CIVICA SOFTWARE TERMS AND CONDITIONS

1. Definitions

1.1 The following definitions apply to this Contract:

Annual Fees means the software licence fees and recurring fees payable by Customer in order to continue to use the Services and/or the Software, as set out in the Order Form.

Applicable Privacy Law means the Privacy Act, the APPs, and equivalent privacy acts and regulations in each state and territory in Australia.

APPs means the 'Australian Privacy Principles' as set out in Schedule 1 of the Privacy Act, as amended from time to time.

Authorised Third Party/ies means any of Customer's subcontractors, agents or other third parties who are approved by Civica in writing and authorised by Customer to access the Software in accordance with clause 3.5.

Authorised User means each individual person (end user) using and/or accessing the Software as authorised by the Customer to use the Software and Documentation and further defined in the relevant Order Form.

Charges means any or all charges payable under this Contract including the one-off charges, implementation charges, Annual Fees and ad-hoc fees by Customer to Civica as detailed in the Order Form.

Civica means Civica Pty Limited, a company incorporated in Australia with ABN 83 003 691 718, with its registered office at Ground Floor, 277 William Street, Melbourne 3000, Victoria.

Confidential Information means all confidential information (however recorded, preserved or disclosed) disclosed by a party or its employees, officers, representatives or advisers to the other party including but not limited to all designs, design studies, surveys, project plans, implementation plans, software, customised specifications, system configurations, user guidance, training handout, proprietary data whose disclosure to third parties may be damaging and/or other similar information, and any Software or materials which have been, or will be supplied to Customer by Civica in connection with this Contract.

Contract means these Civica Software Terms and Conditions, the Special Terms and the Order Form which together make the agreement between Customer and Civica once the Order Form has been signed.

Customer means the entity shown on the Order Form.

Data Breach has the same meaning as in the Privacy Act and guidance published by the OAIC.

Documentation means the standard user guides and manuals made available to the Customer by Civica, as updated from time to time.

GST has the same meaning as in the GST Law.

GST Law means the A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended from time to time.

Intellectual Property Rights/IPR means all intellectual and industrial property rights including copyright, licence, patents, know-how, software, trademarks, trade names, inventions, registered designs, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, database rights, and any other rights in any invention, discovery or process, and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Maintenance Release shall mean a new release of the Software that is substantially the same as the current Software, which is issued in order to remove known errors or otherwise improve or enhance the Software but does not constitute a New Version.

New Version shall mean a release of the Software that incorporates significant new or additional functionality and features which is not a Maintenance Release.

OAIC means the Office of the Australian Information Commission or any replacement authority in Australia.

Open Source Software means software that is supplied on an "as is" basis and is supplied to Customer with all of the rights granted under the applicable licence.

Order/Order Form means Civica's completed order form.

Personal Information shall have the meaning set out in the Privacy Act.

Privacy Act means the Privacy Act 1988 (Cth), as amended from time to time.

Product(s) means any products including but not limited to consumables, hardware or third party software provided by Civica as detailed in the Order Form.

Services mean any services provided by Civica under this Contract as detailed in the Order Form including any implementation services and the Support Service.

Software means the software, which may include Open Source Software that is licensed to, or made available to Customer under this Contract, as listed in the Order Form, together with any updates or Maintenance Releases but excludes New Versions.

Special Terms means any special, additional or varied terms and conditions including third party terms and conditions that are set out in the Order Form and form part of this Contract or that have previously been agreed in writing between Customer and a third party Product owner.

Start Date means the date shown in the Order Form when the Services are first provided.

Support Service means the maintenance and support services for the Software as described in the Order Form.

Working Day means a day that is not a Saturday, a Sunday or public holiday in the State of the Customer.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.

1.3 Words in the singular shall include the plural and vice versa.

1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, 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 Any phrase introduced by the words including, includes, in particular or for example, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.

1.6 In the event of, and to the extent of, any conflict or inconsistency between any Special Terms and these terms and conditions the Special Terms shall prevail.

