

Terms and Conditions of Project Services Agreement

1. Definitions and Interpretation
Definitions and rules of interpretation applying to the Project Services Agreement (including relating to the application of the Standard Conditions) are set out in Schedule 1 of your Project Services Agreement.

2. Commencement and Duration
The Project Services Agreement shall commence on the Commencement Date and shall continue for the Contract Duration unless terminated earlier pursuant to clause 14.1. The Project Services Agreement shall automatically terminate on the expiry of the Contract Duration.

3. Supply of the Services and Equipment
In consideration of the payment by the Customer of the Charges in accordance with clause 7, Nviron shall, with effect from the Commencement Date, supply the Equipment and the Services to the Customer.

3.2 Nviron shall supply the Services:

3.2.1 with reasonable skill and care; and

3.2.2 in accordance with any timescales expressly agreed in writing with the Customer (and where no timescales are so agreed, Nviron shall use reasonable endeavours to complete the provision of the Services by the expiry of the Contract Duration, subject to clauses 3.6, 13.5 and 14.5 and clause 15 of the Standard Conditions).

3.3 Nviron shall, in supplying the Services, comply with all applicable laws in force from time to time relating to such supply.

3.4 All samples of any products or equipment (including any products or equipment loaned to the Customer by Nviron, whether before or after the Commencement Date) are issued for the sole purpose of giving an approximate idea of the nature of such products or equipment. Such items shall not form part of the Equipment for the purposes of the Project Services Agreement and do not constitute a sale by sample.

3.5 Unless otherwise expressly agreed by Nviron in writing, the Assumptions shall apply to:

3.5.1 the scope of the Services;

3.5.2 the supply of the Equipment and the Services by Nviron (including any timescales for the completion of the Services); and

3.5.3 the Charges.

3.6 If, at any time, any of the Assumptions transpire to be incorrect:

3.6.1 Nviron shall have no liability for any associated delays in completing the Services and the time for completion of the Services (and accordingly the Contract Duration) shall be deemed to be extended on a pro-rata basis to the extent necessary to accommodate the period of any such delays;

3.6.2 Nviron shall not be obliged to provide any services (including in respect of the Services) if and to the extent relating to matters falling outside of the Assumptions; and

3.6.3 if and to the extent that Nviron does agree to provide any such services:

3.6.3.1 the Customer shall pay Nviron's reasonable additional charges for such services; and

3.6.3.2 (without prejudice to clause 3.6.3.1) the provisions of the Project Services Agreement (including clause 12) shall apply to any such services and references to the Services shall be construed accordingly.

4. Nature and Scope of the Services

4.1 The Services shall be undertaken at the Location and (to the extent practicable, at Nviron's discretion) Nviron's premises or other locations. Nviron shall be under no obligation to provide the Services other than at the Premises unless otherwise agreed in writing by Nviron.

4.2 Any dates quoted for supply or completion of the Services are approximate only, and the time of delivery 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 Project Services Agreement (except if and to the extent otherwise agreed by Nviron in writing).

4.3 Unless otherwise agreed in writing by the Company, the Services shall be provided during normal working hours on the Company's normal working days (08.30 – 17.00 weekdays excluding bank and public holidays).

4.4 For the purposes of the Project Services 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 and subject to clause 4.6):

4.4.1 Nviron's responsibility for providing services is limited to the Services as set out in the Project Services Agreement and Nviron shall not be required to undertake any other services; and

4.4.2 accordingly, Nviron shall have no responsibility to provide any assistance, support or maintenance relating to the Equipment or its operation after completion of the Services or earlier termination of the Project Services Agreement (except if and to the extent required due to any negligence or breach of the Project Services Agreement by Nviron, subject always to the provisions of clause 13 and the other provisions of the Project Services Agreement).

4.5 For the avoidance of doubt (but without prejudice to any other provision of the Project Services Agreement), matters which are specifically excluded from the scope of the Services are set out in Schedule 5 of your Project Services Agreement.

4.6 The Customer may, for a period of 30 days from the date of issue of the Statement of Completion, contact the Nviron Service Desk (by telephone on 0845 270 4031 or by emailing servicedesk@nviron.co.uk) for minor support issues following the completion of the Services. For these purposes, minor support issues shall (by way of illustrative example only) comprise matters such as answering queries and resolving minor technical problems such as configurations. Nviron shall provide reasonable assistance to the Customer in respect of any such issues during such 30 day period.

5. General Obligations of the Customer

The Customer shall comply with the Customer's responsibilities as set out in Schedule 8 of your Project Services Agreement.

