

## Terms and Conditions of Telecoms Services

### 1. Definitions and Interpretation

- 1.1 All terms which are set out and defined on the first page of the Agreement shall have the meaning so given to them when used elsewhere (whether in plural or singular form) in the Agreement.
- 1.2 All terms which are defined in the Product Specific Terms shall have the meaning so given to them when used elsewhere (whether in plural or singular form) in the Agreement.
- 1.3 In the Agreement, unless the context otherwise requires, the following terms (whether used in plural or singular form) shall have the following meanings:
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| <p>"Acceptable Use Policy" means the acceptable use policy set out at <i>[insert url]</i> from time to time;</p> <p>"Activation Date" means the date on which the relevant Service commences, in accordance with clause 3.6 (and "Activated" shall be construed accordingly);</p> <p>"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;</p> <p>"Agreement" means the Telecoms Services Agreement (incorporating these Terms) which has been signed by the Customer and Nviron;</p> <p>"Applicable Laws" means in respect of a party: (a) all applicable laws, byelaws, treaties, regulations and conventions (including common law and laws of equity) in any jurisdiction to which that party is subject; (b) all applicable rules, regulations and requirements of any regulatory authorities having jurisdiction over that party or any of its party's assets, resources or business; and (c) any binding court order, judgment or decree applicable to such party (in each case, for the time being in force);</p> <p>"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);</p> <p>"Broadband Access Services" means the services described as such in Schedule 1;</p> <p>"Broadband Product Handbook" means the document made available to the Customer by Nviron from time to time which sets out certain information relating to the Broadband Access Services;</p> <p>"Colocation Product Handbook" means the document entitled 'Colocation Customer Manual' made available to the Customer by Nviron from time to time which sets out certain information relating to the Colocation Services;</p> <p>"Colocation Services" means the services described as such in Schedule 1;</p> <p>"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);</p> <p>"Customer Materials" means any services (including facilities and utilities and any dialling system referred to in clause 7.4.3), any equipment (including tools, hardware, systems, telecommunications apparatus or cabling) and any documents, information, items, software and other materials in any form provided by or on behalf of the Customer (other than by Nviron or a Relevant Provider) which are used directly or indirectly in connection with the supply or use of the Services;</p> <p>"Customer Portal" means any portal which (if applicable) is from time to time provided by or on behalf of Nviron (including by a Relevant Provider) to enable the Customer to access and administer certain aspects of the arrangements relating to the Services and/or the Agreement;</p> <p>"Dispute" has the meaning given to such term in clause 26.1;</p> <p>"Ethernet Service Schedule" means the document so entitled made available to the Customer by Nviron which sets out certain information relating to the Leased Line Services;</p> <p>"Ethernet SLA" means the document so entitled made available to the Customer by Nviron which sets out details of the Service Levels applicable to the Leased Line Services;</p> <p>"Extended Term" means 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 (or, in respect of the Leased Lines Services, such longer period where applicable pursuant to paragraph 4.2 of Appendix 1);</p> <p>"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;</p> <p>"IP" means internet protocol;</p> | <p>"Leased Line Services" means the services described as such in Schedule 1;</p> <p>"Minimum Term" means, the period specified in the Agreement for the relevant Service;</p> <p>"NTE" means a device which connects the Customer's data or telephone equipment to a line which comes into the Location;</p> <p>"Preparatory Works" has the meaning given to such term in clause 3.1;</p> <p>"Product Handbook" means (as applicable) the Broadband Product Handbook, the Colocation Handbook, the WLR Product Handbook, the Ethernet Service Schedule and the Ethernet SLA;</p> <p>"Product Specific Terms" means the terms and conditions which apply to specific Services, as set out in the Appendices;</p> <p>"Relevant Items" means any equipment supplied by or on behalf of Nviron or a Relevant Provider in connection with the provision of the Services;</p> <p>"Relevant Provider" means any third party engaged by Nviron (or which is in turn engaged by such third party) to provide or assist in the provision of the Services (or any part thereof) and/or which supplies any associated equipment or infrastructure;</p> <p>"Relevant Provider Network" means an applicable Relevant Provider's public electronic communications network;</p> <p>"Service Credits" means (where applicable) a credit to be applied against the relevant Charges by Nviron in accordance with the relevant Product Handbook;</p> <p>"Service Levels" means any standards and measurements for the applicable Service, as set out in the relevant Product Handbook;</p> <p>"Services" means the services applicable to the Agreement (as shown marked on the Agreement) as more particularly described in Schedule 1 and, where applicable, any Survey;</p> <p>"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 the Product Handbooks and any guides, instruction booklets and training materials created by Nviron);</p> <p>"Service Suspension" means any suspension of any or all of the Services (or any part thereof), as applicable, pursuant to clause 9.1, 20.3 or 20.5;</p> <p>"Survey" has the meaning given to such term in clause 3.2;</p> <p>"Terms" means these terms and conditions to the Agreement, including the Product Specific Terms;</p> <p>"Wholesale Line Rental Services" means the services described as such in Schedule 1; and</p> <p>"WLR Product Handbook" means the document made available to the Customer by Nviron from time to time which sets out certain information relating to the Wholesale Line Rental Services.</p> <p>1.4 In the Agreement (except if and to the extent that the context otherwise requires):</p> <p>1.4.1 references to a numbered clause are to a clause of these Terms so numbered;</p> <p>1.4.2 references to the Schedules are to the schedules to the Agreement and references to a numbered Schedule are to a schedule to the Agreement so numbered;</p> <p>1.4.3 references to the Appendices are to the appendices to these Terms and references to a numbered Appendix are to an appendix of these Terms so numbered;</p> <p>1.4.4 references to a numbered paragraph are to a paragraph so numbered of the Schedule or Appendix in which such paragraph reference appears (or of another Schedule or Appendix if so stated);</p> <p>1.4.5 the words 'including' and 'include' and words of similar effect shall be deemed have the words "without limitation" following them;</p> <p>1.4.6 the words 'other', 'otherwise' and 'such as' are illustrative and shall not limit the sense of the words preceding them;</p> <p>1.4.7 references to persons shall include natural persons, firms, companies, associations and corporate or unincorporated bodies (whether or not having separate legal personality);</p> <p>1.4.8 words importing the singular shall include the plural and vice versa;</p> <p>1.4.9 references to a "party" mean a party to the Agreement (and references to the "parties" shall be construed accordingly);</p> <p>1.4.10 any obligation on a party to do something includes an obligation on that party to ensure that, if and to the extent applicable, its employees, agents and contractors do that thing;</p> <p>1.4.11 any obligation on a party not to do something includes an obligation:</p> <p style="margin-left: 20px;">1.4.11.1 not to agree or allow that thing to be done; and</p> <p style="margin-left: 20px;">1.4.11.2 to procure that, if and to the extent</p> |
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- applicable, its employees, agents and contractors do not do that thing and do not agree or allow that thing to be done;
- 1.4.12 references to 'writing' or 'written' include email; and
- 1.4.13 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.
- 1.5 The Schedules and these Terms (including the Appendices) 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 the Schedules and these Terms (including the Appendices).
- 1.6 Subject to clauses 1.7 and 1.8.3, the provisions of the Product Handbooks shall apply to the Agreement, in addition to the other provisions of these Terms, with respect to the relevant Services.
- 1.7 References in any Product Handbook to any order process (including references to 'orders' and 'cancellation of orders' and similar terms) are for information and administrative purposes only and shall not affect the provisions of the Agreement relating to the commencement or termination of the Agreement or of any of the Services.
- 1.8 In the event of any inconsistency between:
- 1.8.1 the provisions of these Terms and any of the Schedules, then these Terms shall prevail;
- 1.8.2 the provisions of any Product Specific Terms and any other provisions of these Terms, then such other provisions of these Terms shall prevail; or
- 1.8.3 the provisions of these Terms and any Product Handbook, then these Terms shall prevail.
- 1.9 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 20) shall continue in force in respect of each Service 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 in respect of any Service 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 Any termination of one or more (but not all) of the Services shall not affect the continuation of the Agreement in respect of the remaining Services. Following such termination, the provisions of the Agreement, insofar as they apply to the remaining Services, shall continue in full force and effect and references in the Agreement to the "Services" shall be deemed to be a reference to such remaining Services.
- 3. Preparatory Works**
- 3.1 Nviron shall, within a reasonable period after the Commencement Date, undertake any preparatory or exploratory activities relating to the potential provision of the relevant Service ("Preparatory Works").
- 3.2 Nviron (whether itself or using any Relevant Provider) shall be entitled to undertake any survey or other investigations which Nviron (in its absolute discretion) deems necessary in connection with the provision of potential provision of the relevant Service ("Survey").
- 3.3 If, following any Preparatory Works or any Survey, Nviron determines (in its absolute discretion) that the provision of the Services is not feasible then Nviron shall be entitled (without any liability to the Customer) to terminate the Agreement in respect of the relevant Service with immediate effect on giving notice to the Customer.
- 3.4 If Nviron determines (in its absolute discretion) that additional or exceptional work is necessary for the installation or commencement of the relevant Service as a result of any Preparatory Works or any Survey, Nviron may provide the Customer with a revised quotation for the Charges applicable to the relevant Service and the Customer may decide whether or not to proceed with such Service. If the Customer does not accept such quotation then it may terminate the Agreement with respect to the relevant Service on giving notice to Nviron within a reasonable period after receipt thereof, subject to payment of any applicable cancellation charges set out in the relevant Product Handbook or as otherwise notified to the Customer by Nviron. If the Customer does not give such notice then Nviron may elect (at its option) whether to proceed with such work (in which case the Customer shall be liable to pay the Charges specified in the relevant quotation) or to terminate the Agreement in respect of the relevant Service with immediate effect on giving notice to the Customer (in which case Nviron shall have no liability to the Customer). If the Customer informs Nviron that it accepts such quotation then Nviron shall proceed with the relevant work and the provision of the relevant Service and the Charges set out in such quotation shall apply.
- 3.5 Nviron shall use reasonable endeavours to conclude the Preparatory Works within a reasonable period after the Commencement Date. Notwithstanding the foregoing, any dates quoted for commencement or completion of any particular aspect of the Services are approximate only, and the time of commencement or completion may not be made of the essence by notice. No warranty is given by Nviron that the Services shall commence on, or be provided by, any specific dates during the term of the Agreement (except if and to the extent otherwise expressly agreed by Nviron in writing).
- 3.6 The relevant Service shall commence on the date on which the Preparatory Works are completed or, in the case of the Leased Line Services, the date on which Nviron confirms to the Customer that the Leased Line Services are available for use.
- 4. Supply of the Services**
- 4.1 In consideration of the payment by the Customer of the Charges in accordance with clause 10, Nviron shall, with effect from the Activation Date, supply the relevant Service to the Customer in all material respects.
- 4.2 Subject always to the relevant provisions of the Agreement (including clauses 5.4 and 11.1) Nviron shall supply the Services with reasonable skill and care.
- 4.3 Nviron shall, in supplying the Services, comply with all Applicable Laws relating to such supply.
- 4.4 Nviron shall use reasonable endeavours to provide the Services in accordance with any applicable Service Levels.
- 5. Nature and Scope of the Services**
- 5.1 Nviron shall provide the Services (other than the Colocation Services) at the Location.
- 5.2 If the Customer:
- 5.2.1 does not provide specific installation instructions for the Services, then Nviron shall be entitled to select an installation location at its discretion; or
- 5.2.2 asks Nviron to install the Services in a different location to that which was originally specified by the Customer, then Nviron may effect installation at such alternative location,
- 5.2.3 and (in ease case) Nviron shall have no responsibility or liability to the Customer for the installation being effected at such location.
- 5.3 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):
- 5.3.1 Nviron's responsibility for providing services is limited to the Services as set out in the Agreement;
- 5.3.2 each element of the Services is limited to the scope specifically referred to in respect of such Services; and
- 5.3.3 accordingly, Nviron shall not be required to undertake any other services or have any responsibility for any other services which are not so specified.
- 5.4 Without prejudice to clause 5.3, the Customer acknowledges and agrees that (save if and to the extent otherwise agreed in writing by Nviron or expressly stipulated in the Agreement), Nviron is not required to maintain, upgrade, renew or replace the Customer's existing IT hardware or cabling infrastructure or any of the Customer's software applications.
- 6. Access to the Location**
- 6.1 The Customer shall promptly provide (or procure the provision of) such access to the Location which Nviron requires to be provided to it or any Relevant Provider in connection with the supply of the Services (including, where applicable, any relevant office accommodation and facilities) and, where applicable, to deliver and install the Relevant Items in accordance with the Agreement.
- 6.2 If the Customer fails to permit access to the Location at a pre-arranged appointment time, the Customer shall be liable to pay, on demand, the 'Abortive Visit Charge', as set out in the Agreement.
- 6.3 The Customer shall:
- 6.3.1 keep Nviron, any applicable Relevant Provider and their respective personnel informed at all times of the current health and safety and security requirements that apply at the Location; and
- 6.3.2 ensure that the Location complies at all times with all applicable health and safety laws or regulations and other Applicable Laws.
- 6.4 Nviron shall use reasonable endeavours to observe any health and safety and security requirements at the Location which have been communicated to it under clause 6.3.1, subject always to clause 19.8.
- 7. General Obligations of the Customer**
- 7.1 The Customer shall, in respect of its activities in connection with the Agreement (including its receipt and use of the Services), comply with:
- 7.1.1 all Applicable Laws;
- 7.1.2 the applicable provisions of the relevant Product Handbook; and
- 7.1.3 the Acceptable Use Policy.
- 7.2 The Customer shall (and where applicable shall procure that any Applicable Person shall), at no cost to Nviron:
- 7.2.1 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;
- 7.2.2 provide Nviron with all assistance, information, criteria and specifications reasonably required by Nviron to enable it to supply the Services;
- 7.2.3 co-operate with Nviron and with all Relevant Providers in good faith in all respects in connection with the supply by Nviron of the Services; and
- 7.2.4 promptly provide (or procure the provision of):
- 7.2.4.1 such access to Applicable Persons;
- 7.2.4.2 such equipment and third-party services;
- 7.2.4.3 such drawings, designs, specifications, information, materials and criteria; and
- 7.2.4.4 such facilities and utilities (including computer facilities, telecommunications and other resources),
- 7.2.5 which (in each case) Nviron requires to be provided to it or any Relevant Provider in connection with the supply of the Services and, where applicable, to deliver and install the Relevant Items

