

Dated

January 2018

Victory Housing Trust

**Terms of Business
for the Purchase of
eProcurement Portal Software Services**

CONTENTS

1	DEFINITIONS	1
2	CONSTRUCTION	1
3	BASIS OF CONTRACT	2
4	SUPPLY OF SERVICES	2
5	PURCHASER'S OBLIGATIONS	3
6	CHARGES AND PAYMENTS	3
7	INTELLECTUAL PROPERTY RIGHTS	4
8	INDEMNITY	4
9	CONFIDENTIALITY	5
10	TERMINATION AND OTHER REMEDIES	5
11	CONSEQUENCES OF TERMINATION	6
12	ASSIGNMENT AND SUBCONTRACTING	6
13	NOTICES	7
14	NO AGENCY	7
15	THIRD PARTIES	7
16	WAIVER AND CUMULATIVE REMEDIES	7
17	SEVERANCE	7
18	VARIATION	7
19	PREVENTION OF CORRUPTION & PURCHASER'S POLICIES	7
20	DATA PROTECTION	8
21	GOVERNING LAW	8
22	ANNUAL SUPPORT SERVICE	9
23	CLOUD SERVICES	10

**VICTORY HOUSING TRUST:
TERMS AND CONDITIONS OF PURCHASE**

1 Definitions

In this Contract, where the context permits, the following terms have the following meanings.

Business Day	means 9.00 am – 5.00 pm on any day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
Contract	means the contract between the Purchaser and the Supplier for the supply of Services comprised in the Purchase Order, and these Terms and any other documents referred to in the Purchase Order as amended or re-stated from time to time.
Deliverables	means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services, including without limitation computer programs, data, reports and specifications (including drafts).
Delivery Date	means the delivery date set out in the Purchase Order.
Purchaser	means Victory Housing Trust a company registered under the Companies Act 2006 with company registration number 05275586.
Purchaser Materials	has the meaning set out in clause 4.1.8.
Purchase Order	means the Purchaser's order which cross refers to these Terms and Conditions, in the form annexed in Schedule 1.
Price List	means the Supplier's schedule of rates as set out in Schedule 2 of this Contract.
Services	means the services, if any, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Purchase Order.
Specification	means any specification for supply of Services as set out in Schedule 3 of this Contract.
Supplier	means the supplier identified in the Purchase Order.
Terms	means the terms and conditions of purchase set out in this document.

2 Construction

These Terms apply to any Purchase Order which refers to them.

In this Contract, (1) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); (2) a reference to a party includes its

successors or permitted assigns; (3) a reference to a statute or statutory provision is a reference to such statute or statutory provision, and as amended or re-enacted from time to time and any subordinate legislation made under that statute or statutory provision, in each case as amended or re-enacted from time to time; (4) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; (5) a reference to writing or written excludes faxes and e-mails unless otherwise stated; and (6) references to clauses and schedules are to the clauses and schedules of this Contract.

3 Basis of Contract

- 3.1 The Terms and the Purchase Order form the contract for the Purchaser to purchase Services from the Supplier. The Supplier agrees to supply the Services comprised in the Purchase Order in accordance with this Contract.
- 3.2 These Terms, together with the Purchase Order and any other documents which are expressly stated in the Purchase Order to form part of this Contract shall (1) apply to the exclusion of any other terms that the Supplier seeks to impose or incorporate (2) exclude all terms which are or would or might be (but for this provision) implied by trade, custom, practice or course of dealing, and (3) supersede any prior existing agreement relating to its subject matter (written or oral).

4 Supply of Services

- 4.1 In providing the Services, the Supplier warrants it shall:
 - 4.1.1 co-operate with the Purchaser in all matters relating to the Services, and comply with the Specification and all instructions of the Purchaser;
 - 4.1.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - 4.1.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them;
 - 4.1.4 provide all equipment, tools, vehicles computer hardware and software and such other items as are required to provide the Services;
 - 4.1.5 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Purchaser, will be free from defects in workmanship, installation and design;
 - 4.1.6 obtain and at all times maintain all necessary licences and consents to carry out its obligations under this Contract and comply with all applicable laws and regulations;
 - 4.1.7 observe any security requirements that apply at the Purchaser's premises;
 - 4.1.8 hold all materials, equipment and tools, drawings, specifications and data supplied by the Purchaser to the Supplier (the **Purchaser Materials**) in safe custody at its own risk, maintain the Purchaser Materials in good condition until returned to the Purchaser, and not dispose or use the Purchaser Materials other than in accordance with the Purchaser's written instructions or authorisation; and

- 4.1.9 not do or omit to do anything which may cause the Purchaser to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Purchaser may rely or act on the Services.
- 4.2 The Purchaser reserves the right to request the removal and replacement of any member of staff whom it considered unsatisfactory.
- 4.3 The Supplier will provide the services no later than the Delivery Date. The Supplier shall give written notice and details of any delay or likely delay in providing the Services to the Purchaser and will provide details of any alternative dates on which the Services will be provided. The Purchaser may at its absolute discretion accept in writing the provision of the Services on the alternative dates proposed or require provision on or before the original Delivery Date.

5 Purchaser's Obligations

The Purchaser shall:

- 5.1 provide the Supplier with reasonable access at reasonable times on reasonable notice and subject to the rights of any third parties to the Purchaser's premises for the purpose of providing the Services; and
- 5.2 provide such information as the Supplier may reasonably request for the provision of the Services and the Purchaser considers reasonably necessary for the purpose of providing the Services.