2. Contract Term

2.1 This Contract will be in force for a minimum period of 3 years from the Start Date, or such other period as agreed in the Order Form, and thereafter it shall continue until it is terminated:

2.1.1 by either party on 90 days written notice to the other party, provided such notice expires at the end of the minimum period or on the next anniversary of the Start Date; or

2.1.2 otherwise in accordance with the terms of this Contract.

2.2 In consideration of the Customer paying the Charges, Civica agrees to provide the Services including the Documentation in accordance with the terms and conditions of this Contract.

3. Software

3.1 For the term of this Contract, subject to payment of the relevant Charges, Civica grants to Customer a personal, non-transferable and non-exclusive licence in object code only to use the Software for Customer's own internal business purposes only.

3.2 Customer may make such copies of the Software and Documentation as are reasonably necessary for operational security, including back-up purposes, and lawful use. All such copies and the media on which they are stored shall be the property of Civica.

3.3 Customer agrees that:

3.3.1 it shall use the Software in object code form only. Except to the extent permitted by law, Customer shall not, nor permit any third party to, adapt or modify the Software, or decompile, reverse engineer, disassemble, apply any technique, processor

procedure or make any attempt to, or derive the source code of the Software;

3.3.2 unless permitted in accordance with clause 3.5, it shall not permit any third party, to use, access or possess the Software or Documentation nor use the Software on behalf of or for the benefit of any third party, including any consulting, service-bureau, time-sharing, rental or services of any other kind;

3.3.3 this licence is personal to the Customer and the Software and Documentation may only be used by Customer for its internal business purposes on a computer system meeting the minimum hardware requirements by the Authorised Users in accordance with the usage restrictions;

3.3.4 server elements of the Software are only licensed for use on a single live database and no more than two additional databases may be used for the purposes of testing and training only;

3.3.5 the Software is the confidential proprietary information of Civica or its licensor and as such Customer shall not modify or remove any copyright or proprietary notices on the Software and shall reproduce such notices on any copies of the Software and shall treat such Software as confidential;

3.3.6 if the Software fails to operate owing to Customer linking to, accessing or otherwise using the Software or causing the Software to be used in conjunction with, any third party software, database or other application without the prior written consent of Civica then Civica shall not be liable. Customer is not allowed to use third party software which is designed to replicate, run or operate in conjunction with the Software without Civica's written consent;

3.3.7 the Software may incorporate technical means of enforcing or monitoring the licence terms of the Software which may result in Customer being unable to utilise the Software beyond these Contract terms;

3.3.8 Software may only be installed at the installation address as specified in the Order Form. If Customer wants to change the installation address prior consent is needed from Civica. Customer may not sub-licence the Software licence in whole or in part without the prior written consent of Civica.

3.4 The Software includes functionality permitting Customer to perform certain administration and data upload tasks (the "Administrative Functions"). Customer undertakes to keep all user names, passwords, and other access details relating to the Administrative Functions confidential and Customer agrees that Customer will be liable for any loss or damage arising from Customer's failure to do so.

3.5 Customer may permit Authorised Third Parties to access the Software and Documentation provided that:

3.5.1 it obtains prior written approval from Civica before granting any access;

3.5.2 Customer remains responsible for the acts and omissions of such Authorised Third Parties as if they were the Customer's own acts and omissions; and

3.5.3 such access is for the Customer's sole benefit e.g. a third party which provides outsourced services to Customer under a written agreement.

4. Customer Obligations

4.1 Customer agrees it will:

4.1.1 only use the Products, Services and Software for its own internal business purposes;

4.1.2 comply with the terms and conditions of this Contract, in particular the Special Terms;

4.1.3 pay the Charges to Civica;

4.1.4 permit reasonable access by Civica to its sites in order for Civica to perform its obligations under this Contract and co-operate, as necessary, with Civica in relation to the provision of the Services;

4.1.5 ensure that its network and systems comply with the relevant specifications provided by Civica from time to time;

4.1.6 where Civica personnel are required to work at Customer premises, ensure that its personnel provide all reasonable assistance to them including desk space and wireless connection, as and when required by Civica to discharge its obligations, and in particular take all measures necessary to comply with acts, regulations and codes of practice relating to health and safety, which may apply;

4.1.7 when notified by Civica or the owners of Products supplied, implement promptly any Maintenance Releases or other fixes or upgrades of any system software necessary for the successful operation of the Software and/or Products; and

4.1.8 pay the additional fees to accommodate higher usage volumes (including the number of Authorised Users) when such licence or usage limitations are exceeded.

