

## CONDITIONS OF PURCHASE

### 1. Definitions

**Call-off Order** means an Order issued by Civica to call off Goods and/or Services thereunder from the Supplier during an agreed period; it does not represent a commitment for the full value stated thereon.

**Civica** means Civica Solutions Canada Inc., a Canadian federal corporation, with its registered office located at 109 James Avenue, Winnipeg, Manitoba, R3B 0N6.

**Conditions of Purchase** means these terms and conditions as varied in accordance with clause 16.3.

**Contract** means the contract between Civica and Supplier for the supply of Goods and/or Services in accordance with these Conditions of Purchase, the Order and the Specification.

**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 *Personal Information Protection and Electronic Documents Act*, as amended, and the regulations thereunder (“PIPEDA”) as well as the applicable provincial privacy legislation and regulations, including but not limited to, the Personal Information Act (*British Columbia*), the Personal Information Protection Act (*Alberta*), the Personal Information Protection Act (*Ontario*) and An Act respecting the protection of personal information in the private sector (Quebec), as each is amended; 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 of such term or analogous term under applicable Data Protection Legislation.

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

**Goods** means the products, items, hardware or computer programs described in the Order, or as otherwise agreed, in accordance with the Specification, pricing, lead time and scheduling (if any) to be provided by Supplier. The expression “Goods” includes parts of Goods.

**ICO** means the Office of the Information Commissioner or any replacement authority in Canada.

**IPR** means intellectual property rights including any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in Canada or any other part of the world together with all or any goodwill relating or attached thereto.

**Materials** means all tools, equipment, software, materials, documentation and other things supplied, owned by, paid for, or agreed to be paid for by Civica.

**Order** means Civica’s purchase order and/or the Civica Order Form.

**Personal Data** shall have the meaning of such term or analogous term under applicable Data Protection Legislation.

**Personal Data Breach** shall have the meaning of such term or analogous term under applicable Data Protection Legislation.

**Process/Processing** shall have the meaning of such term or analogous term under applicable Data Protection Legislation.

**Processor** shall have the meaning of such term or analogous term under applicable Data Protection Legislation.

**Schedule of Processing** means the document setting out the scope of the Processing activities carried out by Supplier pursuant to the Services as detailed in clause 13.10.

**Services** means the services including without limitation any agreed deliverables to be provided by Supplier as set out in the Order.

**Special Terms** means any special, additional or varied terms and conditions including third party terms and conditions, agreed between the parties that are set out in the Order and form part of the Contract.

**Specification** means in relation to Goods any specification for them (including any relevant plans or drawings) provided by Civica to Supplier and includes the standard specification issued by the manufacturer and in relation to Services the description or specification for services produced by Supplier and agreed in writing by Civica and/or the specification detailed in the Civica Order Form.

**Supplier** means the person, firm, or company to whom the Order is addressed.

**Supplier Personnel** means any of Supplier's personnel including its agents, contractors employees, staff, or sub-contractors.

## 2. Agreement

2.1 Any purchase order issued by Civica constitutes an offer to purchase the Goods and/or Services from Supplier in accordance with these Conditions of Purchase.

2.2 The Order shall be deemed to be accepted on the earlier of:

2.2.1 Supplier issuing written acceptance of the Order and/or signing the Order; or

2.2.2 any act by Supplier consistent with fulfilling the Order;

at which point and on which date the Contract shall come into existence.

2.3 Where a Call-Off Order is issued by Civica it does not represent a commitment for the full value (the "Grand Total") stated thereon, it is an estimated value and invoices should only be presented by the Supplier in accordance with clause 2.4.

2.4 Invoices issued under an Order will only be processed for payment by Civica provided:

2.4.1 the Goods and/or Services have been delivered and accepted by Civica; and

2.4.2 the Grand Total on the Order has not been exceeded.

2.5 These Conditions of Purchase apply to the Contract to the exclusion of any other terms that Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Customer and Civica agree that these terms and conditions, together with any Special Terms shall apply to this Contract, and that in the event of, and to the extent of, any conflict or inconsistency between the Special Terms and these terms and conditions the Special Terms shall prevail.