- in accordance with the Agreement.
- 7.3 The Customer shall be solely responsible, at its own cost, for:
- 7.3.1 obtaining and maintaining for the term of the Agreement all relevant licences, registrations, permits, authorisations or approvals necessary to enable Nviron to supply (and for the Customer to receive) the Services and to access the Location;
- 7.3.2 the provision of all facilities and utilities (including computer facilities, telecommunications, administration facilities and systems and other resources) which are necessary to enable the Customer to obtain the full use and benefit of the Services;
- 7.3.3 the maintenance, testing, repair and/or replacement of all applicable Customer Materials;
- 7.3.4 the security, safe keeping and backing-up of all data and content used or processed by the Customer in connection with its use of the Services;
- 7.3.5 for ensuring that all systems, devices and software used by the Customer in connection with the Service are regularly updated and that all such software is the latest available version and/or contains the latest available updates; and
- 7.3.6 ensuring that all applicable Customer Materials are technically compatible with the Services and will not damage or interfere with the Relevant Items, the Relevant Provider Network or any third party's equipment,
- 7.3.7 except if and to the extent that the Agreement expressly provides that any of the foregoing are the responsibility of Nviron as part of the Services.
- 7.4 For the avoidance of doubt but without prejudice to the generality of clause 7.1, the Customer shall (as between the parties) be solely responsible for:
- 7.4.1 the quality and accuracy of all Customer Materials, including ensuring that all the Customer Materials are in good working order, conform to all relevant Applicable Laws and are suitable for the purposes of receiving and using the Services;
- 7.4.2 ensuring that the applicable Customer Materials are (unless otherwise expressly set out in the Agreement as being Nviron's responsibility as part of any Services) safely connected and used in such a way that they will not damage or interfere with the Relevant Items, the Relevant Provider Network or any third party's equipment;
- 7.4.3 any form of automated dialling system which the Customer may utilise in connection with the use of the Service (including the reliability of such system, its compliance with Applicable Laws and any call costs which may be incurred as a result of its use and all contracts entered into between the Customer and the supplier of any such system.
- 7.5 The Customer shall indemnify, keep indemnified and hold harmless, Nviron and each Relevant Provider from and against all actions, claims, damages, losses and expenses arising as a result of or in connection with any claim:
- 7.5.1 that any Customer Materials breach any Applicable Laws;
- 7.5.2 that any Customer Materials infringe the rights of any third party (including any third party's Intellectual Property Rights); and/or
- 7.5.3 relating to any breach of contract entered into between the Customer and the supplier of any of the Customer Materials.
- 7.6 The Customer shall (and where applicable shall procure that any Applicable Person shall):
- 7.6.1 where required by Nviron, enter into a separate licence with the owner of any software provided to the Customer as part of the Services;
- 7.6.2 take all reasonable and appropriate steps to ensure the security of all user names and passwords issued by or on behalf of Nviron or used to access the Customer Portal, other Nviron systems or any Relevant Provider Network;
- 7.6.3 notify Nviron as soon as reasonably practicable if it becomes aware that any such user names or passwords have become known to, or used by, any unauthorised person;
- 7.6.4 appropriately configure the Customer's internal network as required for the proper provision and use of the Services;
- 7.6.5 follow the procedure for fault reporting as set out in the relevant Product Handbook or as otherwise notified by Nviron;
- 7.6.6 comply with any reasonable instructions issued by Nviron or a Relevant Provider regarding the operation and use of the Services;
- 7.6.7 not engage in 'slamming' or disrupt (or allow any third party to disrupt) the Services or any other service provided by Nviron to the Customer or any third party;
- 7.6.8 not copy or modify any software provided as part of, or in connection with the Services without the prior written consent of Nviron;
- 7.6.9 not copy, redistribute or publish any material or information in breach of any rights (including any Intellectual Property Rights) of a third party;
- 7.6.10 not circumvent, or attempt to circumvent, any security measures applied to the Services; and
- 7.6.11 not perform any unauthorised IP or port multicasting, spoofing, broadcasting, vectoring, filtering translation or routing.
- 7.7 The Customer shall not (and shall ensure that all Applicable Persons shall not) use the Services:
- 7.7.1 illegally, unlawfully or fraudulently or in connection with any criminal activity (including theft, fraud, piracy, drug-trafficking, money laundering or terrorism);
- 7.7.2 to send, knowingly receive, upload, download or use any material which violates any Applicable Laws or is offensive, abusive, indecent, defamatory, obscene or menacing, or in breach of copyright, a duty of confidence, privacy or any other third party rights (including Intellectual Property Rights);
- 7.7.3 to cause annoyance, inconvenience or anxiety to any person;
- 7.7.4 to "spam" or to send or provide unsolicited advertising or promotional material or knowingly to receive responses to any spam, unsolicited advertising or promotional material sent or provided by any third party;
- 7.7.5 in any way which would contravene, or constitute an offence under, any Applicable Laws;
- 7.7.6 in contravention of any third-party contracts, licences or rights; or
- 7.7.7 in any way which, in Nviron's opinion is, or is likely to be, detrimental to any Relevant Items, the provision of the Services to the Customer or to any other customer or to the business or reputation of Nviron or any Relevant Provider.
- 7.8 If, at any time, the Customer fails to comply with its obligations under the Agreement (including this clause 6) then, without prejudice to any other right or remedy available to Nviron:
- 7.8.1 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;
- 7.8.2 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
- 7.8.3 if and to the extent that Nviron does agree to provide any such services:
- 7.8.3.1 the Customer shall pay Nviron's reasonable additional charges for such services; and
- 7.8.3.2 (without prejudice to clause 7.8.3.1) the provisions of the Agreement (including clause 18) shall apply to any such services and references to the Services shall be construed accordingly.
- 7.9 The Customer acknowledges and agrees that, whilst Nviron shall take all reasonable steps to minimise property damage during installation or maintenance of the Services, the Customer shall be solely responsible for any remedial works (including any decorating or repairs) required following such installation or maintenance (unless otherwise expressly agreed by Nviron or, subject always to the provisions of clause 19, if and to the extent that such remedial works are required as a result of Nviron being in breach of the Agreement).
- 7.10 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).
- 8. Fault Reporting**
- 8.1 Nviron shall provide a fault reporting and management process to be used by the Customer in respect of the provision of the Services (which may be included in the relevant Product Handbook).
- 8.2 In the event of any fault with the Services, the Customer shall carry out initial fault diagnosis and shall only report a fault to Nviron when the Customer reasonably believes that the fault is not attributable to the Customer or any equipment which is not provided by or on behalf of Nviron.
- 8.3 If Nviron or any Relevant Provider undertakes any investigation, maintenance or repair work in respect of a fault which is attributable to the Customer or any equipment which is not provided by or on behalf of Nviron or otherwise results from reasons outside of Nviron's reasonable control, Nviron reserves the right to charge the Customer for any such investigation, maintenance or repair work.
- 9. Maintenance**
- 9.1 In order to maintain the quality and safety of the Services, Nviron may (in addition to its rights under clause 20.3) from time to time suspend, close down or restrict all or any of the Services (or any part thereof) in order to carry out emergency and/or scheduled maintenance or repairs.
- 9.2 Nviron shall, in the case of scheduled maintenance or repairs affecting the Services, give the Customer a minimum of 3 (three) days' advance notice before any such suspension of the Services.
- 9.3 The Customer acknowledges and agrees that Nviron shall not be required to give any notice in order to carry out emergency maintenance or repairs in respect of the Services.
- 9.4 The Customer shall provide such reasonable assistance as Nviron or a Relevant Provider may require in respect of any emergency or scheduled maintenance affecting the Services.
- 10. Contact by Relevant Provider Personnel**
- 10.1 The Customer acknowledges and agrees that personnel acting on behalf of any Relevant Provider may contact the Customer and Authorised Persons directly:
- 10.1.1 for operational or emergency reasons (including welfare to concerns relating to any individual) in connection with the provision of the Services;
- 10.1.2 in response to the Customer making contact with the applicable Relevant Provider;
- 10.1.3 where necessary in relation to any appointments and access arrangements for engineering visits in connection with the provision of the Services; and/or
- 10.1.4 to assist with provision of the Services (including maintenance and/or repair activities).
- 11. Service Levels and Service Credits**
- 11.1 The Customer acknowledges and agrees that:
- 11.1.1 it is technically impracticable to provide the Services entirely free of faults and that accordingly no warranty is given by Nviron that the Services shall be provided without fault or on a

