CIVICA SOFTWARE TERMS AND CONDITIONS

1. Definitions

1.1 The following definitions apply to this Contract:

Annual Fees means the recurring fees payable by Customer in order to use the Services as set out in the Order Form.

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

Authorised User means each individual person allowed to access the Software under this Contract, subject to the authorised numbers shown in the Order Form.

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

Civica means Civica UK Limited (company number 1628868) with registered office at South Bank Central, 30 Stamford Street, London, SE1 9LQ.

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 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 and the Order Form and if appropriate the Data Protection Addendum and any Special Terms, 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 Protection Addendum means the data protection terms and conditions together with the scope of processing as set out in Schedule 1.

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

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.

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 the implementation services, the hosted online solution, Software, Documentation (as updated by Civica from time to time), Support Services and any other services detailed in the Order Form provided by Civica under this Contract.

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.

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

Working Day means 0900 – 1700 hours on a Monday to Friday excluding English public holidays.

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, Civica grants to Customer a personal, non-transferable and non-exclusive right to use the Services for Customer's own internal business purposes only.

3.2 Customer may make such copies of the Documentation as are reasonably necessary for its use of the Services and shall reproduce all copyright and other notices in and on the Documentation. All such copies shall form part of the Documentation and shall be subject to the terms and conditions of this Contract.

3.3 Customer agrees that:

3.3.1 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, process or procedure or make any attempt to or derive the source code or derivative works 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 the access granted under this Contract is personal to the Customer and the Software and Documentation may only be used by Customer for its internal business purposes by the Authorised Users in accordance with the usage restrictions; and

3.3.4 it will take security measures sufficient to reasonably safeguard the Software and Documentation from access by unauthorised third persons.

3.4 The Software includes functionality permitting Customer to perform certain administration and data upload tasks (the "Administrative Functions"). Customer undertakes to keep all usernames, 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 Services, including 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 to 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 including those 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;

4.1.8 not use the Services to store, reproduce, transmit, communicate or knowingly receive any material which is offensive, racist, abusive, indecent, defamatory, obscene, threatening or menacing (to be determined by Civica, in its sole discretion, acting reasonably);

4.1.9 make its own arrangements for internet access in order to access the Services, with the required type and version of browser as notified by Civica from time to time. Civica shall not be liable for Customer's inability to access the Services if it is due to the Customer's inability to establish an internet connection, or not having their browser set to the correct type and version, for accessing the Services;

4.1.10 obtain and shall maintain all necessary licences, consents, and permissions necessary for Civica, its contractors and agents to perform their obligations under this Contract; and

4.1.11 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 Support Services will be provided by Civica subject to Customer paying the Annual Fees until this Contract is properly terminated. No refund will be given for Charges paid in advance in the event of termination.

5.3 The implementation, consultancy and Support Services will be provided by Civica on Working Days, either at Civica sites or at the Customer's sites.

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

5.5 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, suspend the Services.

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

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

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

5.6.3 failure by any third party to fulfil its obligations to Customer; and

5.6.4 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.

5.7 Acceptance of the Services will be on the earlier of:

5.7.1 when the Services (including the Software) is ready for use by the Customer; or

5.7.2 use by Customer of the Services or any part thereof.

5.8 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:

5.8.1 require the Customer to take reasonable action with respect to the particular Authorised User(s) concerned;

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

5.8.3 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.

5.9 Civica may use data collection technology to collect technical information to improve the Software, to provide associated services, to adapt them to user preferences, and to prevent the unlicensed or illegal use of the Software. Customer agrees Civica may use such information provided it is in a form that does not personally identify any person.

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 affected Service, Civica shall re-perform the Service without additional charge to Customer within a reasonable period of time.

6.2 Civica warrants that it shall use its commercially reasonable efforts to ensure that no viruses are coded or introduced into the systems used to provide the Services.

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;

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; and

6.3.3 Civica will not be liable in any way for any inadequacies in the accuracy, quality of, or infringements of third party copyright caused by the materials that the Customer creates or distributes using the Services.

6.4 Civica does not warrant that the Services will be entirely error free nor that the Customer's use of the Software will be uninterrupted.

6.5 Civica will not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet. The Customer acknowledges that the Software and Documentation may be subject to limitations, delays, and other problems inherent in the use of such communications facilities.