## 3. Pricing and Payment

3.1 The price for the Goods shall be the price set out in the Order, or as otherwise agreed, inclusive of the costs of packaging, insurance and carriage of the Goods unless otherwise agreed. No extra charges shall be effective unless agreed in writing and signed by Civica.

3.2 Prices are exclusive of all harmonized sales, tax, goods and services tax, sales tax, value added tax, use and excise taxes and any other similar taxes, duties and charges of any kind imposed by any governmental authority which will be added to Supplier's invoices by Supplier at the current rate as at the time of delivery of the Goods and/or Services.

3.3 In respect of Goods, Supplier shall invoice Civica on or at any time after delivery and in respect of Services, Supplier shall invoice Civica on completion of the Services and in accordance with clause 2.4. Each invoice shall include such supporting information required by Civica to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

- 3.4 In consideration of the supply of Goods and/or Services by Supplier, Civica shall pay the invoiced amounts within 60 calendar days of receipt of a correct invoice. Payment shall not constitute acceptance of non-conforming Goods or Services.
- 3.5 If Civica fails to pay any amount properly due and payable by it under the Contract, Supplier shall have the right to charge interest on the overdue amount at the lesser rate of 2% per cent per annum or the highest rate permissible under applicable law, calculated daily and compounded monthly, from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that Civica disputes in good faith.
- 3.6 Civica may, without limiting its other rights or remedies, set off any amount owing to it by Supplier against any amount payable by Civica to Supplier.

#### **4. Supply of Goods**

- 4.1 Supplier shall ensure that the Goods shall:
- 4.1.1 correspond with their description and any Specification; and
  - 4.1.2 be of satisfactory quality (within the meaning of any applicable provincial sale of goods legislation and regulations, including but not limited to, the Sale of Goods Act (*British Columbia*), the Sale of Goods Act (*Alberta*), the Sale of Goods Act (*Ontario*) and the Civil Code of Quebec), as each is amended and fit for any purpose held out by Supplier or made known to Supplier by Civica, expressly or by implication, and in this respect Civica relies on Supplier's skill and judgment.
- 4.2 Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods and it has the right to accept and fulfil the Order.

#### **5. Delivery of Goods**

- 5.1 Supplier shall ensure that:
- 5.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and
  - 5.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the purchase order number, the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 5.2 Supplier shall deliver the Goods:
- 5.2.1 on the date specified in the Order or, if no such date is specified, then within 30 days of the date of the Order or as otherwise agreed;
  - 5.2.2 to the location as is set out in the Order or as instructed by Civica before delivery ("Delivery Location"); and
  - 5.2.3 during Civica's normal hours of business, or as instructed by Civica.
- 5.3 Supplier shall not deliver the Goods in instalments without Civica's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for in instalments. However, failure by Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Civica to the remedies set out in clause 15.
- 5.4 Risk shall pass on delivery to the Delivery Location provided that a Civica employee has signed a delivery note acknowledging receipt. Title to the Goods (other than software and programs) shall pass to Civica upon payment for the Goods or as otherwise agreed.
- 5.5 Where the Goods are, or include computer programs or software unless Supplier specifies otherwise, then upon delivery Supplier grants Civica an irrevocable, non-exclusive, right and licence, with authority to sell or grant sub licences directly or indirectly to Civica's end

customers, to use each copy of such programs or software supplied and to make such other copies as are reasonably necessary to support such licensed use.

## **6. Supply of Services**

- 6.1 Supplier shall from the date set out in the Order and for the duration of the Contract provide the Services to Civica and/or to Civica's end customer in accordance with the terms of the Contract.
- 6.2 Supplier shall meet any performance dates for the Services specified in the Order or notified to Supplier by Civica.
- 6.3 In providing the Services, Supplier shall:
  - 6.3.1 co-operate with Civica in all matters relating to the Services and comply with all instructions of Civica;
  - 6.3.2 perform the Services with the best care, skill and diligence, in accordance with best practice in Supplier's industry, profession or trade;
  - 6.3.3 use Supplier Personnel who are suitably skilled and experienced to perform tasks assigned to them and in sufficient number to ensure that Supplier's obligations are fulfilled in accordance with the Contract;
  - 6.3.4 ensure that the Services and any deliverables will conform with all descriptions and conditions set out in the Specification, and that any deliverables shall be fit for any purpose expressly or impliedly made known to Supplier by Civica;
  - 6.3.5 provide all equipment, tools and vehicles and such other items as are required to perform the Services;
  - 6.3.6 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
  - 6.3.7 observe all health and safety rules and regulations and any other security requirements that apply when at any of Civica's or Civica's customer's premises; and
  - 6.3.8 where processing and/or receiving personal data comply with clause 13.