<p>11.1.2 continuous basis and (subject always to clause 4.2): and interruptions may occur in the provision of the Services and the Services may not be performed in accordance with any applicable Service Levels;</p> <p>11.1.3 if any such interruption does occur and any applicable Service Levels are not achieved, the Customer shall be entitled to the relevant Service Credits (subject to clause 11.2); and</p> <p>11.1.4 (without prejudice to the relevant provisions of clause 19) the Customer's entitlement to any Service Credits (subject to clause 11.2) shall constitute the Customer's sole and exclusive remedy for any failure by Nviron to meet the applicable Service Levels.</p> <p>11.2 The Customer shall have no entitlement to any Service Credits (or for any other redress whatsoever) relating to any failure by Nviron to meet any applicable Service Levels where:</p> <p>11.2.1 the Customer does not comply with clause 11.3; or</p> <p>11.2.2 any of the circumstances referred to in clause 11.4 apply.</p> <p>11.3 Any claims by the Customer for Service Credits must be:</p> <p>11.3.1 made within 21 (twenty-one) days after the end of the calendar month in which the relevant Service Levels were not achieved; and</p> <p>11.3.2 logged with the Nviron Account Manager responsible for the Services.</p> <p>11.4 The Service Levels do not apply (and Nviron shall have no responsibility or liability to the Customer whatsoever) in respect of:</p> <p>11.4.1 the Customer's failure to provide any required assistance or information to Nviron or any Relevant Provider;</p> <p>11.4.2 the Customer's failure to comply with the fault management process set out in the relevant Product Handbook or otherwise notified by Nviron;</p> <p>11.4.3 outages or loss or failure of service resulting from emergency or scheduled maintenance which affects availability of all or any part of the Services;</p> <p>11.4.4 faults which are the result of misuse, interference or a malicious act by the Customer, any Applicable Persons or any third party outside of Nviron's control;</p> <p>11.4.5 any unauthorised use of, or unauthorised attempts to access, the Services or any associated equipment;</p> <p>11.4.6 faults which are the result of data transmission originating from equipment owned or managed by the Customer;</p> <p>11.4.7 any use by the Customer of equipment (including any modem or wireless router where applicable) which are not supplied by or on behalf of Nviron;</p> <p>11.4.8 any outage and/or loss or failure of service caused by:</p> <p>11.4.8.1 any breach of the Agreement by the Customer;</p> <p>11.4.8.2 the Customer's software;</p> <p>11.4.8.3 any configuration of the Customer's internal network as required for the proper provision and use of the Services;</p> <p>11.4.8.4 any changes which the Customer has made (other than where such changes have been approved in writing by Nviron or undertaken upon the written instruction of Nviron);</p> <p>11.4.8.5 any third party outside of Nviron's control; or</p> <p>11.4.8.6 any viruses, denial of service attack or hacking attempt; or</p> <p>11.4.8.7 any event or circumstance beyond Nviron's control (including as referred to in clause 23.1).</p> <p>11.5 Notwithstanding any other provision of the Agreement or any Product Handbook, the total maximum Service Credits (expressed as a percentage) available to the Customer shall not, in any event, exceed the amount of the service credits (expressed as a percentage) which are available to Nviron from any Relevant Provider in respect of the circumstances giving rise to the relevant Service Credits.</p> <p>12. <b>Charges and payment</b></p> <p>12.1 The Customer shall pay Nviron the Charges for the Services in accordance with this clause 10.</p> <p>12.2 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:</p> <p>12.2.1 with effect from each anniversary of the Activation Date, by 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</p> <p>12.2.2 at any time with immediate effect (or after giving such notice as Nviron may determine, in its absolute discretion) in the event that there is 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).</p> <p>12.3 For the avoidance of doubt:</p> <p>12.3.1 any increase of the Charges pursuant to clause 12.2 shall apply to the amount of the Charges applicable as at the relevant anniversary (including as previously increased pursuant to such clause); and</p> <p>12.3.2 all references in the Agreement to the 'Charges' shall mean the Charges as increased pursuant to clauses 12.2 and/or 12.2 (and shall be payable by the Customer accordingly).</p> <p>12.4 In addition to payment of the Charges set out in Schedule 2, the Customer shall reimburse Nviron for any expenses incurred by Nviron in connection with the provision of the Services.</p>	<p>12.5 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.</p> <p>12.6 Payment by the Customer shall be deemed not to have been received unless and until Nviron has received cleared funds.</p> <p>12.7 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.</p> <p>12.8 All Charges shall be paid by the Customer in full without any deduction or withholding other than as required by Applicable Laws. 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.</p> <p>12.9 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 (including pursuant to clause 20), Nviron may charge the Customer interest under the Late Payment of Commercial Debts (Interest) Act 1998.</p> <p>13. <b>Customer Contacts</b></p> <p>13.1 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).</p> <p>13.2 As at the Commencement Date:</p> <p>13.2.1 the representative appointed by the Customer for the purposes of clause 13.1 shall be the person specified as the Primary Contact in Schedule 3; and</p> <p>13.2.2 other relevant points of contact for the Customer (which shall also be relevant for the purposes of escalating any Dispute in accordance with clause 26.1) are also set out in Schedule 3.</p> <p>13.3 The Customer may change its representative referred to in clause 13.2.1 (or any other points of contact referred to in clause 13.2.2) by giving written notice to Nviron (and whenever practicable shall give reasonable notice in advance of any such change taking effect).</p> <p>14. <b>Customer Requested Variations</b></p> <p>14.1 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, 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 (subject always to clause 30.3). If and to the extent that such changes or additional services are so agreed, the provisions of the Agreement (including clause 19) shall apply thereto and references to the 'Services' shall be construed accordingly.</p> <p>15. <b>Customer Warranties</b></p> <p>15.1 The Customer warrants and represents to Nviron that, as at the date of the Agreement and throughout its term:</p> <p>15.1.1 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 7.3.1; and</p> <p>15.1.2 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).</p> <p>16. <b>Relevant Items</b></p> <p>16.1 This clause 16 applies to such of the Relevant Items which, at any time, are sited at the Location (and references in this clause 16 to the 'Relevant Items' shall be construed accordingly).</p> <p>16.2 The Customer acknowledges and agrees that:</p> <p>16.2.1 any Relevant Items will be tested by or on behalf of Nviron and configured to meet the Customer's basic network and internet specifications but (unless otherwise expressly set out in the Agreement as forming part of any Services) no alterations shall be made to the configuration of Relevant Items;</p> <p>16.2.2 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 the possession or Nviron or the applicable Relevant Provider;</p> <p>16.2.3 ownership of the Relevant Items shall not pass to the Customer at any time;</p> <p>16.2.4 Nviron and the applicable Relevant Provider 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); and</p> <p>16.2.5 (without prejudice to any other provisions of the Agreement) the Customer shall notify Nviron immediately if the Customer believes any Relevant Item to be faulty, or in the event of any loss or damage to any of the Relevant Items.</p> <p>16.3 The Customer shall at all times:</p> <p>16.3.1 hold the Relevant Items on a fiduciary basis on trust as bailee of Nviron or the applicable Relevant Provider;</p> <p>16.3.2 store the Relevant Items in such a way that they remain readily identifiable as the property of Nviron or the applicable Relevant Provider;</p>
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- 16.3.3 keep the Relevant Items in good condition, in a safe and suitable location; and
- 16.3.4 keep the Relevant Items insured, on behalf of Nviron and the applicable Relevant Provider, 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).
- 16.4 The Customer shall not at any time without the prior written consent of Nviron:
- 16.4.1 use any Relevant Items for any purposes other than in accordance with the guidance or instructions of the relevant manufacturer or licensor;
- 16.4.2 permit any third party or any staff of the Customer to have access to, or any use of, the Relevant Items;
- 16.4.3 undertake or attempt to undertake any updates, repairs, alterations or maintenance to the Relevant Items;
- 16.4.4 sell or sub-let the Relevant Items or part with possession or control of the Relevant Items;
- 16.4.5 move the Relevant Items from the Location;
- 16.4.6 use the Relevant Items for any purposes other than as expressly approved in writing by Nviron;
- 16.4.7 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 16.4.6;
- 16.4.8 remove, destroy, damage deface, obstruct, alter or add to:
- 16.4.8.1 any cables, accessories or documentation supplied with or forming part of the Relevant Items; and/or
- 16.4.8.2 any identifying or proprietary notices affixed to the Relevant Items (including any trade marks or trade names of Nviron or the applicable Relevant Provider or of the manufacturer of the Relevant Items);
- 16.4.9 do (or permit to be done) any act or thing which will or may jeopardise the right, title and/or interest of Nviron or the applicable Relevant Provider in the Relevant Items;
- 16.4.10 create or allow the creation of any mortgage, charge, lien or other security interest in respect of the Relevant Items;
- 16.4.11 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
- 16.4.12 combine the Relevant Items with any other equipment or software.
- 16.5 The Customer grants Nviron, each applicable Relevant Provider and their respective 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.
- 16.6 For the avoidance of doubt (but without prejudice to the generality of clause 21.7) on termination of the Agreement, howsoever caused, the Customer's obligations and the rights of Nviron and the Relevant Providers contained in this clause 16 shall remain in effect.
17. **Marketing and Publicity**
- 17.1 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).
18. **Intellectual Property Rights**
- 18.1 Subject to clause 18.2, the Customer:
- 18.1.1 acknowledges and agrees that the Services IPR shall vest absolutely in Nviron (or a Relevant Provider, where applicable);
- 18.1.2 hereby assigns absolutely to Nviron (or the applicable Relevant Provider) 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;
- 18.1.3 agrees, to the extent that the right, title and interest in and to the Services IPR cannot be assigned to Nviron (or the applicable Relevant Provider) by future assignment pursuant to clause 18.1.2, to assign (or procure the assignment) to Nviron (or the applicable Relevant Provider) of such right, title and interest in and to the Services IPR on request to do so; and
- 18.1.4 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.
- 18.2 Without prejudice to clause 18.1, 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, a Relevant Provider or Nviron's other 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).
19. **Liability**
- 19.1 Without prejudice to clause 22, the following provisions set out the entire liability of Nviron (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 19.1.1 any breach of the Agreement; and
- 19.1.2 any representation, statement or act or omission (including negligence) arising under or in connection with the Agreement.
- 19.2 All warranties, conditions and other terms implied by Applicable Laws are, to the fullest extent permitted by Applicable Laws, excluded from the Agreement.
- 19.3 Nothing in the Agreement excludes or limits the liability of Nviron:
- 19.3.1 for death or personal injury caused by Nviron's negligence; or
- 19.3.2 for fraud or fraudulent misrepresentation; or
- 19.3.3 for any liability if and to the extent that it is not permissible under any Applicable Laws for such liability to be limited or excluded.
- 19.4 Subject to clause 19.3, 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.
- 19.5 Subject to clause 19.3 (and without prejudice to clause 19.4), 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:
- 19.5.1 loss of profits, business, revenue or turnover;
- 19.5.2 loss of sales, contract or business opportunities;
- 19.5.3 loss or depletion of goodwill, damage to reputation or similar losses;
- 19.5.4 loss of anticipated savings or wasted time or expenditure (including management time);
- 19.5.5 loss or corruption of software, data or information; or
- 19.5.6 loss or liability under or in relation to any contract which the Customer may have with any third party.
- 19.6 Subject to clause 19.3, Nviron shall have no responsibility or liability to the Customer for any delay, failure, breakdown, damage, costs, loss or injury caused by:
- 19.6.1 any equipment, software, programs or services supplied by the Customer or any third party on the Customer's behalf; or
- 19.6.2 any requirements of telecommunications authorities or any applicable regulatory body,
- 19.6.3 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 19 shall apply in the event that Nviron has any such responsibility).
- 19.7 Subject to clauses 19.3, 19.5 and 19.6, 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 be limited to the lesser of:
- 19.7.1 £50,000 (fifty thousand pounds); and
- 19.7.2 the total Charges paid or payable by the Customer under the Agreement.
- 19.8 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:
- 19.8.1 observation by Nviron or any Relevant Provider of any health and safety and security requirements at the Location which have been communicated by the Customer under clause 6.3.1; or
- 19.8.2 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 6 or any failure of the Customer to follow the reasonable instructions of Nviron or a Relevant Provider) or any third party.
20. **Termination and Suspension**
- 20.1 Subject to the other provisions of the Agreement, each of Nviron and the Customer shall be entitled to terminate the Agreement in its entirety or in respect of any one or more of the Services 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.
- 20.2 Nviron shall be entitled to terminate the Agreement in its entirety or in respect of any one or more of the Services with immediate effect by giving notice in writing to the Customer if:
- 20.2.1 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;
- 20.2.2 if Nviron has reasonable grounds to suspect that the Customer:
- 20.2.2.1 has committed or may be committing any fraud against Nviron or any third party;
- 20.2.2.2 is using the Services in breach of its obligations under the Agreement; or
- 20.2.2.3 is in breach of clause 22;
- 20.2.3 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 any Applicable Laws), 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;
- 20.2.4 the value of the assets of the Customer is less than its liabilities (taking into account contingent or prospective liabilities);
- 20.2.5 a moratorium is declared in respect of any indebtedness of the Customer;
- 20.2.6 any corporate action, legal proceedings or other procedure or step is taken in relation to:

20.2.6.1	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;	20.8	any Service Suspension and accordingly such period shall not count towards the calculation of any Service Credits. For the avoidance of doubt, when the last remaining Service is terminated, the Agreement shall be deemed to have terminated in its entirety.
20.2.6.2	a composition, compromise, assignment or arrangement with any creditor of the Customer;	21.	<b>Consequences of Termination</b>
20.2.6.3	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	21.1	Save as provided in clause 20.8, where the Agreement is terminated in respect of any one or more (but not all) of the Services, the provisions of this clause 21 shall apply only to the extent relevant to the Services which have been so terminated.
20.2.6.4	enforcement of any security interest (howsoever described) over any assets of the Customer;	21.2	On termination of the Agreement or any of the Services for any reason (and without affecting the rights or remedies of either party):
20.2.7	any event analogous to those set out in clause 20.2.6 occurs in any jurisdiction in respect of the Customer;	21.2.1	any Charges relating to any Services which have been supplied shall remain due and payable by the Customer in accordance with its provisions, together with any Charges payable by the Customer pursuant to clause 21.3 (where applicable);
20.2.8	the Customer engages in any activity which, in the absolute discretion of Nviron, adversely affects (or is likely to adversely affect) the reputation of Nviron or a Relevant Provider;	21.2.2	(subject to clause 2.4) Nviron shall not be obliged to provide any further Services (but the Customer shall remain liable to pay, in accordance with clause 21.2.1, any Charges for any Services which are supplied after the date of termination, in addition to any amounts due for any other services which are supplied pursuant to clause 21.5);
20.2.9	requested to do so by a Relevant Provider;	21.2.3	each party shall immediately cease to use any Intellectual Property Rights or confidential information belonging or licensed to the other party (save if and to the extent required to be used for any Services which are provided after termination of the Agreement or for any other services which are supplied pursuant to clause 21.5);
20.2.10	Nviron's contract with a Relevant Provider terminates for any reason, or a Relevant Provider ceases to provide any services which are necessary for the provision of the Services; or	21.2.4	without prejudice to any other provisions of the Agreement (including clause 16.5), 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 18.2; and
20.2.11	required to do so, in Nviron's reasonable opinion, in order to comply with any Applicable Laws (or to avoid being in breach of any Applicable Laws).	21.2.5	each party shall (at the option and request of the other) securely destroy or deliver to the other all documents and other records (in whatever form) in its possession or control containing or reflecting Intellectual Property Rights or confidential information belonging or licensed to the other and shall not retain any copies thereof except if and to the extent required by Applicable Laws.
20.3	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 any or all of the Services (or any part thereof) at any time and with immediate effect:	21.3	If the Agreement is terminated by Nviron pursuant to clause 20.1, 20.2.1, 20.2.2 or 20.2.8 prior to the expiry of the Minimum Term or of any Extended Term (as the case may be), the Customer shall be immediately liable to pay an amount equal to the aggregate amount of all Charges which would otherwise have been payable for the remainder of the Minimum Term or Extended Term (as applicable).
20.3.1	where the Customer is in breach, or if Nviron has reasonable grounds to suspect that the Customer may be in breach, of any of its obligations under the Agreement (including pending any potential remediation of such breach, where capable of remedy), including non-payment by the Customer of any Charges;	21.4	Except if and to the extent otherwise agreed in writing by Nviron, Nviron is under no obligation to provide any services to the Customer relating to the termination of the Agreement or any Services (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 (in its discretion) provide an estimate of its fees to provide any such services.
20.3.2	if any event occurs which would entitle Nviron to terminate the Agreement pursuant to clause 20.2;	21.5	Where Nviron agrees to provide any additional services referred to in clause 21.4, such services shall be provided upon and subject to:
20.3.3	if and to the extent required to do so, in Nviron's reasonable opinion, in order to comply with any Applicable Laws (or to avoid being in breach of any Applicable Laws);	21.5.1	any written terms agreed by Nviron specifying the nature and scope of such services and the applicable fees payable in respect thereof; and
20.3.4	to take any other action necessary in Nviron's reasonable opinion to comply with instructions issued by an emergency service or other competent authority or organisation;	21.5.2	the provisions of the Agreement,
20.3.5	temporarily to vary the technical specification of the Services, for repair, maintenance or improvement of the Services or to protect people or property;	21.5.3	and references in the Agreement to the 'Services' and the 'Charges' shall be construed accordingly.
20.3.6	if and to the extent necessary pending implementation of any variations to the Services pursuant to clause 14;	21.6	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 under any Applicable Laws and shall not affect any rights or liabilities of either party which have accrued as at termination.
20.3.7	pending receipt by Nviron of any necessary information, assistance or materials from the Customer relevant to such Services;	21.7	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.
20.3.8	pending the Customer undertaking any necessary or desirable maintenance, repairs or upgrades to the Relevant Items and/or the Customer Materials (except if and to the extent such maintenance, repairs or upgrades are the responsibility of Nviron as part of the Services); and/or	22.	<b>Compliance with Applicable Laws</b>
20.3.9	if a Relevant Provider suspends or terminates the provision of any services which are necessary for the provision of the Services.	22.1	The Customer warrants, represents and undertakes that it is (and will remain) in full compliance with all Applicable Laws.
20.4	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 20.3. Nviron shall not be required to give such prior notice where this would or may (in Nviron's reasonable opinion):	22.2	Without prejudice to the generality of clause 22.1, the Customer warrants, represents and undertakes that it is (and will remain) in full compliance with all laws, 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).
20.4.1	cause or exacerbate any technical problem or otherwise adversely affect any future provision of the Services;	22.3	The Customer shall indemnify, keep indemnified and hold harmless, Nviron and each Relevant Provider from and against all actions, claims, damages, losses and expenses arising as a result of or in connection with any claim, investigation, prosecution or allegation that the Customer has breached any Applicable Laws or is in breach of clause 22.2.
20.4.2	contravene any Applicable Laws;	23.	<b>Force majeure</b>
20.4.3	prejudice the interests of any applicable regulatory body or any potential investigation by any applicable regulatory body; or	23.1	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 (and the time for performance of the affected obligations shall be extended accordingly) 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, war, threat of or preparation for war, armed conflict, national emergency, acts of terrorism or terrorist attacks, protests, riots, civil war, civil commotion, collapse of buildings, fire, explosion or accident, flood, drought, earthquake or other natural disaster, epidemic or pandemic, nuclear, chemical or biological contamination; imposition of sanctions or embargoes, cessation or disruption of diplomatic relations, lock-
20.4.4	prejudice the interests of Nviron (including where any delay in suspending the provision of the Services would or may prevent Nviron from avoiding any breach in Applicable Laws or would or may result in a breach of contract with any Relevant Provider).		
20.5	Without prejudice to any other rights or remedies available to Nviron (including its other rights under this clause 20, Nviron may suspend (without prior notice) or ask the Customer to suspend, any Applicable Person from using any or all of the Services (or any part thereof) where Nviron reasonably believes that such Applicable Person is using a Service in breach of the Agreement (until such breach is rectified). On receipt of any such request from Nviron, the Customer shall immediately suspend the relevant Applicable Persons from using the relevant Services.		
20.6	Unless otherwise expressly stated in the Agreement, any Service Suspension shall be to such extent and for such period as Nviron may (in its absolute discretion) think fit and (for the avoidance of doubt) may be of indefinite duration.		
20.7	Notwithstanding any other provision of the Agreement:		
20.7.1	(subject always to clause 19.3) Nviron shall have no liability to the Customer for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that the Customer may suffer or incur as a result of any Service Suspension; and		
20.7.2	any applicable Service Levels shall not apply for the period of		