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

6.7 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 Services including 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 Customer grants to Civica a royalty-free, worldwide, irrevocable perpetual licence to use and incorporate into 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 the UK 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 (including the Authorised Users or Authorised Third Parties) use 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. Data Protection

8.1 The parties undertake to each other that they shall comply with the Data Protection Addendum, or such replacement schedule from time to time, in relation to their collection and processing, respectively, of any personal data in connection with the Services.

8.2 Where Customer is a public authority and is under a duty to comply with the provisions of the Freedom of Information Act 2000 as amended from time to time, including any related guidance or codes of practice ("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 of receipt of any such written request.

8.3 Customer shall consult with Civica prior to disclosing information relating to this Contract and will only disclose to the extent that it is required so to do by the FOIA or under the Transparency Agenda.

8.4 Neither Civica nor Customer shall, in responding to such requests for information or disclosure of this Contract under clause 8.2, disclose any information which is exempt as described within any provision of the FOIA or can be construed as commercially sensitive information.

8.5 All personal data 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.

9.5 The Customer agrees that Civica may use Customer's anonymised data, it has collected during the Services, for enhancing the service it provides.

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 pounds sterling and are exclusive of VAT, 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. Where specific daily rates are quoted these are only valid for 6 months following the date of signing this Contract (or any later date noted in the Order Form). 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 All invoices shall be due for payment within 30 days of the date of the invoice(s). If Civica has not received payment within 30

days after the due date, and without prejudice to any other rights and remedies of Civica including under clause 10.11, Civica may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Civica shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.

10.6 If the provision of the Services is cancelled, suspended or deferred under clause 5.5 Civica will:

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

10.6.2 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.

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

10.7.1 except for third party costs, the percentage increase shall not exceed the percentage increase (if any) of the United Kingdom rate of the retail prices index as published by the Office for National Statistics + 2% from time to time but not more than once per year, or as otherwise agreed in the Order Form; and

10.7.2 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 10.8.

10.8 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.

10.9 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's expenses policy.

10.10 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.

10.11 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 £500 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.

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

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 15.9; 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 Customer fails to pay within 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, Civica shall cease to be obliged to provide the Services under this Contract.

11.4 On expiry or termination of this Contract the right to use the Services including the Software and Documentation granted under this Contract shall cease and the Customer shall not use the Services.

11.5 On termination each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party.

11.6 On termination of the Services, for any reason other than a valid termination of this Contract by Civica under clause 11.1, Civica will, if requested before or within 7 days after such termination, for an additional charge, provide services to assist the Customer to migrate to a replacement, service including assisting in the transfer of any Customer data held by Civica.

11.7 If termination assistance is not requested under clause 11.6 then Civica may destroy or otherwise dispose of any of the Customer data in its possession unless clause 11.8 applies.

11.8 After termination or expiration of this Contract, upon Customer's written request, Civica will provide any Customer data in its control to Customer in Civica's standard database export format at no additional charge.   Customer must submit such request to Civica within 30 days after termination or expiration of this Contract. Civica is not obligated to maintain or provide any Customer data after such 30 day period and will, unless legally prohibited, delete all Customer data in its systems or otherwise in its possession or under its control.

11.9 Termination of this Contract shall not affect any accrued liabilities, rights, obligations or liability of the parties as at the date of termination or arising as a result of termination or of circumstances giving any right to terminate.

11.10 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 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979; or

12.1.3 fraud or fraudulent misrepresentation; 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 £1,000,000 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 (as defined in Section 1(1) Unfair Contract Terms Act 1977), 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 Civica does not accept any responsibility for errors or omissions that are a direct result of incorrect information being forwarded and/or given by the Customer.

12.6 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.

12.7 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

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 Sub-section (3) of Section 117 of the Local Government Act 1972; 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 Bribery Act 2010 in relation to this Contract or any other contract with Customer;

Customer may (i) terminate this Contract on written notice with immediate effect; and (ii) 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.

14.   Statutory and Other Regulations

14.1 Civica shall in all matters arising in the performance of the Contract conform with all Acts of Parliament and with all orders, regulations, and byelaws made with statutory authority by Government Departments or by local or other authorities that shall be applicable to this Contract. 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 waterlooreception@civica.co.uk.