## **Additional Goods and/or Services**

- 6.4 This Contract also acts as an umbrella agreement, which sets out the general terms for the supply of additional related goods and services by Supplier to Civica, when so requested from time to time. Such additional goods and services and any particular special terms and conditions applicable to the supply thereof shall be set out in the Order.

## **7. Acceptance**

- 7.1 Civica may, by written notice to Supplier, reject any Goods supplied which are found within a reasonable time of delivery not to be:
  - 7.1.1 in accordance with the Contract and/or the Specification;
  - 7.1.2 of satisfactory quality; or
  - 7.1.3 reasonably fit for purpose for which they were ordered where the purpose was made known to the Supplier or by implication.
- 7.2 Where Goods have been developed, modified, enhanced or altered in any way to suit the requirements of Civica, the parties shall agree on acceptance tests and a timetable for acceptance or if no criteria is agreed Civica shall follow its own internal acceptance standards ("Acceptance Criteria"). Any such Goods delivered shall be deemed to have been accepted by Civica when the relevant Acceptance Criteria have been satisfied.

- 7.3 Any Goods rejected under clause 7.1 or 7.2 above shall:
  - Civica Solutions Canada – Conditions of Purchase (January 2023)
  - Commercial in Confidence

- 7.3.1 be collected by Supplier from Civica at Supplier's cost and expense in a prompt and timely manner and, in any event, by no later than a date reasonably set by Civica; and
- 7.3.2 promptly be replaced by Supplier at the Supplier's expense and this clause 7 shall apply to any such replacements as if they were the Goods originally delivered.
- 7.4 In the event that Supplier fails to collect the Goods within 30 days, Civica shall have the right to dispose of the Goods at its discretion without liability and to use any proceeds to offset any disposal costs.
- 7.5 Unless otherwise specified on the Order, Supplier agrees to provide spare parts and maintenance services for the Goods for a period of not less than five (5) years from the date of delivery of such Goods (if delivered in parts it shall be from the final delivery date).

## **8. Warranty**

- 8.1 Supplier warrants to Civica that:
    - 8.1.1 the Goods shall be new, conform to the Specification and be free from defects in workmanship, materials and design if properly used in accordance with the user documentation supplied by Supplier for a period of thirty six (36) months after delivery (i) to Civica's end customers; or (ii) to Civica, if the end user is Civica;
    - 8.1.2 where Goods constitute software, clause 8.1.1 shall not apply and the Goods are warranted instead to conform substantially to their published functional specification, if properly used in accordance with any user documentation supplied by Supplier, for a period of ninety (90) days from the date of installation at (i) Civica's end customers; or (ii) Civica, if the end user is Civica;
    - 8.1.3 all Goods delivered to Civica shall comply with all applicable laws, regulations and ordinances. Supplier shall obtain and maintain at its own expense all applicable listings, certificates and approvals in Supplier's own name;
    - 8.1.4 it shall use all reasonable skill and care in carrying out the Services;
    - 8.1.5 it has and shall pass to Civica good title for the Goods (excluding software and programs) free and clear of all liens and encumbrances; and
    - 8.1.6 the Goods and any deliverables (delivered as part of the Services) do not infringe any patent, copyright, or design right or otherwise violate the rights of any third party.
  - 8.2 In respect of a warranty claim Supplier shall forthwith at its own expense under:
    - 8.2.1 clause 8.1.1 repair or replace such Good(s);
    - 8.2.2 clauses 8.1.2 and 8.1.6, and at Civica's option (i) correct any non-conforming software; or (ii) replace the software; or (iii) grant Civica a full refund. This warranty is subject to the following conditions:
      - 8.2.2.1 damage resulting from negligence or misuse by Civica or its customer is excluded from this warranty; or
      - 8.2.2.2 any unauthorised modification of the software shall void this warranty;
    - 8.2.3 clause 8.1.4 re-perform the Services to Civica's reasonable satisfaction;
- provided that Civica gives notice to Supplier detailing such warranty claim upon becoming aware of such event.
- 8.3 These Conditions of Purchase shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by Supplier.

