether or not any of the Relevant Items are End of Life at the expiry of the Minimum Term, it may not be possible or commercially viable (in Nviron's absolute discretion) for Nviron to procure appropriate extensions to, or replacements of, any Relevant Support after the expiry of the Minimum Term;
- 11.1.3 in those circumstances, Nviron shall not be obliged to provide any Relevant Support in respect of any Extended Term; and
- 11.1.4 accordingly, the Customer shall solely accept all risk in respect of (and accordingly shall be solely responsible and liable for) any breakdowns, defects, bugs, issues, lack of security, outdated software, lack of compatibility and any other matter if and to the extent arising out of or in connection with any Relevant Support which is not provided by Nviron pursuant to clause 11.1.3.
- 11.2 For the avoidance of doubt, the Customer shall remain liable to pay the Charges in full even if Nviron does not provide any Relevant Support in respect of any Extended Term pursuant to clause 11.1.3.
- 12. Contracted Days**
- 12.1 This clause 12 applies only to the advance purchase of Professional Services to be provided by Nviron to the Customer ("Contracted Days").
- 12.2 The Professional Services available in respect of the Contracted Days are as follows (and, for the avoidance of doubt, no other services are available as part of the Contracted Days):
- 12.2.1 Technical Consultant days are available for skills specified in the skills matrix in Nviron's Professional Services brochure, set out at: https://www.nviron.co.uk/media/664/download/Nviron_Pro_Services_A4.pdf; and
- 12.2.2 Service Engineer days are available for skills specified in Schedule 8.
- 12.3 Subject always to clause 12.2 and the following provisions of this clause 12, the work to be undertaken by Nviron for the Contracted Days shall be agreed by the parties separately in writing (including in respect of the terms and conditions governing the provision of the Contracted Days).
- 12.4 The number of Contracted Days to be purchased by the Customer for each year of the Minimum Term shall be as specified in the Agreement.
- 12.5 The price payable by the Customer for the Contracted Days during the Minimum Term shall be as specified in the Agreement. The price payable for each Contracted Day in respect of each Extended Term shall be Nviron's standard single day rate (also known as Nviron's 'on-usage day rate') for Professional Services as in force at the start of such Extended Term.
- 12.6 Each Contracted Day shall constitute seven and a half (7.5) hours of working time per consultant.
- 12.7 The Contracted Days shall be available for potential use by the Customer subject to the following provisions of this clause 12.
- 12.8 The Customer shall contact Nviron to book Contracted Days.
- 12.9 Contracted Days are subject to availability and Nviron is under no obligation to provide any Contracted Days on any given dates until agreed by Nviron in writing and accordingly the Customer should contact Nviron as soon as possible with a view to booking Contracted Days (having regard also to the provisions of clauses 12.10 and 12.16).
- 12.10 For the avoidance of doubt, the specified amount of Contracted Days shall apply for each year of the Minimum Term and for each Extended Term and (subject to clauses 12.9 and 12.11) must be used by the Customer in each such year and in each Extended Period (as applicable).
- 12.11 If the Customer has not used all of the Contracted Days in any year of the Minimum Term, the Customer shall be entitled to carry forward to the next year of the Minimum Term the total amount of such unused Contracted Days (subject always to clause 12.9). For the avoidance of doubt, the Customer shall not be entitled:
- 12.11.1 to carry forward any unused Contracted Days into the subsequent year (but only to the first year immediately succeeding the year in which any Contracted Days are unused);
- 12.11.2 to carry forward any unused Contracted Days after the expiry of the Minimum Term.
- 12.12 If there is any Extended Term:
- 12.12.1 the Customer shall be obliged to purchase from Nviron, for each Extended Term, the same quantity of Contracted Days as applied to each year during the Minimum Term;
- 12.12.2 the Customer shall not be entitled to carry forward any unused Contracted Days from any Extended Term into any subsequent Extended Term.
- 12.13 Contracted Days shall be invoiced and payable on the same basis as set out in clause 6 regarding the Charges. Unless otherwise specified in the Agreement, the price for the Contracted Days excludes any expenses incurred by Nviron in connection with the provision of the Contracted Days. The Customer shall reimburse Nviron for any such expenses in addition, including any travel costs, mileage costs (at £0.45 per mile) and sustenance and accommodation costs (including, in each case, in connection with travel to and attendance at the Location).