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 The Contracts (Rights of Third Parties) Act 1999 is excluded, by the agreement of all the parties to this Contract, from applying to this Contract to the maximum extent permitted by law. No term of this Contract is enforceable by any person who is not a party to it, whether in accordance with such Act or otherwise. This clause shall prevail in the event of any conflict between it and anything else in this Contract.

15.8 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.

15.9 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.

15.10   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, the dispute may be referred to the English courts.

15.11   Subject to clause 15.10, 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 English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England.

Schedule 1 – Data Protection Addendum

This Schedule 1 is the Data Protection Addendum ("DPA"), that forms part of and is incorporated to the Contract. The parties agree that: (i) in the event of conflict between the terms of this DPA and any other terms of the Contract, the terms of this DPA shall apply in respect of Processing; and (ii) to the extent that any provisions in the Contract relating to Personal Data overlap with the provisions in this DPA, the provisions shall be read together in order to provide the most protection over the Processing of Personal Data in connection with this Contract.

Definitions
For the purpose of this DPA, the definitions listed below apply. Unless otherwise set out below, each capitalised term in this DPA shall have the meaning set out in the Contract.

Adequacy Decision means a country, territory or sector within a country which has been subject to a finding, and continues to be subject to a finding for the duration of the Agreement, of an adequate level of protection for Personal Data under the GDPR or UK GDPR as applicable to the Personal Data Processing activity and **"EU Adequacy Decision"** and **"UK Adequacy Decision"** should be construed accordingly.

Contract Personal Data means the Personal Data Processed in connection with the Contract.

Controller shall have the meaning set out in the Data Protection Legislation.

Data Protection Legislation means all applicable legislation relating to privacy or data protection in force from time to time, including any statute or statutory provision which amends, extends, implements, consolidates or replaces the same, and in particular, to the extent applicable and without limitation, the GDPR, the GDPR as it forms part of the domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 ("UK GDPR") and the Data Protection Act 2018.

Data Subject shall have the meaning set out in the Data Protection Legislation.

EU Adequacy Decision shall have the meaning as set out in the definition of Adequacy Decision.

EU Standard Contractual Clauses means: (i) the standard contractual clauses adopted by the European Commission on 4th June 2021 or (ii) such other standard contractual clauses that are approved by the European Commission for Controller to Processor transfers of Personal Data to a third country which has not received an EU Adequacy Decision (and are subsequently incorporated into the DPA).

GDPR means the EU General Data Protection Regulation being Regulation (EU) 2016/679.

ICO means the Information Commissioner's Office or any replacement authority in the UK.

Personal Data shall have the meaning set out in the Data Protection Legislation.

Personal Data Breach means a breach of security leading to the accidental loss or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, the Contract Personal Data.

Process/Processing shall have the meaning set out in the Data Protection Legislation.

Processor shall have the meaning set out in the Data Protection Legislation.

Restricted Transfer means a transfer of Personal Data which is undergoing Processing to a country, a territory or specified sector within a country which has: (i) not received an Adequacy Decision; or (ii) is not subject to any safeguards or derogations that would permit the transfer of the personal data to the country, territory or sector in accordance with the GDPR or UK GDPR; or (iii) any other applicable Data Protection Legislation (as applicable to the Personal Data subject to the transfer).

Scope of Processing means the scope of data processing activities carried out by Civica pursuant to the Services, as attached to the Order Form, or such replacement scope of data processing from time to time.

UK Adequacy Decision shall have the meaning as set out in the definition of Adequacy Decision.

UK GDPR shall have the meaning as set out in the definition of Data Protection Legislation.

UK International Data Transfer Agreement/Addendum means the Standard Data Protection Clauses issued by the UK Information Commissioner's Office under section 119A(1) of the Data Protection Act 2018 as may be updated from time to time; namely: (1) the International Data Transfer Agreement (version A1.0); or (ii) the International Data Transfer Addendum to the EU Commission Standard Contractual Clauses (version B1.0).