## **9. Statutory Requirements**

- 9.1 Supplier warrants that the Goods and Supplier's carrying out of the Services will comply with all relevant federal and provincial legislation and regulations, including but not limited to, the Canada Labour Code Part II, the Occupational Health and Safety Regulation (*British Columbia*), the

Occupational Health and Safety Act (*Alberta*), the Occupational Health and Safety Act (*Ontario*) and an Act respecting occupational health and safety (*Quebec*), as each is amended.

- 9.2 Supplier shall be responsible for all Supplier Personnel who enter Civica's premises and/or Civica's customer premises and will ensure that they adhere to all applicable site rules and health and safety legislation which are applicable from time to time.
- 9.3 Supplier shall be responsible for payment of all taxes and duties that may be due in the country of origin of the Goods and for obtaining at its expense any necessary import or export licences or government consents. Supplier shall indemnify Civica against all losses and expenses incurred by Civica as a result of Supplier's breach or failure to obtain necessary licences or consents under this clause 9.3.
- 9.4 Supplier shall not:
- 9.4.1 offer, give or agree to give to any person working for or engaged by Civica (including any customer of Civica's) 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 the Contract, or any other agreement between Civica and Supplier; nor
  - 9.4.2 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 *Criminal Code* and/or the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, as each is amended or such other applicable anti-corruption law; nor
  - 9.4.3 enter into a 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 Civica (including a customer of Civica) by or for Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to Civica before agreeing the Contract.
- 9.5 Supplier warrants that any Goods supplied and Supplier's carrying out of the Services have been done so in compliance with the requirements of the applicable "Modern Slavery" legislation, whether Supplier is obliged to produce a slavery and human trafficking statement or not by such "Modern Slavery" legislation, and in trading with Civica the Supplier confirms that their organisation and supply chain are slavery free. Also Supplier warrants that it has passed this obligation, including the obligation to pass on the obligation, to all organisations in its supply chain that have contributed to the supply of Goods or Services.
- 9.6 If Supplier (including any Supplier Personnel, in all cases whether or not acting with Supplier's knowledge) breaches:
- 9.6.1 clause 9.4; or
  - 9.6.2 clause 9.5; or
  - 9.6.3 the *Corruption of Public Officials Act*, the *Criminal Code*, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and/or the *Anti-Corruption Act (Quebec)*, as each is amended or such other applicable anti-corruption law in relation to a Contract or any other contract with Civica;

Civica may terminate all Contracts and these Conditions of Purchase by written notice with immediate effect and to recover from Supplier the amount of any loss resulting from such cancellation.

- 9.7 Any termination under clause 9.6 shall be without prejudice to any right or remedy that has already accrued or subsequently accrues to Civica.

## 10. Intellectual Property Rights

- 10.1 All IPR created or invented (including without limitation by the creation or customisation of a computer program or marketing, technical or training material or the internal or external design of an article) whether patentable or not, know-how, designs, trademarks, drawings and copyright in documents of any description as a result of or in the performance of the Contract shall be the exclusive property of Civica from the date of creation.

- 10.2 Supplier assigns to Civica, with full title guarantee and free from all third party rights, all IPR in the Goods, including for the avoidance of doubt any deliverables delivered as part of the Services.
- 10.3 Supplier shall obtain waivers of all moral rights in any products, including for the avoidance of doubt any deliverables (delivered as part of the Services) to which any individual is now or may be at any future time entitled under the *Patent Act* or the *Copyright Act*, as each is amended or any similar provisions of law in any jurisdiction.
- 10.4 Supplier shall, promptly at Civica's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Civica may from time to time require for the purpose of securing for Civica the full benefit of the Contract, including all right, title and interest in and to the IPR assigned to Civica in accordance with clause 10.2.
- 10.5 All Materials are the exclusive property of Civica including all related IPR.