4.2 Customer shall indemnify, keep indemnified and hold Civica harmless from and against all claims, liabilities, proceedings, costs, damages, losses, or expenses incurred by Civica caused by, or in any way connected with Customer's use of the Software or the unauthorised use of the Software by any third party whether through breach of this Contract or any other negligent or wrongful act.

4.3 Customer shall allow Civica reasonable access, as required, to provide the Services and/or undertake an audit of Customer's use of the Software.

4.4 Customer represents and warrants that it possesses the full power and authority to enter into and perform its obligations under this Contract.

5. Services

5.1 Civica shall provide the Services using reasonable care and skill.

5.2 Implementation services will be provided by Civica as detailed in the Order Form and subject to Customer paying the implementation Charges set out in the Order Form.

5.3 Support Service will be provided by Civica subject to Customer paying the Annual Fees each year from the Start Date until this Contract is properly terminated. No refund will be given for Charges paid in advance in the event of termination.

5.4 The Services will be provided by Civica on Working Days, either at Civica sites or at the Customer's sites.

5.5 Customer will give to Civica promptly, on request, provide and/or make available such information and documents as Civica reasonably requires for the provision of the Services.

5.6 If the dates scheduled for delivery of the Services are deferred or cancelled by Customer, Civica may revise any scheduled date for completion of any part of the Services and/or by giving seven days written notice to suspend the Services.

5.7 Acceptance of Software shall be on the earlier of: (i) where no acceptance tests are specified in the Order Form, on delivery of the Software; or (ii) where acceptance tests are specified in the Order Form when the Software has passed such tests; or (iii) deemed to have occurred on the date of first live use or processing of data (except for testing purposes).

5.8 Civica shall not be liable for any failure to provide or delay in providing the Services, arising out of or in connection with any:

5.8.1 act or omission of Customer or its employees, agents or subcontractors which affects Civica's ability to provide the Services;

5.8.2 inaccurate or incomplete data, information or documentation provided by Customer;

5.8.3 failure by any third party to fulfil its obligations to Customer;

5.8.4 use by Customer of non-manufacturer recommended media and supplies, or any neglect or improper use, or electrical disturbances, or any unauthorised use, of the Products, Software and Services or modification by persons other than Civica employees.

5.9 If the Customer or any of its Authorised Users requests the same or substantially the same advice or assistance on more than one occasion, or makes requests which may reasonably be considered excessive or an abuse of the Support Service, or requests advice or assistance for matters which a reasonable trained user ought to be able answer or solve for themselves, then Civica may do all or any of the following at its sole discretion:

5.9.1 refuse to answer any further such requests for advice or assistance; or

5.9.2 require the Customer to provide further training to its Authorised Users, and the Customer shall pay an additional charge for any such training provided by Civica.

5.10 This Contract also acts as an umbrella agreement, which sets out the general terms for the supply of additional related software and services by Civica to the Customer, when so requested from time to time. Such additional software and services and any particular special terms and conditions applicable to the supply thereof shall be set out in a work order. If Civica provides any additional software or services Customer shall be charged separately for the provision of these at Civica's then prevailing rates for such software or services or as agreed under the work order.

6. Warranties

6.1 In the event of a breach of clause 5.1 and provided such breach is reported to Civica within a reasonable time (given the nature of the Service) after completion of the Services, Civica shall re-perform the Services without additional charge to Customer within a reasonable period of time.

6.2 Civica warrants in respect of the Software (i) that it will during normal use provide the facilities and functions described in the accompanying software manuals. Such warranty will start upon acceptance of the Software (in accordance with clause 5.7) and continue for so long as the Software is supported by Civica and Customer continues to pay the Annual Fees and Support Fees; and (ii) it has tested for viruses in the Software using commercially available virus checking software consistent with current industry practice.