- 12.14 Unless otherwise agreed in writing by Nviron, the Contracted Days must be utilised during normal working hours on Nviron's normal working days.
- 12.15 Contracted Days may (subject to clauses 12.9 and 12.14) be utilised on the basis of one consultant working alone or multiple consultants working simultaneously (and in each case, whether or not on consecutive days). No less than half a Contracted Day can be utilised at any one time.
- 12.16 Save in respect of any Contracted Days which are carried forward pursuant to clause 12.11, the amount paid by the Customer for Contracted Days shall not be refundable if the Customer does not utilise the Contracted Days for any reason - including, for the avoidance of doubt:
- 12.16.1 if the parties do not for any reason enter into a separate agreement relating to the Contracted Days as referred to in clause 12.3);
- 12.16.2 where the Contracted Days cannot be booked on any given dates as referred to in clause 12.9;
- 12.16.3 on expiry of the Minimum Term (whether or not there is any Extended Term); and
- 12.16.4 on expiry of any Extended Term (whether or not there is any subsequent Extended Term).
- 13. Marketing and Publicity**
- 13.1 The Customer permits Nviron to provide details of the Customer to Nviron's customers and potential customers for the purposes of informing them that the Customer has received services from Nviron (including providing details of the Services).
- 14. Intellectual Property Rights**
- 14.1 Subject to clause 14.2, the Customer:
- 14.1.1 acknowledges and agrees that the Services IPR shall vest absolutely in Nviron;
- 14.1.2 hereby assigns absolutely to Nviron by way of present and future assignment with full title guarantee and without encumbrance all right, title and interest in and to the Services IPR;
- 14.1.3 agrees, to the extent that the right, title and interest in and to the Services IPR cannot be assigned to Nviron by future assignment pursuant to clause 14.1.2, to assign (or procure the assignment) to Nviron of such right, title and interest in and to the Services IPR on request to do so; and
- 14.1.4 acknowledges and agrees that the Customer will obtain no right, title or interest in or to the Services IPR and shall have no right to use the Services IPR save if and to the extent necessary to obtain the benefit of the Services provided pursuant to the Agreement.
- 14.2 Without prejudice to clause 14.1, save if and to the extent otherwise agreed in writing by Nviron or expressly stipulated as part of the Services, all documents, manuals, materials (including training materials), equipment, tools, software, drawings, specifications and data which are provided or otherwise made available to the Customer by Nviron shall remain the exclusive property of Nviron, its suppliers or licensors. Where any such items are in the possession or control of the Customer, the Customer shall hold them in safe custody at its own risk and in good condition until returned to Nviron (and the Customer shall not dispose of or use any such items other than in accordance with Nviron's written instructions or authorisation).
- 15. Liability**
- 15.1 Without prejudice to clause 0, the following provisions set out the entire financial liability of Nviron (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 15.1.1 any breach of the Agreement; and
- 15.1.2 any representation, statement or act or omission (including negligence) arising under or in connection with the Agreement.
- 15.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 15.3 Nothing in the Agreement excludes or limits the liability of Nviron:
- 15.3.1 for death or personal injury caused by Nviron's negligence; or
- 15.3.2 for fraud or fraudulent misrepresentation; or
- 15.3.3 for any liability if and to the extent that it is not permissible in law for such liability to be limited or excluded.
- 15.4 Subject to clause 15.3, Nviron shall not be liable to the Customer for any special, indirect or consequential loss, costs, damages, charges or expenses (including pure economic loss), howsoever caused or incurred, arising in connection with the performance or contemplated performance of the Agreement.

- 15.5 Subject to clause 15.3, Nviron shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for any direct or indirect:
- 15.5.1 loss of profits, business, revenue or turnover;
 - 15.5.2 loss of contract or business opportunities;
 - 15.5.3 loss or depletion reputation or goodwill or similar losses;
 - 15.5.4 loss of anticipated savings or wasted time or expenditure (including management time);
 - 15.5.5 loss or corruption of data or information; or
 - 15.5.6 loss or liability under or in relation to any contract which the Customer may have with any third party.
- 15.6 Subject to clause 15.3, Nviron shall have no responsibility or liability to the Customer for any delay, failure, breakdown, damage, costs, loss or injury caused by:
- 15.6.1 any equipment, software, programs or services supplied by the Customer or any third party on the Customer's behalf; or
 - 15.6.2 any requirements of telecommunications authorities or any applicable regulatory body,
- except if and to the extent otherwise expressly stipulated as Nviron's responsibility as part of the relevant Services (save that, for the avoidance of doubt, the other provisions of this clause 15 shall apply in the event that Nviron has any such responsibility).