## **11. Civica Materials**

- 11.1 All Materials shall be and remain the sole property of Civica. Supplier undertakes to ensure that Civica's title to the Materials is not prejudiced while the Materials are in the possession of Supplier or Supplier Personnel.
- 11.2 Materials shall be used by Supplier exclusively for the purposes of the Order, maintained in good working order at Supplier's expense and fully insured by Supplier against fire, theft and other risks.
- 11.3 Materials shall not be disposed of without prior written approval from Civica and Supplier shall not tamper with or remove any plates, labels or other indications of Civica's ownership of the Materials.
- 11.4 Supplier shall return the Materials upon request by Civica at any time.

## **12. Confidential Information**

- 12.1 A party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party, its employees, agents or subcontractors ("Disclosing Party"), and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain.
- 12.2 The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

## **13. Data Protection**

- 13.1 Civica shall comply with the Data Protection Legislation in respect of all Personal Data it passes to Supplier acting as a Processor.
- 13.2 Supplier carries out certain processing activities on behalf of Civica in performing the Services. Supplier shall comply with the Data Protection Legislation in respect of all Personal Data processed on behalf of Civica and/or on behalf of Civica's customer(s) in connection with the Contract and the Services ("Contract Personal Data").
- 13.3 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.
- 13.4 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 it.

- 13.5 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.
- 13.6 To the extent Supplier Processes Contract Personal Data on behalf of Civica and/or on behalf of Civica's customer(s) in connection with the Services, clauses 13.7 – 13.10 of this Contract shall apply to the Processing.
- 13.7 Supplier (as Processor) shall:
- 13.7.1 Process the Contract Personal Data only (i) on the instructions of Civica to the extent necessary to provide the Services or (ii) as required by any regulator or applicable law (provided that the Supplier shall notify Civica promptly after it becomes aware of such a requirement (and at least 5 business days before carrying out such Processing, except to the extent expressly prohibited by applicable law);
  - 13.7.2 not transfer the Contract Personal Data outside of Canada or the UK (as applicable) except in accordance with clause 13.8;
  - 13.7.3 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;
  - 13.7.4 take all measures required pursuant to Article 32 of UK GDPR or such analogous measures under applicable Data Protection Legislation, in particular:
    - (i) implement and maintain suitable and appropriate technical and organisational measures and controls to prevent unauthorised or unlawful processing of Contract Personal Data and accidental loss, destruction, damage, theft, use or disclosure of such Contract Personal Data, and shall protect against any security threats to the Contract Personal Data and detect and prevent unauthorised processing of or access to the Contract Personal Data;
    - (ii) install and maintain all necessary software updates to ensure the security of Contract Personal Data and will give notice to Civica of such updates which will affect the Services;
    - (iii) in assessing the appropriate level of security, take 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 Contract Personal Data transmitted, stored or otherwise Processed; and
    - (iv) take such steps to ensure that any person acting under the authority of the Supplier who has access to the Contract Personal Data does not Process such Contract Personal Data except in respect of the Services, unless he or she is required to do so by law;
  - 13.7.5 on request from Civica, (i) assist Civica by appropriate technical and organisational measures, insofar as this is possible, in responding to any request, complaint, demand or order from a Data Subject (including any such request, complaint, demand or order received by a Civica customer) relating to the Contract Personal Data; (ii) assist Civica in responding to any request, complaint, demand or order from a supervisory authority, regulator or government authority (including law enforcement) related to Contract Personal Data (including any such request, complaint, demand or order received by a Civica customer); and (iii) assist Civica in ensuring compliance with Civica's obligations under the Data Protection Legislation, including by providing all reasonable cooperation and information in respect of security, breach notifications, impact assessments and consultations with supervisory authorities, regulators and government authorities (including law enforcement);
  - 13.7.6 upon request by Civica, and after the end of the provision of the Services relating to the Processing, either (at the choice of Civica) destroy, anonymise or return all the Contract Personal Data to Civica or, at Civica's request, directly to Civica's customer, and delete all copies of such Contract Personal Data unless storage of the Contract Personal Data is required by law and/or to carry out contractual obligations and on request provide written confirmation that it has done so;