5.2 The Customer shall (and where applicable shall procure that any relevant Third Parties shall), at no cost to Nviron:

5.2.1 ensure that the Location is safe and is adequately prepared for efficient delivery, unloading and installation of the Equipment and for the supply of the Services;

5.2.2 where the Equipment is delivered directly to the Customer, ensure that the Equipment is safely and securely stored at the Location, in such a way that it remains readily identifiable and can be quickly and easily retrieved for use and/or installation by Nviron in connection with the Services;

5.2.3 ensure that prior to the commencement of the Services (and at such intervals as may be appropriate thereafter) it creates adequate back-ups of all data in the possession or control of the Customer which may be affected by the provision of the Services or the installation of the Equipment;

5.2.4 provide Nviron with all assistance reasonably required by Nviron to enable it to supply the Services and deliver the Equipment;

5.2.5 obtain and maintain for the Contract Duration any licences, registrations, permits, authorisations or approvals necessary to enable Nviron to supply the Services at the Location and to deliver the Equipment;

5.2.6 co-operate with Nviron in good faith in all respects in connection with the supply by Nviron of the Services; and

5.2.7 provide Nviron with:

5.2.7.1 such access to the Location and Third Parties;

5.2.7.2 such drawings, designs, specifications, information, materials and criteria; and

5.2.7.3 such facilities and utilities (including computer facilities, telecommunications and other resources), which (in each case) Nviron requires in order to supply the Services and deliver and install the Equipment in accordance with the Project Services Agreement.

5.3 The Customer shall comply with all applicable laws and regulatory requirements relating to its obligations under, or as contemplated by, the Project Services Agreement.

5.4 Except if and to the extent otherwise expressly stated as being included in the scope of the Services, it shall be the Customer's sole responsibility to ensure that the Equipment is fit for its intended purpose.

6. Acceptance Criteria

6.1 Acceptance criteria (including details of all associated tests, where applicable) for determining successful completion of the Services are set out in Schedule 6 of your Project Services Agreement.

6.2 The Acceptance Criteria shall be deemed to have been met (even if the Customer does not sign the Statement of Completion) unless the Customer otherwise notifies Nviron in writing within 30 days of Nviron issuing the Statement of Completion.

7. Charges and payment

7.1 The Customer shall pay Nviron the Charges for the Services in accordance with this clause 7.

7.2 In addition to payment of the Charges set out in Schedule 7 of your Project Services Agreement, the Customer shall reimburse Nviron for any expenses incurred by Nviron in connection with the provision of the Services, including all costs referred to in clause 13.9 of the Standard Conditions.

7.3 Any estimates given by Nviron with regard to the total anticipated charges for the Services are provided in good faith based on the Assumptions and any relevant information available to Nviron at the time. Should the Customer require any greater degree of comfort with regard to any estimates, then it may request Nviron to provide services for the purposes of giving an indication of the scope of a project or potential future services (and any such services shall be subject to a separate written agreement which is signed by both parties). In no circumstances will any estimates given by Nviron be binding on Nviron (including, for the avoidance of doubt, where the Services include assessing the scope of a project or potential future services and estimates are subsequently given). Accordingly, notwithstanding any estimates given by Nviron, the Customer shall remain liable to pay of the Services for the actual time incurred, at the rates referred to in Schedule 7 of your Project Services Agreement.

7.4 Where the Services comprise or include the use of Contracted or Directed Days but the scope of the Services exceed the available amount of Contracted or Directed Days, the Customer shall be required to pay for the difference at the applicable rate for Contracted or Directed Days in force at the relevant time (which will be confirmed by Nviron on request).

7.5 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, the Customer shall (without prejudice to any other right or remedy of Nviron) be liable for any