- 15.7 Subject to clauses 15.3, 15.5 and 15.6, Nviron's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall, in respect of any cause of action (or a series of connected events arising from the same cause), be limited to £5,000,000 (five million pounds).
- 15.8 No warranty is given by Nviron that the Services shall be provided on a continuous basis and (subject always to clause 3.2):
- 15.8.1 the Customer acknowledges and agrees that interruptions may occur in the provision of the Services;
 - 15.8.2 if any such interruption does occur, Nviron shall use its reasonable endeavours to restore the provision of the Services as soon as reasonably practicable after becoming aware of the same; and
 - 15.8.3 provided that it complies with its obligations under clause 15.8.2, Nviron shall have no liability in respect of any such interruptions.
- 15.9 Notwithstanding any other provision of the Agreement, Nviron shall not be liable for any failure to perform (or for any delay in performing) any of its obligations in the Agreement if and to the extent that such failure or delay is caused by or contributed to by any act or omission of the Customer (including, for the avoidance of doubt, any failure of the Customer to comply with any of its obligations under clause 5).
- 15.10 For the avoidance of doubt, subject to clause 15.3 (but without prejudice to clause 15.7 or any provision of the Agreement), Nviron shall have no responsibility or liability whatsoever for:
- 15.10.1 any of the matters referred to in clause 5.12 (which shall be at the Customer's sole risk) if the Customer fails to comply with clause 5.11; or
 - 15.10.2 any of the matters referred to in clause 11.1.4 (which shall be at the Customer's sole risk) in the event that Nviron does not provide any Relevant Support during any Extended Term pursuant to clause 11.1.3.
- 16. Termination and Suspension**
- 16.1 Subject to the other provisions of the Agreement, each of Nviron and the Customer shall be entitled to terminate the Agreement with immediate effect by giving notice in writing to the other if the other party commits any other breach of its obligations under the Agreement and fails to remedy that breach within a period of 14 days after receipt of notice in writing requiring it to do so.
- 16.2 Nviron shall be entitled to terminate the Agreement with immediate effect by giving notice in writing to the Customer if:
- 16.2.1 the Customer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
 - 16.2.2 the Customer is unable or admits inability to pay its debts as they fall due (or is deemed to or declared to be unable to pay its debts under applicable law), suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
 - 16.2.3 the value of the assets of the Customer is less than its liabilities (taking into account contingent or prospective liabilities);
 - 16.2.4 a moratorium is declared in respect of any indebtedness of the Customer;
 - 16.2.5 any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - 16.2.5.1 the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Customer;
 - 16.2.5.2 a composition, compromise, assignment or arrangement with any creditor of the Customer;
 - 16.2.5.3 the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Customer or any of its assets; or
 - 16.2.5.4 enforcement of any security interest (howsoever described) over any assets of the Customer; or
- 16.2.6 any event analogous to those set out in clause 16.2.5 occurs in any jurisdiction in respect of the Customer.
- 16.3 Without prejudice to any other rights or remedies available to Nviron (including its rights to terminate the Agreement in accordance with its provisions), Nviron shall be entitled to suspend the provision of the Services (or part thereof) at any time (without liability to the Customer):
- 16.3.1 if and to the extent required to do so by law or by any the applicable regulatory body (or to avoid any breach in law or the requirements of any regulatory body);
 - 16.3.2 if and to the extent necessary pending implementation of any variations to the Services pursuant to clause 8;
 - 16.3.3 if the Customer does not pay any Charges on the due date for payment (until such payment is made);
 - 16.3.4 pending receipt by Nviron of any necessary information, assistance or materials from the Customer relevant to such Services; and/or
 - 16.3.5 pending the Customer undertaking any necessary or desirable maintenance, repairs or upgrades to the Equipment & Technologies (except if and to the extent such maintenance, repairs or upgrades are the responsibility of Nviron as part of the Services).