	outs, strikes or other labour disputes (whether or not relating to Nvtron's workforce), any law or action taken by a government or public authority (including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent), restraints or delays affecting carriers or any default of Nvtron's suppliers or sub-contractors), or interruption or failure of utility service.		
24.	<b>Confidentiality</b>		
24.1	Subject to clause 24.2, the Customer shall treat all customer or business information, drawings, designs and specifications submitted to it by Nvtron (including in any proposal or other documents) as confidential and shall not without Nvtron'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.		
24.2	The restrictions in clause 24.1 do not apply to information which:		
24.2.1	is publicly available or becomes publicly available without breach of clause 24.1; or		
24.2.2	is required to be disclosed by Applicable Laws.		
25.	<b>Freedom of Information Act</b>		
25.1	For the purposes of this clause 25:		
25.1.1	"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 Nvtron and the Customer as potentially falling within an FOIA Exemption;		
25.1.2	"FOIA" means the Freedom of Information Act 2000; and		
25.1.3	"FOIA Exemption" means any applicable exemption to the FOIA including but not limited to confidentiality (section 41 FOIA), trade secrets (section 43 FOIA) and prejudice to commercial interests (section 43 FOIA).		
25.2	To the extent that the Customer is a public authority for the purposes of the FOIA, Nvtron 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:		
25.2.1	the Customer shall notify Nvtron promptly;		
25.2.2	Nvtron 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);		
25.2.3	the Customer shall not disclose information relating to the Agreement until Nvtron has made such representations (provided always that Nvtron shall provide such representations within 5 (five) working days of the Customer's notification pursuant to clause 25.2.1);		
25.2.4	the Customer shall not disclose any Exempted Information; and		
25.2.5	the Customer shall not disclose any other information about Nvtron 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 Nvtron's representations given under clause 25.2.2).		
26.	<b>Dispute Resolution</b>		
26.1	Subject to clause 26.2, 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:		
26.1.1	the Dispute shall in the first instance be referred to the Primary Contact for the Customer as set out in Schedule 3 (or as otherwise notified from time to time in accordance with clause 13.3);		
26.1.2	if the Dispute is not resolved within 14 days of its referral pursuant to clause 26.1.1, it shall be referred to the Level 2 Contact for the Customer as set out in Schedule 3;		
26.1.3	if the Dispute is not resolved within 14 days of its referral pursuant to clause 26.1.2, it shall be referred to the Level 3 Contact for the Customer as set out in Schedule 3; and		
26.1.4	if the Dispute is not resolved within 14 days of its referral pursuant to clause 26.1.3, 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.		
26.2	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.		
26.3	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 26.1 have not been successful.		
27.	<b>Engagement of Nvtron's Personnel</b>		
27.1	The Customer shall pay Nvtron 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 Nvtron at the time of such employment, engagement or offer. Such fee shall be payable for each employee of Nvtron to whom any such employment, engagement or offer applies.		
		28.	<b>Notices</b>
		28.1	Any notice or other communication given under or in connection with the Agreement shall be in writing and may be:
		28.1.1	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
		28.1.2	subject to clause 28.2, sent by email.
		28.2	For the purposes of clause 28.1.2:
		28.2.1	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);
		28.2.2	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.
		28.3	Any notice or communication given pursuant to clause 28.1 shall be deemed to have been served:
		28.3.1	if delivered personally or sent by courier service, at the time of delivery;
		28.3.2	if sent by first class post, at the expiry of two days after it was posted; and
		28.3.3	if sent by email, at the time of sending (provided that no error message indicating failure to deliver has been received by the sender).
		28.4	The provisions of this clause 27 shall not apply to the service of any proceedings or other documents in any legal action.
		29.	<b>Rights of Third Parties</b>
		29.1	Save as provided in clause 29.2, nothing in the Agreement shall confer, or is intended to confer, on any third party any benefit or the right to enforce any term of the Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
		29.2	A Relevant Provider shall be entitled to enforce against the Customer any provisions of the Agreement which refer to (or by implication include) any right of the Relevant Providers (including any indemnities given by the Customer to a Relevant Provider under the Agreement).
		29.3	Notwithstanding clause 29.2, the Agreement may be terminated or varied without reference to the Retailers or any other person and sections 2(1)(a) to (c) of the Contracts (Rights of Third Parties) Act 1999 shall not apply.
		30.	<b>Changes to the Agreement</b>
		30.1	Nvtron shall be entitled to change the Charges in accordance with clause 12.2.
		30.2	Nvtron shall be entitled to change any aspect of the Agreement (including, for the avoidance of doubt, any provisions of these Terms, the Product Specific Terms and the Product Handbooks) at any time on giving the Customer not less than 7 (seven) days' notice.
		30.3	No amendment or variation of the Agreement (including, for the avoidance of doubt, the scope of the Services) shall be effective unless confirmed in writing by Nvtron or its duly authorised representative.
		31.	<b>Miscellaneous</b>
		31.1	The Agreement constitutes the entire agreement and understanding between Nvtron 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 Nvtron which is not set out in the Agreement or otherwise expressly agreed in writing by a director of Nvtron. Nothing in this clause 31.1 shall exclude or limit Nvtron's liability for fraudulent misrepresentation.
		31.2	Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between Nvtron 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.
		31.3	Nvtron shall be entitled to transfer and/or subcontract all or part of any its rights and/or obligations under the Agreement (including to a Relevant Provider).
		31.4	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 Nvtron).
		31.5	Each right or remedy of Nvtron under the Agreement is without prejudice to any other right or remedy of Nvtron whether under the Agreement or otherwise.
		31.6	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.
		31.7	The failure of Nvtron to exercise or enforce any right under the Agreement shall be deemed not to be a waiver of that right, nor operate to bar the exercise or enforcement of it at any time or times thereafter.
		31.8	Any waiver by Nvtron of any breach of, or any default under, any provision of the Agreement by the Customer shall be deemed not to be a waiver of any subsequent breach or default and shall in no way affect the other provisions of the Agreement.
		31.9	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.