6.3 Customer acknowledges that:

6.3.1 software in general is not error free and that the existence of such errors in the Software shall not by themselves constitute a breach of this Contract; and

6.3.2 the Software is not bespoke and has not been prepared to meet Customer's individual requirements and that it is therefore the responsibility of Customer to ensure that the facilities and functions in the Software meet its requirements.

6.4 Civica warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Contract.

6.5 This clause 6 constitutes the only warranties given by Civica. Express terms of this Contract are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

7. IPR

7.1 All Intellectual Property Rights in the Software belong to Civica or a third party licensor. At no time shall any rights, interests or title in any intellectual property in the Software pass to the Customer.

7.2 Civica shall have a royalty-free, worldwide, irrevocable perpetual licence to use and incorporate into the Software any suggestions, enhancement requests or other feedback provided by the Customer or its Authorised Users relating to the Software without restriction.

7.3 The Customer hereby grants to Civica a non-exclusive, non-transferrable (except as part of a permitted assignment of this Contract), royalty free licence to copy, modify, and use the Customer data as reasonably appropriate for the purposes of this Contract.

7.4 Civica shall defend or, at its option, settle any claim brought against Customer regarding its authorised use of the Software, excluding third party software and open source software, in Australia and in accordance with this Contract infringes any Intellectual Property Rights of any third party and shall pay any damages finally awarded against Customer in respect of such claim and any reasonable costs and expenses incurred by Customer provided that:

7.4.1 Customer notifies Civica immediately;

7.4.2 Customer provides all information and assistance as Civica reasonably requests at Civica's cost, and Customer does not prejudice the defence of such claim;

7.4.3 Civica is given immediate and complete control of such claim; and

7.4.4 the claim does not arise from any unauthorised use or alteration to the Software or Customer's use (including the Authorised Users or Authorised third Parties) of the Software after notice of alleged infringement is known.

7.5 In the event that a claim as contemplated by clause 7.4 is made or in Civica's opinion is likely to be made, Civica may at its option:

7.5.1 obtain the right for Customer to continue to use the Software;

7.5.2 change or replace all or any part of the Software; or

7.5.3 terminate this Contract immediately on written notice.

7.6 Clauses 7.4 and 7.5 state the entire liability of Civica in respect of any claim as contemplated by clause 7.4.

7.7 The third party owner's terms shall apply, as detailed in the Special Terms, in respect of licensing and/or the supply of the Products.

8. Privacy

8.1 The Customer shall comply with the Applicable Privacy Law in respect of all Personal Information it passes, uses or discloses to Civica.

8.2 Civica shall comply with Applicable Privacy Law in respect of all Personal Information collected, used or disclosed on behalf of the Customer in accordance with this Contract.

8.3 The parties undertake to each other that they shall comply with Applicable Privacy Law in relation to their collection use or disclosure of Personal Information in connection with the Services.

8.4 Civica shall:

8.4.1 ensure that its staff who collect, use or disclose the Customer's Personal Information have had the necessary training regarding the handling and security of Personal Information and have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

8.4.2 at the choice of the Customer, destroy, anonymise or return all the Personal Information to the Customer after the end of the provision of Supplies relating to the collection, use or disclosure, and destroy or de-identify all copies unless storage of the Personal Information is required by law and/or to carry out contractual obligations and on request provide written confirmation that it has done so;

8.4.3 make available to the Customer all information necessary to demonstrate compliance with the obligations set out in this clause 8.5, subject to the Customer paying Civica's reasonable costs in collating any such information;

8.4.4 inform the Customer if, in its opinion, an instruction infringes Applicable Privacy Law;

8.4.5 notify the Customer as soon as possible after becoming aware of either:

8.4.5.1 a potential Data Breach;

8.4.5.2 any Data Breach notification, complaint or other notice or communication in relation to either party's compliance with Applicable Privacy Law.

Civica will not directly respond to any such Data Breach notification, complaint, notice or communication unless required by law.