Responsibilities
1. The parties acknowledge and agree that for the purposes of this Contract and where such designation is required pursuant to Data Protection Legislation: (i) Customer is the Controller; and (ii) Civica is the Processor in respect of the Contract Personal Data Processed in connection with the provision of the Services pursuant to this Contract.
2. The Customer shall, as a Controller, comply with, and not cause Civica to breach, the Data Protection Legislation.
3. The Customer shall ensure it has a legal basis to and has fulfilled all its obligations that entitle it to share the Contract Personal Data with Civica.
4. In interpreting the Data Protection Legislation, the parties shall have regard to all guidance and codes of practice issued by the ICO or any other body with regulatory authority in relation to the Processing of the Contract Personal Data.
5. The parties agree that if there are changes to the Data Protection Legislation or related guidance from the ICO or any other body with regulatory authority in relation to the Processing during the term of this Contract which require either party to take additional steps to enable compliance with the Data Protection Legislation, the parties shall review the provisions of this Contract and shall negotiate in good faith to agree appropriate changes to them.
6. The parties undertake to each other that they shall comply with the Data Protection Legislation and this DPA in relation to their collection and Processing, respectively, of the Contract Personal Data in connection with the Services.
7. Each party shall provide the other with the name and contact details of its data protection contact, who is responsible for data protection matters on a day-to-day basis as applicable to the Services and who will serve as the relevant contact for any notice given pursuant to this DPA.
8. Civica carries out certain Processing activities on behalf of the Customer in performing the Services. To the extent that Civica Processes, Contract Personal Data, on behalf of the Customer in connection with the Services paragraph 9 to paragraph 11 shall apply to the Processing.

Processing Data
9. Civica (as Processor) shall:
   9.1 Process the Contract Personal Data only (i) on the written instructions of the Customer and as detailed in the Scope of Processing, or (ii) as required by any regulator or applicable law (in which case Civica shall inform the Customer of such legal requirement before Processing, unless prevented from doing so by applicable law);

9.2 not Process Contract Personal Data that is: (i) subject to the UK GDPR outside of the UK; and/or (ii) subject to the GDPR outside of the EU, in a jurisdiction deemed to not provide an adequate level of protection for Personal Data pursuant to the UK GDPR and/or GDPR respectively (and ensure that its sub-processors shall not Process Contract Personal Data outside of the aforementioned jurisdictions) unless it has written authority from the Customer permitting such a transfer and subject to compliance with paragraph 11, except where such Processing is required by law to which Civica is subject, and in such a case, Civica shall inform the Customer of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest.

9.3 ensure that its staff who Process the Contract Personal Data have had the necessary training regarding the handling and security of Contract Personal Data and have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

9.4 implement and maintain suitable and appropriate technical and organisational measures and controls to prevent unauthorised or unlawful processing of Personal Data and accidental loss, destruction, damage, theft, use or disclosure of such Personal Data, and shall protect against any security threats to the Personal Data and detect and prevent unauthorised processing of or access to the Personal Data including by:

(i) complying with its information security standards as detailed in the Scope of Processing;

(ii) installing and maintaining all necessary software updates as soon as technically feasible and will give notice to the Customer of such updates which affect the Services;

(iii) in assessing the appropriate level of security, taking into account the risks that are presented by the Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed; and

(iv) taking such steps to ensure that any person acting under the authority of Civica who has access to the Personal Data does not Process such Personal Data except in respect of the Services, unless he or she is required to do so by law;

9.5 not engage another Processor to carry out specific Processing activities on behalf of the Customer (a sub-processor) without the Customer's prior written authorisation, save for: (a) where it engages any companies within its corporate group, which is set out in Table 1 of the Scope of Processing; (b) in the circumstances set out in paragraph 9.13; and (c) the list of Civica's sub-processors appointed pursuant to this paragraph 9.5, as at the date of this Contract, which is set out at Table 2 of the Scope of Processing. The Customer hereby authorises Civica to use any such sub-processor to process Contract Personal Data on its behalf, provided that Civica complies with its obligations in paragraph 9.6. Civica shall give the Customer prior notice of any intended addition or replacement of the sub-processors set out in Table 2 of the Scope of Processing, including the location of any sub-processors and Civica may do so on Civica's website www.civica.com. The Customer shall have 30 days from the date of receipt of such notification to object to the change. If the Customer objects to the change, Civica shall refrain from making that addition or replacement for the Customer. The Customer agrees that if it objects to a sub-processor, Civica shall be relieved from any obligation to supply any such Service that is impacted by the Customer's objection, provided that Civica has taken appropriate care in selecting such sub-processor, and complied with paragraph 9.6. If the Customer fails to respond to such change notification within the period stipulated above, the Customer shall be deemed to have authorised the change to Civica's sub-processors;