31.10 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.

31.11 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 the laws of England and Wales. Without prejudice to clause 26, Nvtron and the Customer irrevocably agree that the courts of England and Wales shall have exclusive 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).



## Appendix 1

### Product Specific Terms for Leased Line Services

1. **Application**
    - 1.1 This Appendix 1 applies where the Agreement includes the provision of the Leased Line Services.
  2. **Definitions**
    - 2.1 In this Appendix 1, unless the context otherwise requires, the following terms (whether used in plural or singular form) shall have the following meanings:
      - "Access" means a copper or fibre optic internet and/or data connection which is provided via a dedicated link and used exclusively by the Customer for the purposes of data transmission;
      - "Assurance Backup" means a secondary connection which facilitates the remote management and monitoring by Nviron of the CPE and which can be used as a limited failover service in the event of a failure of the Leased Line Services;
      - "BT" means British Telecommunications plc (a company registered in England and Wales under company number 1800000);
      - "Circuit" means an individual Leased Line circuit;
      - "CPE" means 'Customer Premises Equipment', being the router equipment located at the Location and which is connected (or to be connected) with Nviron's leased line, Ethernet or private line circuit/service;
      - "EFM" means 'Ethernet in the First Mile' which is an internet connection provided over copper;
      - "Ethernet" means the technology used to deliver a Leased Line;
      - "FTTC" means 'Fibre to the Cabinet';
      - "FTTP" means 'Fibre to the Premises' (meaning to the Location);
      - "Leased Line" means a copper or fibre optic internet and/or data connection provided and managed in such a way so as to provide guarantees about data throughput and performance, (being one of the following: (i) Access, (ii) Ethernet, (iii) Private Line Service, (iv) EFM or (v) NGA Ethernet, as specified in the Agreement);
      - "Nviron Supplied Router" means the router equipment supplied (or to be supplied) by Nviron as part of the Leased Line Service and which is connected (or to be connected) at the Location with Nviron's leased line, Ethernet or private line circuit/service;
      - "Nviron Supplied Router Installation Service" means the onsite installation service of the Nviron Supplied Router, as specified in the Agreement (where applicable) and in accordance with the provisions of paragraph 5;
      - "NGA Ethernet" means an internet connection provided using the technologies of FTTC (or FTTP where available) circuits to deliver business grade Ethernet services;
      - "Private Line" means a point-to-point connection which enables data to be transferred between two business premises;
      - "Suitable Secondary Connection" means: (i) an available broadband service is already in existence at the Location; or (ii) an available PSTN line on which Nviron can install Assurance Backup service at the Location; or (iii) another secondary connection as may be agreed by Nviron from time to time;
      - "TCP" means transmission controls protocol;
      - "Telecommunications Circuit" means a circuit which allows that transmission of TCP/IP data; and
      - "Terminating Device" means a router that is used to terminate the Circuit and present connectivity through a single fast/Gig Ethernet port to the Customer's network (normally via a firewall).
  3. **Provision of the Leased Line Services**
    - 3.1 Nviron shall configure and deliver the equipment applicable to the Leased Line Services, but the Customer must install such equipment on (or prior to) the Activation Date. Nviron shall not be liable for any failure to deliver the Leased Line Services until such equipment has been installed and connected to the Telecommunications Circuit by the Customer. Nviron reserves the right to recover from the Customer any charges incurred in providing onsite assistance relating thereto.
    - 3.2 Nviron shall allocate a range of IP addresses for the Customer's use for machines on the Customer network for the duration of the Agreement. Unless otherwise expressly set out in the Agreement as being Nviron's responsibility as part of any Services, it is the Customer's sole responsibility to connect the relevant equipment to, and to configure the Customer's machines on, the Customer's own network.
  - 3.3 Nviron shall send to the Customer's relevant technical contact (as notified by the Customer to Nviron from time to time, with reasonable advance notice), via email, regular online usage statistical reports detailing the bandwidth used on the Telecommunications Circuit by the Customer.
  - 3.4 If the Customer does not have a Suitable Secondary Connection or Assurance Backup in place and operational either at the time of Activation or at any time during the term of the Agreement, then any applicable Service Levels (and accordingly any associated Service Credits) shall cease to apply in respect of the Leased Line Services.
  4. **Regrades and Shifts**
    - 4.1 The bandwidth of a Circuit cannot be downgraded to a bandwidth which is below the Circuit bandwidth of that particular Circuit. Circuit bandwidths can be upgraded at any time during the term of the Agreement, subject to the payment of revised Charges as notified to the Customer by Nviron from time to time. The Access bandwidth of an EFM Circuit cannot be downgraded at any time.
    - 4.2 Access bandwidths can be upgraded subject to the payment of revised Charges as notified to the Customer by Nviron from time to time. Where any existing Access bandwidth is upgraded, a new minimum duration of twelve (12) months shall apply for the Leased Line Services, with effect from the date of implementation of such upgrade. If, on such date, there is less than twelve (12) months remaining of the Minimum Term or the Extended Term (as applicable) then the Minimum Term or the Extended Term (as applicable) shall be deemed to be extended until the expiry of such 12-month period.
    - 4.3 Access bandwidth for EFM Circuits can be upgraded, subject to the addition of extra copper pairs, as such cost as shall be advised by Nviron.
  5. **Nviron Supplied Router Installation Service**
    - 5.1 The provisions of this paragraph 5 shall apply only where the Agreement includes the provision of the Nviron Supplied Router Installation Service as part of the Leased Line Services.
    - 5.2 An engineer will visit the Location to connect the Nviron Supplied Router to the Leased Line Circuit.
    - 5.3 Nviron shall endeavour to ensure that the Leased Line circuit is in a working state prior to leaving the Location, however, if Nviron is able to connect the Nviron Supplied Router but Nviron is unable to sign off the Circuit due to a carrier fault, Nviron will contact the Customer once the fault has been resolved to confirm whether or not the Circuit is operational. The Customer will not be liable for the Charges until the Circuit is confirmed as operational.
    - 5.4 Nviron shall perform only the following installation tasks, unless otherwise expressly agreed by Nviron in writing:
      - 5.4.1 the installation and configuration of the proposed Nviron Supplied Router (subject to paragraph 5.5);
      - 5.4.2 configuration of the Nviron Supplied Router by default to act as a terminating device to the Leased Line (subject to paragraph 5.5); and
      - 5.4.3 the performance of operational and performance tests.
    - 5.5 For the purposes of paragraph 5.4, the Nviron Supplied Router will, by default be configured to act as a Terminating Device only. Nviron shall not have any responsibility for, nor be required to configure or install any equipment in accordance with, any specific routing policies (including, for example, Access Control Lists) which are not expressly set out in the Agreement.
    - 5.6 Pre-installation checks must be completed by the Customer and confirmed to Nviron at least 5 (five) days in advance of the Nviron Supplied Router Installation Service commencing. Nviron reserves the right to charge for additional visits or work required as a result of the Customer not completing any pre-installation checks or any other responsibilities of the Customer (including where the Customer does not provide to Nviron in a timely manner any information relating to pre-installation checks or configuration requirements).
    - 5.7 The Charges for the Nviron Supplied Router Installation Service are subject to the following assumptions:
      - 5.7.1 the Location has no redundant hardware onsite to decommission, remove from site and/or dispose of;
      - 5.7.2 the Location is within mainland UK in a major town or city and with no impediment to road travel;
      - 5.7.3 the Nviron Supplied Router Installation Service shall take a maximum of 2 (two) hours, commencing from the time of the scheduled appointment, regardless of the time that the engineer actually commences the Nviron Supplied Router Installation Service; and
      - 5.7.4 the Nviron Supplied Router Installation Service shall be performed between the hours of 09:00 to 17:00, Monday to Friday excluding public holidays.
  - 5.8 Where the assumptions set out in paragraph 5.7 are not met, Nviron may increase the Charges payable for the Nviron Supplied Router Installation Services.
  - 5.9 If the Customer use the Leased Line Services, in a live environment, after completion of the Nviron Supplied Router Installation Service then the Nviron Supplied Router Installation Service shall be deemed to have been completed satisfactorily and accepted by the Customer.
  - 5.10 If the Customer cancels the Nviron Supplied Router Installation Service, the Customer shall pay a cancellation charge, as advised by Nviron, which shall be payable immediately upon such cancellation.
6. **Assurance Backup**
  - 6.1 The provisions of this paragraph 6 shall apply only where the Agreement includes the provision of the Assurance Backup as part of the Leased Line Services.
  - 6.2 A Suitable Secondary Connection must be present at the Location prior to the Leased Line Service being Activated.
  - 6.3 If the Customer is unable to provide Nviron with details of a pre-existing Suitable Secondary Connection at the time of entering into the Agreement, Nviron shall arrange to install a secondary connection as part of the