Customer Consents

8.5 The Customer acknowledges and consents to the following:

8.5.1 Civica may transfer Customer Personal Information to any of its group of companies, whether they are domiciled in Australia or in a country outside of Australia; or

8.5.2 Civica may transfer Personal Information outside of Australia where required to do so under law.

8.6 The Customer shall ensure it has obtained the requisite consent (if applicable) to collect, use or disclose Personal Information and has fulfilled all its obligations that entitle it to pass the Personal Information to Civica (including its contractors, sub-contractors and any other third party contractors, including but not limited to its group of companies) so that Civica may lawfully use or disclose such Personal Information.

8.7 Where the Customer fails to comply with Applicable Privacy Law, or the Customer does not obtain the requisite consent under clause 8.6, the Customer shall keep Civica indemnified in full and hold Civica harmless against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Civica as a result of, or in connection with, any claim made against Civica in respect of any use of such Personal Information in breach of this Contract arising from Customer's failure to comply with its obligations.

8.8 The Customer consents to Civica appointing its third party hosting provider (or any replacement hosting provider) listed in the Order Form.

Freedom of Information

8.9 Where Customer is a public authority and is under a duty to comply with the provisions of the Freedom of Information Act 1982 (Cth) or its equivalent in any Australian state or territory, as amended from time to time and including any related guidance or codes of practice (each an "FOIA"), Civica shall assist Customer in meeting any requests for information in relation to this Contract in return for a reasonable fee which will be notified by Civica to Customer within 5 Working Days (or as otherwise agreed by the parties acting reasonably) of receipt of any such written request.

8.10 Customer shall consult with Civica prior to disclosing information relating to this Contract and will only disclose to the extent that it is required to do so by the relevant FOIA.

8.11 Neither Civica nor Customer shall, in responding to such requests for information or disclosure of this Contract under clause 8.9, disclose any information which is exempt as described within any provision of the relevant FOIA or that can be construed as commercially sensitive information.

8.12 All Personal Information is to be provided to Civica in the specified format, and where additional manipulation and/or data changes are required, Civica reserves the right to charge for this additional work.

9. Confidentiality

9.1 Both parties shall keep the other party's Confidential Information confidential and shall not:

9.1.1 use or exploit the Confidential Information in any way except for carrying out its obligations under this Contract;

9.1.2 disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Contract;

9.1.3 copy, reduce to writing or otherwise record the Confidential Information except as necessary for this Contract; and

9.1.4 use, reproduce, transform, or store the Confidential Information in an externally accessible computer system or transmit it in any form or by any means whatsoever outside of its usual places of business.

9.2 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 9.2 it takes into account the reasonable requests of the other party in relation to the content of this disclosure.

9.3 The terms of clause 9.1 shall not apply to any Confidential Information which:

9.3.1 is or comes into public knowledge, other than through a breach of this Contract by the Recipient;

9.3.2 can be shown by the Recipient to the reasonable satisfaction of the Discloser to have been known by the Recipient and to be at its free disposal before disclosure by the Discloser;

9.3.3 came lawfully into the possession of the Recipient from a third party who is free to make a non-confidential disclosure of the same, without any obligation of confidentiality being imposed upon the Recipient in respect thereof by such third party.

9.4 Civica may publicise the fact that it has been engaged by the Customer to provide the Services and is licensed to copy and reproduce any names or logos of the Customer for this purpose on its website and in any promotional materials, proposals and tenders. No press release will be issued without the Customer's prior consent.

10. Charges

10.1 The Customer shall pay the Charges in accordance with the Order Form and this clause 10.

10.2 All amounts and fees stated or referred to in this Contract shall be payable in Australian Dollars and are exclusive of GST, which shall be added to Civica's invoice(s) at the appropriate rate.

10.3 Where Services are provided on a time and materials basis they will be at the rates current at the time of provision of the service, unless otherwise agreed in the Order Form. Where specific daily rates are quoted these are only valid for 6 months following the date of signing this Contract. Unless otherwise stated in the Order Form, invoices for work carried out on a time and materials basis will be raised monthly in arrears based on time actually worked on the chargeable activities covered by this Contract (as recorded by Civica staff on Civica's internal systems).