- 16.4 Nviron shall, if and to the extent reasonably practicable to do so (having regard to the relevant circumstances), provide prior notice to the Customer of any suspension of the provision of the Services pursuant to clause 16.3. Nviron shall not be required to give such prior notice where this would or may (in Nviron's reasonable opinion):
- 16.4.1 cause or exacerbate any technical problem or otherwise adversely affect any future provision of the Services;
 - 16.4.2 contravene any law or the requirements of any applicable regulatory body;
 - 16.4.3 prejudice the interests of any applicable regulatory body or any potential investigation by any applicable regulatory body; or
 - 16.4.4 prejudice the interests of Nviron (including where any delay in suspending the provision of the Services would prevent Nviron from avoiding any breach in law or the requirements of any regulatory body).
- 17. Consequences of Termination**
- 17.1 On termination of the Agreement for any reason (and without affecting the rights or remedies of either party):
- 17.1.1 any Charges relating to any Services which are supplied pursuant to the Agreement shall remain due and payable in accordance with its provisions;
 - 17.1.2 Nviron shall not be obliged to provide any further Services (but the Customer shall remain liable to pay any Charges for any Services which are supplied after the date of termination in accordance with clause 17.1.1);
 - 17.1.3 without prejudice to any other provisions of the Agreement (including clause 10.5), Nviron shall be entitled to enter the Location (or any other applicable premises of the Customer) to take possession of the Relevant Items and Nviron's Items referred to in clause 14.2; and
 - 17.1.4 each party shall (at the option and request of the other party) destroy or deliver to the other all documents and other records (in whatever form) containing confidential information belonging to the other and no copies thereof shall be retained except if and to the extent required by law.
- 17.2 If the Services include or comprise the provision of any subscriptions (including Microsoft Cloud Subscriptions) and the Agreement is terminated for any reason before the end of the Minimum Term or the Extended Term (as applicable), then the Customer shall (without prejudice to clauses 17.1 and 17.5) remain liable to pay to Nviron the sums due for all such subscriptions for the remainder of the Minimum Term or the Extended Term (as applicable). The entire amount of such sums may be invoiced at any time following such termination.
- 17.3 Except if and to the extent otherwise agreed in writing by Nviron or stipulated as part of the Services, Nviron is under no obligation to provide any services to the Customer relating to the termination of the Agreement (including any services relating to the Customer's transition to another supplier or to the migration or replacement of any data, hardware or software). Should the Customer require any such services then it shall notify Nviron and Nviron may provide an estimate of its fees to provide any such services.
- 17.4 Where Nviron agrees to provide any additional services referred to in clause 17.3, such services shall be provided upon and subject to:
- 17.4.1 any written terms agreed by Nviron specifying the nature and scope of such services; and
 - 17.4.2 the provisions of the Agreement,
- and references in the Agreement to the 'Services' and the 'Charges' shall be construed accordingly.
- 17.5 Termination of the Agreement for any reason shall be without prejudice to any other rights or remedies a party may be entitled to under the Agreement or at law and shall not affect any rights or liabilities of either party which have accrued as at termination.
- 17.6 The clauses of the Agreement which expressly or by implication have effect after termination of the Agreement shall continue to be enforceable notwithstanding such termination.
- 18. Force majeure**
- 18.1 Nviron shall not be in breach of the Agreement, nor liable for any failure to perform or any delay in the performance of any of its obligations under the Agreement if and to the extent that such failure or delay arises from or is

- attributable to acts, events, omissions or accidents beyond its reasonable control (including acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to Nviron's workforce), restraints or delays affecting carriers or any default of Nviron's suppliers or sub-contractors).
19. **Confidentiality**
- 19.1 Subject to clause 19.2, the Customer shall treat all customer or business information, drawings, designs and specifications submitted to it by Nviron (including in any proposal or other documents) as confidential and shall not without Nviron's prior written consent disclose any such item to any third party or use it for any purpose except strictly as necessary for the purposes of obtaining the benefit of the Agreement.
- 19.2 The restrictions in clause 19.1 do not apply to information which:
- 19.2.1 is publicly available or becomes publicly available without breach of clause 19.1; or
- 19.2.2 is required to be disclosed to any governmental or other authority, regulatory body, or by the listing rules of a recognised stock exchange or as required by law.
20. **Freedom of Information Act**
- 20.1 For the purposes of this clause 0:
- 20.1.1 "Exempted Information" means any information or category of information, document, report, contract or other material containing information relevant to the Agreement that has been designated by the mutual agreement of Nviron and the Customer as potentially falling within an FOIA Exemption;
- 20.1.2 "FOIA" means the Freedom of Information Act 2000; and
- 20.1.3 "FOIA Exemption" means any applicable exemption to the FOIA including confidentiality (section 41 FOIA), trade secrets (section 43 FOIA) and prejudice to commercial interests (section 43 FOIA).