7.6	reasonable costs incurred by Nviron as a result of such delay. For the avoidance of doubt, such costs will include charges for Nviron's personnel at the applicable day rate for such personnel where they cannot be deployed on other projects because of such delay.	12.3	Without prejudice to clause 12.1, 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, drawings, specifications and data which are provided or otherwise made available to the Customer by Nviron (other than the Equipment) shall remain the exclusive property of Nviron. All such items shall be held by the Customer in safe custody at its own risk and kept in good condition by the Customer until returned to Nviron and shall not be disposed of or used other than in accordance with Nviron's written instructions or authorisation.
7.7	The Customer shall pay each invoice submitted by Nviron within the Payment Period. Payment shall be made to such bank account as is specified on the invoice.	13.1	Liability For the avoidance of doubt, the following provisions of this clause 13 apply in addition to the provisions of clause 14 of the <u>Standard Conditions</u> (except for clause 14.5 of the <u>Standard Conditions</u> , which shall not apply to the Project Services Agreement).
7.8	The Charges (and any other amounts stated to be payable by the Customer pursuant to the Project Services Agreement) 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.	13.2	Subject to clause 14.3 of the <u>Standard Conditions</u> , 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:
8.	Reporting and Liaison	13.2.1	loss of profits, business, revenue or turnover;
8.1	Each party shall nominate a representative who shall be responsible for:	13.2.2	loss of contract or business opportunities;
	8.1.1 acting as the main point of contact for the Customer on a day-to-day basis (including managing and co-ordinating the parties' relationship with each other);	13.2.3	loss or depletion reputation or goodwill or similar losses;
	8.1.2 reviewing the parties' performance of the Project Services Agreement on an on-going basis and meeting whenever desirable in order to address any significant matters; and	13.2.4	loss of anticipated savings or wasted time or expenditure (including management time);
	8.1.3 (without prejudice to clause 19.1) highlighting and implementing any changes which may be necessary or desirable to the Services or the Project Services Agreement.	13.2.5	loss or corruption of data or information; or
8.2	As at the Commencement Date:	13.2.6	loss or liability under or in relation to any contract which the Customer may have with any third party.
	8.2.1 the representatives appointed by the parties for the purposes of clause 8.1 shall be those persons specified as the Primary Contact in Schedule 9 of your Project Services Agreement; and	13.3	Subject to clause 14.3 of the <u>Standard Conditions</u> , Nviron shall have no responsibility or liability to the Customer for any delay, failure, breakdown, damage, costs, loss or injury caused by:
	8.2.2 other relevant points of contact for each party (which shall also be relevant for the purposes of escalating any Dispute in accordance with clause 16.1) are also set out in Schedule 9 of your Project Services Agreement.	13.3.1	any equipment, programs or services supplied by the Customer or any third party;
8.3	Either party may change its Representative (or any other points of contact referred to in clause 8.2.2) by giving written notice to the other party (and whenever practicable shall give reasonable notice in advance of any such change taking effect).	13.3.2	any Equipment which has been modified by the Customer or any third party without the prior written consent of Nviron (if and to the extent due to such modification); or
9.	Variations to Equipment and Services	13.3.3	any requirements of telecommunications authorities or any applicable regulatory body.
9.1	In the event that the Customer wishes to vary the Equipment or 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 Project Services Agreement (including clause 12) shall apply thereto and references to the Services shall be construed accordingly.	13.4	Subject to clauses 13.2 and 13.3 and clause 14.3 of the <u>Standard Conditions</u> , 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 Project Services Agreement shall:
10.	Customer Warranties	13.4.1	in respect of any cause of action (or a series of connected events arising from the same cause) related to the supply of the Equipment (as distinct from the supply of the Services), be limited to an amount equal to the total price paid or payable by the Customer for the Equipment; and
10.1	The Customer warrants and represents to Nviron that, as at the date of the Project Services Agreement and throughout its term:	13.4.2	in respect of any cause of action (or a series of connected events arising from the same cause) related to the supply of the Services (as distinct from the supply of the Equipment), be limited to the greater of:
	10.1.1 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 Project Services Agreement and to receive the Services from Nviron in accordance with the Project Services Agreement; and	13.4.2.1	£5,000,000 (five million pounds); and
	10.1.2 the implementation of the Services and the installation of the Equipment 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).	13.4.2.2	an amount equal to the total price paid or payable by the Customer for the Services.
11.	Marketing and Publicity	13.5	For the avoidance of doubt but without prejudice to clauses 4.4 and 4.5, Nviron shall have no responsibility or liability to the Customer for any matters falling outside of the Assumptions, except if and to the extent that (subject to clause 3.6.3) Nviron agrees to provide any services relating to such matters.
11.1	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) and for the Customer to be contacted by them for a reference relating to Nviron's services.	13.6	Notwithstanding any other provision of the Project Services Agreement, Nviron shall not be liable for any failure to perform (or for any delay in performing) any of its obligations in the Project Services 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).
12.	Intellectual Property Rights	14.	Termination and Suspension
12.1	Subject to clause 12.2, the Customer:	14.1	Nviron shall be entitled to terminate the Contract with immediate effect by giving notice in writing to the Customer if:
	12.1.1 acknowledges and agrees that the Services IPR shall vest absolutely in Nviron;	14.1.1	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;
	12.1.2 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;	14.1.2	the value of the assets of the Customer is less than its liabilities (taking into account contingent or prospective liabilities);
	12.1.3 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 12.1.2, 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	14.1.3	a moratorium is declared in respect of any indebtedness of the Customer;
	12.1.4 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 Project Services Agreement.	14.1.4	any corporate action, legal proceedings or other procedure or step is taken in relation to:
		14.1.4.1 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;	
12.2	The provisions of clause 12.1 do not apply to any software which is supplied by Nviron under the Project Services Agreement (in respect of which clause 12 of the <u>Standard Conditions</u> shall apply).	14.1.4.2	a composition, compromise, assignment or arrangement with any creditor of the Customer;
		14.1.4.3 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	
		14.1.4.4 enforcement of any security interest (howsoever described) over any assets of the Customer; or	
		14.1.5 any event analogous to those set out in clause 14.1.4 occurs in	