10.4 Any Services provided outside of a Working Day will be chargeable at the then current time and materials rates plus 50%.

10.5 If the provision of the Services is cancelled, suspended or deferred under clause 5.6 Civica will:

10.5.1 be entitled to payment by Customer for all work done up to date of such deferment cancellation or suspension (including payment of the Annual Fees); and

10.5.2 wherever able to redeploy staff but in the event the days cannot be re-assigned Civica may charge for these. The rates chargeable for cancellation or deferment where there is: (i) less than 48 hours' notice is 100% per day; (ii) less than 7 days' notice is 75% per day; and (iii) more than 7 days' notice is 50% per day; together with any expenses already incurred or non-refundable e.g. train or air fares.

10.6 Civica may modify its fees and Charges in line with the then current prices of Civica and its suppliers, as follows:

10.6.1 except for third party costs, the percentage increase shall not exceed the percentage increase (if any) of the Consumer Price Index published by the Australian Bureau of Statistics for the appropriate period plus 2% from time to time but not more than once per year, or as otherwise agreed in the Order Form; and

10.6.2 in respect of third party costs over which Civica has no control (for example Microsoft licensing charges) the percentage increase shall match the increase applied by the third party as detailed in clause 10.7.

10.7 Civica may increase the charges at any time to take into account third party costs, over which Civica has no control (for example, energy and Microsoft licensing charges) and apply the increase to the charges to match the increase applied by such third party, in respect of that element of the charges. Civica may not apply such increase retrospectively and will not pass on such increase to Customer where the increase is less than 2% of the third party element. On request Civica shall provide evidence of such increase applied by the third party.

10.8 Unless specifically shown as inclusive of expenses in the Order Form, all prices referred to in this Contract are exclusive of transport, travel, subsistence or out of pocket expenses incurred by Civica in carrying out the Services. Such reasonable expenses will be charged to Customer in accordance with Civica' expenses policy.

10.9 Where the Customer requires a purchase order to be raised in order to facilitate payment of invoices, the Customer agrees to raise such purchase order in a timely fashion so as not to delay payment of Civica invoices in accordance with this clause 10. Notwithstanding the foregoing, the Customer agrees that any failure to raise a purchase order does not prevent Civica from raising invoices and any delay or lack of a purchase order does not relieve the Customer from paying valid invoices.

10.10 Civica reserves the right (in addition to any other remedies which may be available to it) to charge an administrative fee on overdue amounts on a daily basis from the original due date of the invoice at the rate of AUD$900 per day, the Customer agrees that such administrative fee is a genuine pre-estimate of the cost and loss suffered by Civica for late payment of invoices.

10.11 If the use of the Software exceeds the usage restrictions shown in the Order Form at any time Civica may charge Customer the additional usage fees and increase the applicable Charges to take into account the additional usage.

10.12 If, and to the extent, any supply of the Products or Services under the Contract is a taxable supply within the meaning of the GST Law, the price for the Services will be increased to include GST payable by the Supplier in respect of the supply.

10.13 All rebates, discounts or other reductions in price will be calculated on the GST exclusive price.

10.14 The parties agree that:

10.14.1 the parties must be registered persons within the meaning of the GST Law; and

10.14.2 costs required to be reimbursed or indemnified excludes any amount that represents GST for which an input tax credit within the meaning of the GST Law can be claimed.

11. Termination

11.1 Either party may, without prejudice to any other remedies it may have, terminate this Contract forthwith at any time by giving notice in writing to the other party:

11.1.1 if the other party commits any material breach of this Contract provided that if the breach is remediable then the notice of termination shall not be effective unless the party in breach fails within thirty (30) days of the date of such notice to remedy the breach complained of; or

11.1.2 if one party suffers for a period of 30 consecutive days or more a force majeure event described in clause 15.8; or

11.1.3 if the other party ceases to carry on business or a substantial part thereof, commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation whether compulsory or voluntary other than for the purposes of amalgamation or reconstruction or compounds with its creditors generally or has a receiver or manager appointed over all or any part of its assets

or suffers execution or distress or takes or suffers any similar action in consequence of debt or becomes unable to pay its debts as they fall due or other similar event.