- 20.2 To the extent that the Customer is a public authority for the purposes of the FOIA, Nviron acknowledges and accepts that the Customer may be under a legal duty to disclose information on request which is subject to the FOIA, including matters relating to the Agreement. Accordingly, to the extent that the Customer reasonably believes it is under a duty to disclose information about the Agreement in respect of a valid request pursuant to the FOIA:
- 20.2.1 the Customer shall notify Nviron promptly;
- 20.2.2 Nviron shall be entitled to make representations that one of the FOIA Exemptions applies (including details of which and the reasons why it should be applied);
- 20.2.3 the Customer shall not disclose any Exempted Information; and
- 20.2.4 the Customer shall not disclose any other information about Nviron or the Agreement to the extent that a FOIA Exemption applies (and, in making its decision as to whether a FOIA Exemption applies, the Customer shall take reasonable account of Nviron's representations given under clause 20.2.2).
21. **Data Protection**
- 21.1 Each party shall comply with its obligations under the Data Laws with regard to its Processing of Relevant Personal Data.
- 21.2 In this clause 0, references to the "Controller" shall be construed as a reference to the applicable party in its capacity as a Controller and references to the "Processor" shall be construed as a reference to the applicable party in its capacity as a Processor (in each case, as a matter of fact in accordance with the Data Laws) in respect of any Relevant Personal Data.
- 21.3 Without prejudice to clause 21.2, details of the status of the parties as a Controller or Processor of any Relevant Personal Data and of the applicable Processing activities are set out in Schedule 4, where applicable.
- 21.4 Without prejudice to the generality of clause 21.1, the Controller shall ensure it is entitled to provide the Relevant Personal Data to the Processor as required for the Processor to perform its obligations under the Agreement in accordance with the Data Laws.
- 21.5 Without prejudice to the generality of clause 21.1, the Processor shall:
- 21.5.1 subject to clause 21.5.2, Process the Relevant Personal Data for and on behalf of the Controller for the purposes of performing its obligations under the Agreement and only in accordance with the terms of the Agreement and any written instructions from the Controller from time to time;
- 21.5.2 unless prohibited by law, immediately notify the Controller (and prior to undertaking the applicable Processing) if:
- 21.5.2.1 the Processor is required by the Data Laws or any other applicable law to act other than in accordance with the instructions of the Controller with regard to any Processing of Relevant Personal Data; and/or
- 21.5.2.2 the Processor considers, in its opinion, that any of the Controller's instructions with regard to any Processing of Relevant Personal Data infringe the Data Laws or any other applicable law;
- 21.5.3 ensure that the Processor's personnel (including contractors where applicable, but without prejudice to clause 21.9) who Process the Relevant Personal Data have entered into appropriate contractually-binding obligations to keep the Relevant Personal Data confidential or are subject to an appropriate statutory obligation of confidentiality;
- 21.5.4 implement and maintain technical and organisational security measures against the unauthorised or unlawful Processing of Relevant Personal Data and against the accidental loss or destruction of, or damage to, Relevant Personal Data sufficient to comply at least with the obligations imposed by the Data Laws ("Security Measures");
- 21.5.5 assist the Controller (taking into account the nature of the Processing), by the implementation, provision and use of appropriate technical and organisational measures (insofar as possible), to fulfil its obligations to respond to requests from Relevant Data Subjects for exercising their rights under the Data Laws;
- 21.5.6 except if to the extent otherwise required by the Data Laws and any other applicable law, cease Processing all Relevant Personal Data after termination of the Agreement as soon as such Processing is no longer required for the purposes of the Agreement and return or delete (as directed in writing by the Controller) all Relevant Personal Data and all copies in its possession or control; and
- 21.5.7 maintain accurate written records of its Processing of Relevant Personal Data which shall contain, at a minimum:
- 21.5.7.1 its details, the details of the Controller and the details of its data protection officer (or equivalent);
- 21.5.7.2 the categories of Processing carried out on behalf of the Controller;
- 21.5.7.3 the details of any transfers to any third countries, where applicable, and the safeguards in place for that transfer; and
- 21.5.7.4 an accurate record of the Security Measures it has in place; and
- 21.5.8 promptly provide such records to the Controller and/or any applicable regulatory bodies upon request.