Assurance Backup (and in which case the provisions of paragraph 7 shall apply in respect of such installation) and the Customer shall pay such charges for installation as shall be advised by Nviron.

- 6.4 If the Customer has purchased a 'private line' service under the Agreement, the requirement to have a Suitable Secondary Connection applies to both ends of the Private Line Circuit.
- 6.5 Assurance Backup shall be provided for the purposes of failover of the Leased Line Services only and the Customer shall not make use of the Assurance Backup as a primary circuit or for any other purpose. Assurance Backup is not intended to provide an equivalent service to the Leased Line Service.
- 6.6 Broadband speeds are not guaranteed with Assurance Backup and are subject to availability, according to the advertised coverage of exchanges in the UK as published by BT.

#### **7. Installation of Assurance Backup**

- 7.1 The provisions of this paragraph 7 shall apply only where the Agreement includes the provision of the Assurance Backup Installation as part of the Leased Line Services, or where paragraph 6.3 applies.
- 7.2 The Leased Line Service is from the BT exchange (or any network telephony equipment which provides the same function) to the NTE at the Location.
- 7.3 External NTE will be placed no higher than 1.5m above ground level, and any internal NTE will not be placed higher than 1.5m above floor level in the room in which it is sited.
- 7.4 The internal NTE will be located on a wall, shelf or rack within 3m of the entry point into the Location as measured horizontally along the entry wall or any adjacent wall.
- 7.5 Nviron's engineer will fit the NTE as close as possible to where the Customer requires it to be sited and provided this does not involve more than 1 (one) hours' work. If this is not sufficient for the Customer's needs, the Customer has the option to request a further visit from an engineer, via Customer Services, to fit extension wiring (at additional cost to the Customer) or the Customer may make the Customer own arrangements with another supplier or use wireless technology.
- 7.6 The Customer is solely responsible for any internal wiring beyond the NTE.

## Appendix 2

### Product Specific Terms for Wholesale Line Rental Services

#### 1. Application

- 1.1 This Appendix 2 applies where the Agreement includes the provision of the Wholesale Line Rental Services.

#### 2. Definitions

- 2.1 In this Appendix 2, unless the context otherwise requires, the following terms (whether used in plural or singular form) shall have the following meanings:
- "BT" means British Telecommunications plc (a company registered in England and Wales under company number 1800000);
- "Call" means a signal, message or communication which can be silent, visual or spoken;
- "CDR" means a call data record relating to the Wholesale Line Rental Services; and
- "NTP" means a Network Termination Point.

#### 3. Provision of the Wholesale Line Rental Services

- 3.1 The Wholesale Line Rental Services shall be delivered by Nviron using BT as a subcontractor from the nearest telephone exchange and shall terminate upon reaching an NTP at the Location.

#### 4. Numbering

- 4.1 Neither party has title in the number allocated to the line rental and such number is controlled by and may only be transferred with the consent of BT or to meet the national numbering requirements of OFCOM. Changes to the number allocated to the line will be provided by BT to other communications providers with services on that line.

#### 5. Calls

- 5.1 The Customer may place Calls with Nviron or alternative suppliers. Any Calls routed over the Relevant Provider Network shall be supplied and charged under the terms of the Agreement.

#### 6. Call Data Records

- 6.1 Nviron shall provide the Customer with CDRs as part of the applicable monthly billing process or by making them available in the Customer Portal.
- 6.2 The Customer shall be responsible for processing the CDRs made available by Nviron.
- 6.3 The availability of CDRs is not guaranteed by Nviron and may be interrupted due to system down time of Nviron or any Relevant Providers. Nviron shall give the Customer as much notice as reasonably practicable of that downtime and shall resume availability as quickly as possible.

#### 7. Directory Entries And Phonebooks

- 7.1 Nviron shall request that Customer information is excluded from BT directory enquiries and for basic directory listings for phone book entries if requested to do so by the Customer in writing (or set out in the Agreement).
- 7.2 The Customer is responsible for the accuracy and provision to Nviron of its directory listing entry details.
- 7.3 The parties acknowledge and agree that Nviron shall have no liability for the Customer's failure to provide, or any error or omission in, any Customer directory listing information.

#### 8. Nuisance Calls

- 8.1 Nviron shall provide reasonable support to the Customer regarding any nuisance call investigations, but reserves the right to charge for such support.

#### 9. Service Constraints

- 9.1 The Customer acknowledges and agrees that:
- 9.1.1 technical or geographical limitations may prevent or inhibit the installation of the Wholesale Line Rental Services;
- 9.1.2 the Wholesale Line Rental Services are subject to certain limitations including technical limitations which may not become apparent until after the Wholesale Line Rental Services have been installed and working for some time and such limitations may require the Wholesale Line Rental Services to be withdrawn (in which case Nviron will rebate any applicable charges paid in advance by the Customer);
- 9.1.3 the Wholesale Line Rental Services may be incompatible with other services (including other of the Services and services provided by third parties to the Customer); and/or
- 9.1.4 the performance of some of the Customer's equipment at the Location may be affected by the Wholesale Line Rental Services.
- 9.2 Nviron shall have no liability to the Customer or any third party for the provision of the Wholesale Line Rental Services (including any failure to effect installation of the Wholesale Line Rental Services or the withdrawal of the Wholesale Line Rental Services), the performance of the Wholesale Line Rental Services and their effect on other services or equipment due to any service constraints or other issues referred to in paragraph 9.1.

#### 10. Service Requests

- 10.1 Without prejudice to any other provision of the Agreement, the Customer acknowledges and agrees that the provisioning time associated with features and facilities which are requested by the Customer relating to Wholesale Line Rental Services is not guaranteed and will be provided as soon as Nviron is reasonably able to do so.

**Product Specific Terms for Broadband Access Services****1. Application**

- 1.1 This Appendix 3 applies where the Agreement includes the provision of the Broadband Access Services.

**2. Definitions**

- 2.1 In this Appendix 3, unless the context otherwise requires, the following terms (whether used in plural or singular form) shall have the following meanings:
- "Broadband" means the physical network and connection between the Customer NTE and the point of handover on the Relevant Provider Network; and
- "PSTN" means the public switched telephone network forming part of the Relevant Provider Network.

**3. Installation**

- 3.1 The Customer acknowledges and agrees that it may lose its existing internet or telephony services for a period of time during or pending installation of the Broadband Access Services. Nviron shall have no liability to the Customer for any such loss.
- 3.2 Nviron shall not have any responsibility for connecting any equipment which Nviron had not provided (unless otherwise agreed by Nviron or the subject of other applicable Services).
- 3.3 The Customer shall be responsible for installing itself such equipment as Nviron may specify (subject to Nviron providing the Customer with instructions on how to effect such installation).

**4. Provision of the Broadband Access Services**

- 4.1 The Customer acknowledges and agrees that:
- 4.1.1 the Broadband Access Services are provided by Nviron subject to certain technical limitations and product incompatibilities as may be set out in the Broadband Product Handbook;
- 4.1.2 such limitations and incompatibilities may affect the performance of the Customer Materials or other equipment of the Customer;
- 4.1.3 such limitations and incompatibilities may not become apparent until after specific Broadband Access Services have been activated and working for some time. In these circumstances, some Broadband Access Services may need to be withdrawn (in which case Nviron will refund any Charges paid in advance by the Customer for the relevant aspects of the Broadband Access Services).
- 4.2 Due to circumstances outside of Nviron's control, it is possible that some Broadband Access Services will cease to be operational as a result of changes to third party infrastructure. In these circumstances the parties acknowledge and agree that some Broadband Access Services may need to be withdrawn and re-provided and shall cooperate to do so as quickly and efficiently as is reasonably possible.