11.2 If the Customer fails to make any payment payable under this Contract by the due date and provided notice has been given by Civica, if fails to pay within a further 14 day period after the due date , then Civica shall be entitled to terminate this Contract by giving 14 days written notice to Customer.

11.3 On expiry or termination of this Contract, Customer shall immediately cease using the Software and Services, deleting all relevant Software and data from both Customer's machines and backup media and upon request provide Civica with written confirmation of deletion.

11.4 On expiry or termination of this Contract, Customer shall immediately deliver up to Civica (i) the Software and any copies thereof, and the Documentation; and (ii) all copies of Civica's Confidential Information and copies of programs, manuals and documentation used by Civica for the purpose of providing the Services.

11.5 Upon termination of this Contract, Civica shall immediately deliver up to Customer any copies of Customer's Confidential Information and data in its possession that Customer requests are returned.

11.6 In the event Customer fails to comply with its obligations under clause 11.4, Civica shall be entitled to retake possession, by entry into any sites or otherwise, of the Software, and Civica's Confidential Information and any related manuals and the Documentation.

11.7 Termination will not discharge Customer from any payment obligation under this Contract, or from payment of sums already due, or, in the case of termination under clause 11.1 or 11.2 from payment of any sums which would necessarily have become due if the licence had not been terminated.

11.8 The accrued rights and remedies of the parties as at termination shall not be affected by clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12. Limits of Liability

12.1 Neither party excludes or limits liability to the other party for:

12.1.1 death or personal injury arising from its negligence; or

12.1.2 fraud or fraudulent misrepresentation

12.1.3 wilful misconduct or deliberate breach; or

12.1.4 to the extent such limitation or exclusion is unlawful.

12.2 Each party's liability to the other in respect of any loss of, or damage to, physical property of the other whether in contract, tort (including negligence) or otherwise arising from, or in connection with, this Contract shall be limited to A$1,500,000 in aggregate.

12.3 Notwithstanding anything to the contrary in this Contract, but subject to clause 12.1 neither Civica nor Customer shall be liable to the other for any of the following (whether or not the party being claimed against was advised of, or knew of, the possibility of such losses) whether arising from negligence, breach of contract or otherwise:

12.3.1 loss of profits, loss of business, loss of revenue, loss of contract, loss of goodwill, loss of anticipated earnings or savings (whether any of the foregoing are direct, indirect or consequential loss or damage); or

12.3.2 loss of use or value of any data or equipment including software, wasted management, operation or other time (whether any of the foregoing are direct, indirect or consequential); or

12.3.3 any indirect, special or consequential loss or damage; or

12.3.4 the poor performance, or lack of connectivity, or lack of availability of the Internet or telecommunications or hardware;

12.3.5 loss or damage to the other party's or any third party's data or records;
however arising.

12.4   Except where liability arises under clauses 12.1 or 12.2 and subject to clause 12.3 Civica's total aggregate liability in or for breach of contract, negligence, misrepresentation (excluding fraudulent misrepresentation), tortious claim (including breach of statutory duty), restitution or any other cause of action whatsoever relating to or arising under or in connection with this Contract (including performance, non-performance or partial performance), and including liability expressly provided for under this Contract shall not exceed the Charges paid or payable during the 12 months preceding the date on which the claim arose.

12.5   Except as expressly provided otherwise by these terms and conditions or as otherwise expressly agreed in writing between the parties, all other representations, conditions, warranties and other terms are excluded (including any statutory implied terms as to satisfactory quality, fitness for purpose and conformance with description) save to the extent that the same are not capable of exclusion at law.

12.6   The Charges have been set by Civica on the basis of the exclusions and restrictions of liability in this clause 12 and would be higher without those provisions.

13.   Corruption and Modern Slavery

13.1   Civica shall not:

13.1.1 offer, give or agree to give to any person working for or engaged by Customer any fee, gift, reward or other consideration of any kind, which could act as an inducement or a reward for any act or failure to act connected to this Contract, or any other agreement between Civica and Customer including its award to Civica and any of the rights and obligations contained within it; nor

13.1.2 offer, give or agree to give any fee, gift, reward or other consideration to any person the receipt of which is an offence under the relevant law in which a party is domiciled; nor

13.1.3 enter into this Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by Customer by or for Civica, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to Customer before signing this Contract.