- 21.6 The Processor shall make available to the Controller (and, where required, any applicable regulatory bodies), upon request, all information necessary to demonstrate compliance of the Processor with this clause 0.
- 21.7 Without prejudice to any other provisions of this clause 0, the Processor shall permit the Controller or its representatives (upon reasonable prior notice) to audit and inspect the Processor's compliance this clause 0 (and the Processor shall contribute to any such audit).
- 21.8 At the Controller's request (and taking into account the nature of the Processing and the information available to the Processor), the Processor shall provide such assistance to the Controller as is required to ensure compliance with obligations imposed on the Controller under the Data Laws in respect of:
- 21.8.1 the implementation of Security Measures;
- 21.8.2 notifications to the Data Regulator and/or any Relevant Data Subjects regarding any Personal Data Breach (as defined in the Data Laws); and/or
- 21.8.3 considering and undertaking any Data Protection Impact Assessments.
- 21.9 The Processor shall not, without the Controller's prior specific or general written authorisation (such authorisation not to be unreasonably withheld or delayed) appoint any sub-processor to Process any Relevant Personal Data (and then subject always to clause 21.10).
- 21.10 Where the Controller gives written consent to the appointment of a sub-processor for the purposes of clause 21.9, the Processor shall:
- 21.10.1 where such authorisation is of a general nature, inform the Controller of any intended changes concerning the addition or replacement of sub-processors and shall not effect any such changes without the Controller's prior written authorisation (such authorisation not to be unreasonably withheld or delayed);
- 21.10.2 prior to the sub-processor undertaking any Processing, put in place a written contract with the sub-processor which contains the same terms as the provisions of this clause 0 relating to such Processing and which otherwise meets the requirements of the Data Laws; and
- 21.10.3 remain fully liable to the Controller for the performance of the sub-processor's obligations under such contract and for any breach of those obligations.
22. **Dispute Resolution**
- 22.1 Subject to clause 22.3, in the event of any dispute or difference between the parties arising in connection with the construction, interpretation or performance of the Agreement (a "Dispute"), the parties shall attempt to resolve the Dispute as follows:
- 22.1.1 the Dispute shall in the first instance be referred to the Primary Contact for the Customer as set out in Schedule 7 (or as otherwise notified from time to time in accordance with clause 7.3);
- 22.1.2 if the Dispute is not resolved within 14 days of its referral pursuant to clause 22.1.1, it shall be referred to the Level 2 Contact for the Customer as set out in Schedule 7;
- 22.1.3 if the Dispute is not resolved within 14 days of its referral pursuant to clause 22.1.2, it shall be referred to the Level 3 Contact for the Customer as set out in Schedule 7; and
- 22.1.4 if the Dispute is not resolved within 14 days of its referral pursuant to clause 22.1.3, the parties shall (upon written request by either party) attempt to resolve it by mediation in accordance with the CEDR (Centre for Effective Dispute Resolution) Model Mediation Procedure. The mediation shall commence as soon as reasonably practicable after such written request from a party (a copy of which shall also be sent by that party to CEDR Solve). Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve and the place of mediation shall be nominated by the mediator.
- 22.2 The representatives of the parties which are liaising to resolve any Dispute shall act in good faith and use bona fide efforts to attempt to resolve such Dispute.

- 22.3 Nothing in this clause 22 shall restrict the ability of either party from seeking any injunctive or interlocutory relief from the courts at any time or shall prevent the parties commencing or continuing court proceedings where attempts to resolve the Dispute under clause 22.1 have not been successful.
- 23. Engagement of Nviron's Personnel**
- 23.1 The Customer shall pay Nviron a fee of £50,000 (fifty thousand pounds) if, during the term of the Agreement and for a period of twelve (12) months thereafter, the Customer or its Affiliates directly or indirectly (including in concert with any other person or entity, individually or through a corporation, partnership or other entity) employs or otherwise engages (or offers to employ or otherwise engage) in any capacity any person who is employed by Nviron at the time of such employment, engagement or offer. Such fee shall be payable for each employee of Nviron to whom any such employment, engagement or offer applies.
- 24. Notices**
- 24.1 Any notice or other communication given under or in connection with the Agreement shall be in writing and may be:
- 24.1.1 delivered personally, sent by courier service or by pre-paid first class post (in each case, to the address of the relevant party as set out in the Agreement or as otherwise specified by the relevant party by notice in writing or its registered office address); or
- 24.1.2 subject to clause 24.2, sent by email.