**5. Provision of the Broadband Access Services**

- 5.1 The Customer acknowledges and agrees that the internet is separate from the Broadband Access Services (or any other Services) and that use of the internet is at the Customer's own risk and subject to Applicable Laws.
- 5.2 Nviron shall have no responsibility or liability whatsoever in any circumstances for:
- 5.2.1 the publication or transmission of information of any kind by the Customer or any third party using the internet;
- 5.2.2 any goods, services, information, software, or other materials which the Customer may obtain from a third party when using the internet; or
- 5.2.3 any loss, costs, liabilities or damages incurred by the Customer in any dealings the Customer may have with other individuals or organisations while using the internet.
- 5.3 The Customer acknowledges and agrees that Nviron may exercise editorial control over the content of its servers and block access to certain third party material (at Nviron's absolute discretion) and Nviron shall have no liability to the Customer for any such editorial control or blocking. Notwithstanding the foregoing, Nviron shall not have any obligation to monitor or otherwise check, the content of its servers or the use of the Broadband Access Services at any time.

**6. Use of the Broadband Access Services**

- 6.1 The Customer shall use the relevant Broadband Access Services in good faith and in accordance with what would generally be considered to be typical usage for such Broadband Access Services.
- 6.2 The Customer may use the Broadband Access Services to link to other networks world-wide, provided that the Customer shall comply, at all times, with any policies or terms and conditions imposed by the operators of such other networks.
- 6.3 The Customer acknowledges and agree that Nviron may:
- 6.3.1 modify any digital content provided by Nviron;
- 6.3.2 scan any IP addresses allocated to the Customer for anything which may present a potential risk to the Relevant Provider Network or to other internet users; and
- 6.3.3 refuse (or terminate) the display of any material or information provided by or on behalf of the Customer which Nviron believes (in its discretion) breaches any Applicable Laws or third party rights (including any Intellectual Property Rights).
- 6.4 If, as part of the Broadband Access Services, the Customer is provided with web space to enable it to upload its own websites, the Customer shall (as between the parties) be solely responsible for any material on its websites. The Customer shall indemnify, keep indemnified and hold harmless, Nviron and each Relevant Provider from and against all actions, claims, damages,

## Appendix 4

### Product Specific Terms for Colocation Services

1. **Application**
- 1.1 This Appendix 4 applies where the Agreement includes the provision of the Colocation Services.
2. **Definitions**
- 2.1 In this Appendix 4, unless the context otherwise requires, the following terms (whether used in plural or singular form) shall have the following meanings:
  - "Colocation Suite" means a room within a Data Centre within which the Colocation Services are provided;
  - "Customer Equipment" means the Customer's telecommunications, information technology (including servers) and other equipment from time to time installed in the Customer Space;
  - "Customer Space" means space in a shared or dedicated rack at the Colocation Suite, which is allocated by Nviron for use by the Customer, the location and size of which is set out in the Agreement;
  - "Data Centre" means the data centre facility at the address set out in the Agreement;
  - "Data Centre Rules" means the rules, policies and procedures relating to the Data Centre and its use, as set out in the Colocation Handbook (or as may otherwise be notified to the Customer by Nviron from time to time);
  - "Network Connection" means the network connection provided in accordance with the design set out in the Agreement to enable the Customer Equipment to connect to the internet; and
  - "Remote Hands" means physical maintenance of the Customer Equipment by Nviron in response to a support request.
3. **Power**
- 3.1 Nviron shall monitor and review the Customer's power consumption on a monthly basis and where the actual amount of power consumed by the Customer has exceeded the 'power allocation' specified in the Agreement, Nviron may:
  - 3.1.1 charge the Customer for the amount of power used by the Customer over that power allocation; and/or
  - 3.1.2 increase the Customer's power allocation to the next band of power usage (as informed by Nviron) in line with Nviron's current price list for power.
- 3.2 Where the standard power charges are increased by Nviron's electricity supplier, Nviron may, on notice to the Customer, increase the Charges applicable to the Colocation Services by a corresponding amount.
4. **Customer Rights and Obligations**
- 4.1 The Customer shall insure the Customer Equipment against all usual commercial risks, including its obligations under the Agreement.
- 4.2 If the manufacturer's warranty for the Customer Equipment has expired, the Customer shall ensure that an electrical safety test is carried out at least once in every 12 (twelve) month period following the date of expiry of the manufacturer's warranty.
- 4.3 The Customer shall (and shall ensure that all Applicable Persons shall) comply, at all times, with the Data Centre Rules and any Applicable Laws relating to the Customer Space or its use.
- 4.4 The Customer shall not (and shall ensure that all Applicable Persons shall not) make any alteration or modification to any fixtures and fittings at the Colocation Suite or Data Centre, or to any equipment belonging to Nviron or any third party which is located at the Colocation Suite or Data Centre.
- 4.5 The Customer shall (and shall ensure that all Applicable Persons shall) keep the part of the Colocation Suite at which the Customer Equipment is located clean and tidy and free from rubbish and other debris and refrain at all times from obstructing any doors or access to the Colocation Suite or the Data Centre.
- 4.6 The Customer shall (and shall ensure that all Applicable Persons shall) act with all due care and skill when working in the Colocation Suite, on the Customer Equipment or otherwise and not cause any injury, damage or nuisance to, or interference with, any person or property (including the Data Centre and/or any equipment owned by Nviron or any third parties).
- 4.7 The Customer shall ensure that, at all times, the Customer Equipment fully conforms with the manufacturer's specification and all relevant Applicable Laws, including those concerning safety and electromagnetic compatibility.
- 4.8 Subject to the Customer complying with the Agreement and the Data Centre Rules, Nviron shall permit the Customer, on reasonable prior notice, access to each Colocation Suite where the Customer Equipment is held. Where the Customer Space is part of a shared rack, access will be provided only under the supervision of a Nviron engineer at all times and with a prior appointment.
- 4.9 Notwithstanding paragraph 4.8, in cases where the Customer requires access to any Colocation Suite where the Customer Equipment is held for emergency maintenance and/or repair work, the Customer shall give Nviron as much notice as is reasonable under the circumstances but, in any event, not less than 4 (four) hours' advance notice (and the Customer acknowledges and agrees that immediate access may not be possible).
- 4.10 Where the Customer is undertaking any maintenance and/or repair work to the Customer Equipment, the Customer shall (and shall ensure that all Applicable Persons shall), save as otherwise permitted pursuant to paragraph 4.11, dismantle the Customer Equipment and take it to the designated repair area in the Data Centre.
- 4.11 Where the Customer is undertaking any maintenance and/or repair work to any Customer Equipment which is situated in the rack, the Customer and the Applicable Persons may only repair or replace parts which are specifically designed to be accessed in situ.
- 4.12 The Customer shall (and shall ensure that all Applicable Persons shall)

power-off the Customer Equipment Before beginning any repair or maintenance of any Customer Equipment (including that referred to in paragraph 4.11).

5. **Access by Authorised Personnel**
- 5.1 The Customer shall provide a list of authorised personnel who may access the Colocation Suite on its behalf. The Customer shall immediately notify Nviron in writing of any change to the list of authorised personnel but Nviron shall not have any liability to the Customer if:
  - 5.1.1 it permits access to the Colocation Suite to any person on the Customer's list prior to being informed of such changes; or
  - 5.1.2 it refuses to permit access to the Colocation Suite to any person who is not on the Customer's list because Nviron has not been informed of relevant changes thereto.
- 5.2 Without prejudice to paragraph 5.1, Nviron may, without any liability to the Customer, refuse any person entry to the Data Centre (or may remove them from the Data Centre) if:
  - 5.2.1 such person is not listed as an authorised person on the current list provided to Nviron pursuant to paragraph 5.1;
  - 5.2.2 such person cannot demonstrate (to Nviron's reasonable satisfaction) their identity or that they are authorised by the Customer;
  - 5.2.3 such person does not comply with the Data Centre Rules and/or any access procedures specified by Nviron; or
  - 5.2.4 Nviron reasonably considers that it cannot allow such person entry for any reason (whether or not they are authorised by the Customer).
6. **Relocation of Customer Equipment**
- 6.1 Nviron may, by giving the Customer 3 (three) months' notice (provided that, in an emergency or in other appropriate circumstances, Nviron may give lesser notice but shall give the Customer as much notice as is reasonably possible), move the Customer Equipment to a different Colocation Suite or Data Centre. Nviron shall, to the extent reasonably practicable, endeavour to consult with the Customer prior to any such relocation.
7. **Remote Hands**
- 7.1 The activities which may be carried out by Nviron as part of a Remote Hands service are set out in the Colocation Handbook and/or as may otherwise be notified to the Customer by Nviron from time to time.
- 7.2 Any action taken by Nviron as part of any Remote Hands service will be only on the Customer's precise written instructions and the outcome of those actions will be the Customer's sole responsibility.
- 7.3 The number of instances of Remote Hands support available to the Customer in each calendar month is set out in the Agreement. Such allowance expires at the end of each month and cannot be carried forward. Where the Customer does not use the Remote Hands service or requires additional Remote Hands services, Nviron shall charge the Customer at the applicable standard rate as advised by Nviron.