9.6 where Civica engages another processor for carrying out specific Processing activities on behalf of the Customer (a sub-processor), impose the same data protection obligations no less onerous than those set out in this paragraph 9 on the sub-processor by way of a written contract. Where the sub-processor fails to fulfil its data protection obligations, Civica shall remain fully liable to the Customer for the performance of the sub-processor's obligations;

9.7 on request from the Customer, and subject to the Customer paying Civica's reasonable costs in collating any such data, (i) assist the Customer, by appropriate technical and organisational measures, insofar as this is possible, in responding to any request, complaint, demand or order from a Data Subject related to the Contract Personal Data; (ii) to the extent necessary, assist the Customer in responding to any request, complaint, demand or order from a supervisory authority, regulator or government authority (including law enforcement) related to the Contract Personal Data; and (iii) to the extent necessary, assist the Customer in ensuring compliance with the Customer's obligations under the Data Protection Legislation, including by providing reasonable cooperation and information in respect of security, breach notifications, impact assessments and consultations with supervisory authorities, regulators and government authorities (including law enforcement);

9.8 at the choice of the Customer, either delete, anonymise or return all the Contract Personal Data in its possession to the Customer after the end of the provision of Services relating to the Processing. To the extent that deletion is not technically feasible, Civica will put Contract Personal Data beyond reasonable use (including not disclosing, keeping securely and retaining solely for the purpose of, and for no longer than is required to support, Civica's disaster recovery protocols) unless storage of such copies is required by law and/or to carry out contractual obligations and on request provide written confirmation that it has done so;

9.9 make available to the Customer all information necessary to demonstrate its compliance with the obligations set out in this paragraph 9, subject to the Customer paying Civica's reasonable costs in collating any such information;

9.10 allow for and contribute to audits, including inspections, conducted by the Customer or the Customer's designated auditor provided that:

(i) reasonable notice of not less than 10 Working Days is given of any proposed audit and the parties shall, acting reasonably, agree the scope and parameters of any such audit;

(ii) such audit shall be conducted on a Working Day, shall be subject to Civica's policies and may not unreasonably interfere with Civica's business activities;

(iii) the audit shall be subject to Civica's duties of confidentiality owed to any of its clients or employees;

(iv) Civica shall, to the extent practicable, and in no event in any way that would have an adverse effect on Civica's relationship with any sub-processor, request that its sub-processors participate in, and

contribute to, such audits; and

(v) the audit may not be conducted more than once in any calendar year; and

(vi) the Customer shall pay Civica's reasonable costs arising out of such audits.

9.11   inform the Customer if, in its opinion, an instruction infringes Data Protection Legislation;

9.12   notify the Customer without undue delay after becoming aware of either:

(i) a Personal Data Breach;

(ii) any Personal Data Breach notification, complaint or other notice or communication in relation to the Processing or either party's compliance with the Data Protection Legislation.

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

9.13   Notwithstanding paragraph 9.5, in the event of a Personal Data Breach, Customer provides general authorisation for Civica to share Customer Personal Data with third party professional service providers for the purposes of investigating and remediating the Personal Data Breach, and the parties agree that this is deemed to be part of the Services.

10.   Where the Customer fails to comply with the Data Protection Legislation, it shall keep Civica indemnified in full and on demand 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 failure by the Customer to comply with its obligations set out in this DPA or the Data Protection Legislation.

11.   Where there is a Restricted Transfer and further to paragraph 9.2, the Customer agrees and acknowledges that Civica may transfer Personal Data to outside of the UK and/or the EU, provided that Civica ensures such transfer meets the requirements of the UK GDPR and/or the GDPR respectively. To the extent that Restricted Transfers are undertaken to any sub-processors, Civica will ensure that it enters into the UK International Data Transfer Agreement/Addendum and/or the EU Standard Contractual Clauses (as applicable) with the relevant sub-processor (listed in the Scope of Processing) or such replacement sub-processor list from time to time.