- 13.7.7 make available to Civica all information necessary to demonstrate its compliance with the obligations set out in this clause 13.7;
- 13.7.8 allow for and contribute to audits, including inspections, conducted by Civica or Civica's designated auditor or its regulators on reasonable notice from time to time;
- 13.7.9 inform Civica immediately if, in its opinion, an instruction infringes the Data Protection Legislation;
- 13.7.10 notify Civica without undue delay and in any event within 24 hours after becoming aware of either:
  - 13.7.10.1 any actual, suspected or alleged Personal Data Breach; or
  - 13.7.10.2 any Personal Data Breach notification, complaint or other notice or communication in relation to the Processing of the Contract Personal Data or either party's compliance with the Data Protection Legislation;

Supplier will not directly respond to any such Personal Data Breach notification, complaint, notice or communication relating to the Contract Personal Data unless required by applicable law; and
- 13.7.11 notify Civica without undue delay after discovery of any information security vulnerability experienced by Supplier or any of its sub-contractors, sub-processors or third parties, even if the vulnerability does not constitute an actual or suspected Personal Data Breach.
- 13.8 Where Supplier requires the transfer data outside of Canada or the UK it shall first seek Civica's written consent and such consent shall only be granted where (i) Civica's customers authorise the transfer (if appropriate); (ii) where Supplier ensures that such transfer meets the requirements of Article 45 (Transfers on the basis of an adequacy decision) or Article 46 (Transfers subject to appropriate safeguards) of the UK GDPR or any analogous requirements under applicable Data Protection Legislation; and (iii) Supplier complies with any reasonable instructions notified to it by Civica, including any specific instructions required to achieve compliance with the Data Protection Legislation and/or obtain any requisite authorisation from any regulatory authority.
- 13.9 Supplier shall not engage any third party or other sub-processor to process Contract Personal Data on behalf of Civica without the express prior written consent of Civica. Where a sub-processor is duly engaged to carry out specific processing activities on behalf of Civica, Supplier shall ensure that it enters into a written contract with such sub-processor containing data protection obligations no less onerous than those set out in this clause 13. Supplier shall remain liable for the acts and omission of any such sub-processor.
- 13.10 The subject matter and duration of the processing, the nature and purpose of the Processing, the type of personal data and categories of Data Subject are detailed in either (i) the tab "2. Schedule of Processing" of Civica's Supplier Set Up Form; or (ii) sections 5.5 - 5.10 of Civica's Vendor Information and Declaration Assessment.
  - 13.10.1 To the extent that Supplier becomes aware of a change to the scope, nature and purpose of the Processing and the type of personal data and categories of Data Subject under the Contract such that the details require updating or have become inaccurate, Supplier shall notify Civica's data protection contact in clause 13.5 without undue delay and provide Civica with the details necessary to update the Schedule of Processing.
- 13.11 Where Supplier fails to comply with the Data Protection Legislation, it 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 as a result of, or in connection with, any failure by Supplier to comply with its obligations set out in this clause 13 or the Data Protection Legislation.

## **14. Liability and Insurance**

- 14.1 Supplier 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:
- 14.1.1 by a third party (including Civica's customer) for death, personal injury or damage to property arising out of, or in connection with the Contract, to the extent that the claim is attributable to the acts or omissions of Supplier or Supplier Personnel;
  - 14.1.2 by a third party (including Civica's customer) arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by Supplier or Supplier Personnel;
  - 14.1.3 by Civica's customer for actual or alleged infringement of a third party's IPR arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (including the deliverables); and
  - 14.1.4 in respect of any theft, loss, unauthorised disclosure or use, or misuse of data or information, including but not limited to personal data and confidential information, in the care, custody or control of Supplier, whether through a security breach, or from Supplier's fault, negligence, action or inaction.
- 14.2 Supplier will be liable to Civica for all loss, damage or other liability whatsoever including without limitation, damages whether direct, indirect, specified, or otherwise resulting directly at any time from:
- 14.2.1 any fault discovered in the Goods, including without limitation, defects in workmanship or materials, defects in design or non-suitability for intended use; or
  - 14.2.2 the failure of the Goods or performance or non-performance of the Services to comply with the Contract.
- 14.3 For the duration of the Contract and for a period of 3 years thereafter, Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, cyber and data risks insurance, product liability insurance and public liability insurance of at least five million dollars (\$5,000,000) for each policy (or as otherwise stipulated) to cover the liabilities that may arise under or in connection with the Contract and shall, on Civica's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance or evidence of the same.