	any jurisdiction in respect of the Customer.	
14.2	Without prejudice to any other rights or remedies available to Nviron (including its rights to terminate the Project Services 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): 14.2.1 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); 14.2.2 if and to the extent necessary pending implementation of any variations to the Services pursuant to clause 9; 14.2.3 if the Customer does not pay any Charges on the due date for payment (until such payment is made); and/or 14.2.4 pending receipt by Nviron of any necessary information, assistance or materials from the Customer relevant to such Services.	16.1.3 if the Dispute is not resolved within 14 days of its referral pursuant to clause 16.1.2, it shall be referred to the Level 3 Contact for each party as set out in Schedule 9 of your Project Services Agreement; and 16.1.4 if the Dispute is not resolved within 14 days of its referral pursuant to clause 16.1.3, 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.
14.3	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 14.2. Nviron shall not be required to give such prior notice where this would or may (in Nviron's reasonable opinion): 14.3.1 contravene any law or the requirements of any applicable regulatory body; 14.3.2 prejudice the interests of any applicable regulatory body or any potential investigation by any applicable regulatory body; or 14.3.3 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).	16.2 Where a Dispute is referred to representatives of the parties pursuant to clause 16.1, such representatives shall act in good faith and use bona fide efforts to attempt to resolve such Dispute. 16.3 Nothing in this clause 16 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 16.1 have not been successful.
14.4	Where the provision of the Services is suspended by Nviron pursuant to clause 14.2 and prior notice thereof is not given to the Customer, Nviron shall notify the Customer of any such suspension promptly thereafter.	17. Engagement of Nviron's Personnel 17.1 The Customer shall pay Nviron a fee of £50,000 (fifty thousand pounds) if, during the Contract Duration 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.
14.5	If Nviron suspends the provision of the Services pursuant to clause 14.2 then the time for completion of the Services (and accordingly the Contract Duration) shall be deemed to be extended on a pro-rata basis to the extent necessary to accommodate the period of any such suspension.	18. Notices 18.1 Any notice or other communication given under or in connection with the Project Services Agreement shall be in writing and may be: 18.1.1 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 Project Services Agreement or as otherwise specified by the relevant party by notice in writing or its registered office address); or 18.1.2 subject to clause 18.2, sent by email. 18.2 For the purposes of clause 18.1.2: 18.2.1 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); 18.2.2 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. 18.3 The provisions of this clause 18 shall not apply to the service of any proceedings or other documents in any legal action.
15.	15. Consequences of Termination 15.1 On termination of the Project Services Agreement for any reason (and without affecting the rights or remedies of either party): 15.1.1 any Charges relating to any Services which are supplied pursuant to the Project Services Agreement shall remain due and payable in accordance with its provisions; 15.1.2 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 15.1.1); 15.1.3 the Customer shall, as soon as practicable, return all of Nviron's items referred to in clause 12.3, failing which Nviron may enter the Location and take possession of them (and until so returned or repossessed, the Customer shall be solely responsible for their safe-keeping); and 15.1.4 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 and no copies thereof shall be retained except if and to the extent required by law.	19. Miscellaneous 19.1 No amendment or variation of the Project Services 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. 19.2 Each party shall be responsible for its own costs in connection with the preparation, negotiation and entry into of the Project Services Agreement and (save as otherwise expressly provided or as otherwise agreed in writing between the parties) any other documents contemplated by it. 19.3 The Project Services 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.
16.	16. Dispute Resolution 16.1 Subject to clause 16.2, in the event of any dispute or difference between the parties arising in connection with the construction, interpretation or performance of the Project Services Agreement (a "Dispute"), the parties shall attempt to resolve the Dispute as follows: 16.1.1 the Dispute shall in the first instance be referred to the Primary Contact for each party as set out in Schedule 9 of your Project Services Agreement.; 16.1.2 if the Dispute is not resolved within 14 days of its referral pursuant to clause 16.1.1, it shall be referred to the Level 2 Contact for each party as set out Schedule 9 of your Project Services Agreement;	20. Governing Law and Jurisdiction 20.1 Without prejudice to clause 20.10 of the Standard Conditions , the Project Services 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 interpreted in accordance with English Law.