- 24.2 For the purposes of clause 24.1.2:
- 24.2.1 notices and communications from a party may be effected by email to any email address of any representative of the other party from time to time (unless such other party gives notice that such email address is not to be used for such purposes);
- 24.2.2 notices or communications given by email which emanate (or reasonably appear to emanate) from a party (or an employee of a party) shall be deemed to be validly given by such party, even if such party (or such employee) did not send the relevant email, the relevant employee did not have actual authority to send the email or the relevant email in fact emanated from another person or another employee or anyone else who may have had access to such party's email systems.
- 24.3 The provisions of this clause 0 shall not apply to the service of any proceedings or other documents in any legal action.
- 25. Miscellaneous**
- 25.1 The Agreement constitutes the entire agreement and understanding between Nviron and the Customer in respect of the matters dealt with and supersedes, cancels and nullifies any previous agreement between them relating to such matters. The Customer acknowledges and agrees that it has not relied on any statement, promise or representation made or given by or on behalf of Nviron which is not set out in the Agreement or otherwise expressly agreed in writing by a director of Nviron. Nothing in this clause 25.1 shall exclude or limit Nviron's liability for fraudulent misrepresentation.
- 25.2 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between Nviron and the Customer, constitute either the agent of the other, nor authorise either to make or enter into any commitments for or on behalf of the other.
- 25.3 Save as provided in clauses 25.4 and 25.5, no amendment or variation of the Agreement (including, for the avoidance of doubt, the scope of the Services) shall be effective unless in writing and signed by a duly authorised representative of each of the parties.
- 25.4 Nviron shall be entitled at any time, on giving notice to the Customer (to take effect at such time as Nviron may specify), to change any provisions of the Agreement if and to the extent necessary to reflect:
- 25.4.1 any changes to any terms and conditions imposed on Nviron by any of its suppliers which relate to, or otherwise impact on, the Services; and
- 25.4.2 any changes to the basis (including changes to the terms and conditions) on which any person provides to the Customer any products, services or software to which the Services relate.
- 25.5 Nviron shall be entitled to increase any of the Charges at any time if and to the extent that any supplier of any product, service or software which is provided directly to the Customer as part of the Services increases the fees or charges payable by Nviron in respect thereof (including any applicable subscription charges and licence fees). Nviron shall give the Customer not less than 20 (twenty) days' notice of such increase, unless Nviron is not able to give such notice because of the timescales within which the relevant suppliers are changing their fees or charges (in which case Nviron shall provide the Customer with as much notice as is reasonably possible in the circumstances).
- 25.6 For the avoidance of doubt, the Customer will not be entitled to terminate the Agreement as a result of Nviron implementing any changes pursuant to clause 25.4 or 25.5.
- 25.7 The Agreement is personal to the Customer and the Customer shall not be entitled to assign, transfer or otherwise deal with any of its rights under the Agreement or to subcontract or delegate in any manner to any other person any of its obligations under the Agreement (except, in each case, with the prior written consent of Nviron).
- 25.8 Each right or remedy of Nviron under the Agreement is without prejudice to any other right or remedy of Nviron whether under the Agreement or otherwise.
- 25.9 If any provision of the Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement and the validity and enforceability of the other provisions of the Agreement shall not be affected.
- 25.10 The failure of Nviron to exercise or enforce any right under the Agreement shall not be deemed to be a waiver of that right, nor operate to bar the exercise or enforcement of it at any time or times thereafter.
- 25.11 Any waiver by Nviron of any breach of, or any default under, any provision of the Agreement by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other provisions of the Agreement.
- 25.12 The Customer agrees to comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption (including the Bribery Act 2010). The Customer shall not engage in any activity, practice or conduct which constitutes an offence under sections 1, 2 or 6 of the Bribery Act 2010 (or which would do if such activity, practice or conduct had been carried out in the United Kingdom).
- 25.13 No person who is not a party to the Agreement is entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 25.14 Each party shall be responsible for its own costs in connection with the preparation, negotiation and execution of the Agreement and (save as otherwise expressly provided or as otherwise agreed in writing between the parties) any other documents contemplated by it.
- 25.15 The Agreement may be executed by the parties in any number of counterparts and on separate counterparts, each of which shall constitute an original, but all the counterparts together shall constitute one and the same instrument.
- 25.16 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. Nviron and the Customer irrevocably agree that the courts of England and Wales shall have jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).