## **15. Termination**

- 15.1 Either party may, without prejudice to any other remedies it may have, terminate the Contract forthwith at any time by giving notice in writing to the other party if the other:
- 15.1.1 commits any material breach 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
  - 15.1.2 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.
- 15.2 Without limiting its other rights or remedies, Civica may terminate the Contract in respect of the supply of:
- 15.2.1 Services, by giving Supplier 1 months' written notice; and

- 15.2.2 Goods, with immediate effect by giving written notice to Supplier, in which case Civica shall pay Supplier fair and reasonable compensation for any work in progress on any other Goods (not yet delivered) at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 15.3 In any of the circumstances in these Conditions of Purchase in which Civica may terminate the Contract, where both Goods and Services are supplied, Civica may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.
- 15.4 If Supplier fails to deliver the Goods and/or perform the Services by the applicable date Civica may, without limiting its other rights or remedies, have one or more of the following rights:
- 15.4.1 terminate the Contract with immediate effect by giving written notice to Supplier;
- 15.4.2 refuse to accept any subsequent performance of the Services and/or delivery of the Goods which Supplier attempts to make;
- 15.4.3 recover from Supplier any costs incurred by Civica in obtaining substitute goods and/or services from a third party;
- 15.4.4 where Civica has paid in advance for Services that have not been provided by Supplier and/or Goods which have not been delivered by Supplier, to have such sums refunded by Supplier; and
- 15.4.5 claim damages for any additional costs, loss or expenses incurred by Civica which are in any way attributable to Supplier's failure to meet such dates.
- 15.5 Upon expiration or termination of the Contract for any reason Supplier shall promptly re-deliver to Civica all Materials and other materials furnished to Supplier by Civica and all copies made by Supplier.
- 15.6 The accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 15.7 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 16. General**
- 16.1 Any notice or other communication required to be given to a party under or in connection with the 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 Civica notices they shall be addressed for the attention of the President with a copy to Purchasing@civica.co.uk.
- 16.1.1 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 or recorded delivery, at 9.00 am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 16.1.2 For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under the Contract shall not be validly served if sent by e-mail.
- 16.2 The 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 the 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 the Contract. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.
- 16.3 No variation of the Contract shall be binding unless it is in writing and signed by each of the parties (or their duly authorised representatives).

- 16.4 No failure or delay in exercising any remedy or right under a 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 a Contract or otherwise.
- 16.5 Neither party may assign the benefit of the Contract(s) nor any interest except with the prior written consent of the other, save that Civica may assign the Contract(s) at any time to any member of the Civica Group.
- 16.6 The provisions of the Contract shall be severable in the event that any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable, 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 the Contract.
- 16.7 The Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms. This clause shall prevail in the event of any conflict between it and anything else in the Contract.
- 16.8 Nothing in the 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.
- 16.9 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 the Contract if it is due to a force majeure event: any event beyond the reasonable control of a party to this Contract including, without limitation, acts of God, war, industrial disputes, protests, fire, flood, storm, tempest, explosion, an act of terrorism, epidemic, pandemic, act of government authorities 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 prevents Supplier from supplying the Goods and/or Services for at least 2 weeks, Civica shall be entitled to terminate the Contract(s) with immediate effect by giving written notice to Supplier.
- 16.10 All disputes arising out of or under the Contract that are not resolved by the Supplier's contract manager and Civica's contract manager shall be escalated internally by both parties for resolution. Second level escalation is to the party's contract manager's 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, any action or proceeding by either party to enforce the Contract shall be brought only in Winnipeg, Manitoba before the Court of King's Bench.
- 16.11 Subject to clause 16.10, the 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 Federal Laws of Canada and the laws of the Province of Manitoba, and the parties irrevocably submit to the exclusive jurisdiction of the Court of King's Bench in Winnipeg Manitoba.