13.2   If Civica (including any Civica employee or agent, in all cases whether or not acting with Civica's knowledge) breaches

13.2.1 clause 13.1, or

13.2.2 the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) in relation to this Contract or any other contract with Customer;
        Customer may terminate this Contract on written notice with immediate effect and to recover from Civica the amount of any loss resulting from such termination .

13.3   Any termination under clause 13.2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to Customer.

13.4   The parties agree to take reasonable steps to identify, assess and address risks of modern slavery practices in the operations and supply chains used in the provision of services. If at any time the parties become aware of modern slavery practices in the operations and supply chains used in the performance of the Contract, that party must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

14.   Statutory and Other Regulations

14.1   Civica shall not in the performance of this Contract in any manner endanger the safety, unlawfully interfere with or cause the inconvenience of the public. The cost to Civica of meeting the requirements of this clause shall be included in the Charges except as provided under clause 14.2.

14.2   If the cost to Civica of the performance of the Contract shall be increased or reduced after the date of this Contract by reason of the making of any law or any order, regulation or bye-law having the force of law that shall be applicable to this Contract (other than any tax upon profits or revenue), the amount of such increase or reduction shall be added to or deducted from the Charges shown in the Order Form.

15.   General

15.1   Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business. In the case of notices to Civica, they shall be addressed for the attention of the Group Commercial Director with a copy to receptionmascot@civica.com.au.

15.1.1 Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post at 9.00 am on the third day after posting, or if delivered by commercial courier on the date and at the time that the courier's delivery receipt is signed.

15.1.2 Any notice sent by electronic mail shall be deemed received upon delivery by electronic mail with confirmation from the server transmission was completed.

15.2   This Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into this Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Contract. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

15.3   Either party may at any time request a change to this Contract and/or the Services. No variation of this Contract, including any additional terms and conditions, shall be binding unless it is in writing and signed by each of the parties (or their duly authorised representatives).

15.4   No failure or delay in exercising any remedy or right under this Contract will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any remedy or right under this Contract or otherwise.

15.5   Neither party may assign the benefit of this Contract nor any interest except with the prior written consent of the other (such consent not to be unreasonably withheld), save that Civica may assign this Contract at any time to any member of the Civica group of companies.

15.6   The provisions of this Contract shall be severable in the event that any of its provisions are held to be invalid, void or otherwise unenforceable by a court of competent jurisdiction or other applicable authority and the remaining provisions shall remain enforceable to the fullest extent permitted by law. However, if the severed provision is essential and material to the rights or benefits received by either party, the parties shall use their best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly effects their intent in entering into this Contract.

15.7   Nothing in this Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

15.8   Neither party will be liable to the other for any failure or delay or for the consequences of any failure or delay in performance of this Contract, excluding Customer's obligation to pay the Charges, if it is due to a force majeure event: which is any event beyond the reasonable control of a party to this Contract including,

without limitation, acts of God, war, industrial disputes, pandemic, protests, fire, flood, storm, tempest, explosion, an act of terrorism and national emergencies. The party subject to such event shall, as soon as practicable, give notice of the event to the other party, such notice to include a reasonable forecast of the duration of the force majeure event. If such delay or failure continues for at least 30 days, either party shall be entitled to terminate this Contract in accordance with clause 11.1.2.

15.9   All disputes arising out of or under this Contract that are not resolved by the Customer's contract manager and Civica's account manager shall be escalated internally by both parties for resolution. Second level escalation is to the Customer contract manager's manager and for Civica the Service Delivery Manager. Then the third level is to that manager's manager. If the parties fail to settle the dispute within 30 days of the third level escalation, or such longer period as the parties may agree, a party may commence legal proceedings in relation to the dispute.

15.10   Subject to clause 15.9, this Contract 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 Victoria and the parties irrevocably submit to the exclusive jurisdiction of the courts of Victoria.