6 Charges and Payments

- 6.1 The charges for the Services shall be set out in the Purchase Order or, if not set out there, then the Price List and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services and shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services and will not exceed any agreed budget for the Services.
- 6.2 There shall be no change to the Price List or Specification unless agreed in writing by both parties.
- 6.3 In respect of Services, the Supplier shall invoice the Purchaser in accordance with any milestones set out in the Purchase Order or, if none are specified, monthly in arrears. Each invoice shall include any supporting information required by the Purchaser.
- 6.4 Subject to clause 6.7, the Purchaser shall pay correctly rendered invoices within 30 days of receipt of the invoice. Payment shall be made via BACS transfer to the account nominated in writing by the Supplier.
- 6.5 All amounts payable by the Purchaser under this Contract are exclusive of value added tax chargeable from time to time.
- 6.6 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Purchaser in order to justify withholding payment of any such amount in whole or in part. The Purchaser may set off any amount owing to it by the Supplier against any amount payable by the Purchaser to the Supplier under the Contract.
- 6.7 If the Purchaser disputes any invoice, the Purchaser shall notify the Supplier in writing within 7 days of receipt of the invoice. The parties shall negotiate in good faith to attempt

to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. The disputed amount shall not be paid until the dispute has been resolved. The Supplier's obligations to supply the Products shall not be affected by any payment dispute.

7 Intellectual Property Rights

- 7.1 Save to the extent that the Supplier uses documentation and materials supplied by the Purchaser, the Supplier warrants that none of the documentation and materials used or created as part of the Services shall infringe any patent, trade mark, registered design, copyright or other rights in intellectual property or industrial property of any third party.
- 7.2 The Supplier shall indemnify the Purchaser against all actions, demands, charges, expenses and costs (including any legal cost and other professional fees and expenses) which the Purchaser incurs or suffers as a result of or in connection with any breach by the Supplier of clause 7.1.
- 7.3 All current and future intellectual property rights (including the copyright) in any software shall vest in the Supplier. All reports, documentation or materials produced by either party as part of the Services including (without limitation) Deliverables (but excluding the software supplied by the supplier and any documentation supplied in relation to such software), shall vest in the Purchaser. The Supplier assigns to the Purchaser, with full title guarantee and free from all third party rights, a licence to use any software produced by the Supplier as part of the Services. This condition shall survive the termination of this Contract.
- 7.4 The Supplier shall, promptly at the Purchaser's request do (or procure to be done) all such further acts and things and the execution of all such other documents as the Purchaser may from time to time require for the purpose of securing for the Purchaser the full benefit of this Contract, including all right, title and interest in and to the intellectual property rights assigned to the Purchaser in accordance with clause 7.3.

8 Indemnity

- 8.1 The Supplier shall keep the Purchaser indemnified in full 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 the Purchaser as a result of or in connection with:
- 8.1.1 any claim made against the Purchaser by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- 8.1.2 any claim made against the Purchaser for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the use or supply of the Services.
- 8.2 For the duration of the Contract and for a period of six years thereafter, the Supplier shall maintain in force, with a reputable insurance company;
- 8.2.1 professional indemnity insurance to the extent that it is relevant to the supply of Services for the amount of £[];
- 8.2.2 product liability insurance to the extent that it is relevant to the supply of Services for the amount of £1,000,000;

8.2.3 public liability insurance for the amount of £[]; and

8.2.4 employer's liability insurance for the amount of at least £[],

in respect of any single occurrence or series of occurrences arising out of a single event, to cover the liabilities that may arise under or in connection with the Contract and shall, on the Purchaser'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.

8.3 If upon the expiry or termination of the Contract, any employee of the Supplier transfers to the Purchaser under the Transfer of Undertakings (Protection of Employment) Regulations 2006, the Supplier shall keep the Purchaser indemnified in full against any costs and liabilities incurred by it as a result of such transfer, including any redundancy payments.

8.4 The Purchaser shall under no circumstances whatever be liable to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract.

8.5 This clause 8 shall survive termination of the Contract.

9 Confidentiality

9.1 A party (the **Receiving Party**) shall keep in 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 (the **Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, products or services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such 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 this Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

9.2 This clause 9 shall survive termination of this Contract.

10 Termination and other Remedies

10.1 Without limiting its other rights or remedies, the Purchaser may terminate this Contract with immediate effect by giving written notice to the Supplier:

10.1.1 if the Supplier commits a material or persistent breach of this Contract and (if such a breach is remediable) fails to remedy that breach within 15 days of receipt of notice in writing of the breach. Failure to meet an agreed deadline will be an irremediable breach;

10.1.2 if a petition is filed, a notice is given, a resolution is passed or an order is made for the winding up of the Supplier or a receiver, administrator or administrative receiver is appointed over the whole or any part of the assets of the Supplier or the Supplier makes any arrangement with the creditors of the Company for the affairs, business and property of the Company to be managed by a supervisor; or

10.1.3 if the Supplier (being an individual) is the subject of a bankruptcy petition order, dies or, by reason of illness or incapacity (whether mental or physical), is

incapable of managing his own affairs or becomes a patient under any mental health legislation;

10.1.4 by giving written notice to the Supplier, in which case the Purchaser shall pay the Supplier its reasonable costs incurred for work in progress at the date of termination, which shall be determined at the sole discretion of the Purchaser.

10.2 The Purchaser reserves its right to terminate this Contract in respect of part of the Services, in accordance with clause 10.1.4, and the Contract shall continue in respect of the remaining Services in accordance with the terms of this Contract.

10.3 If the Supplier has performed Services that do not comply with the requirement and / or warranties set out in this Contract or if the Supplier fails to perform the Services by the applicable date after taking account of any delay agreed under clause 4.3 then, without limiting its other rights or remedies, the Purchaser shall have one or more of the following rights:

10.3.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

10.3.2 to require the Supplier to perform the Services again, or to provide a full refund of the price of the rejected Services (if paid);

10.3.3 to refuse to accept any subsequent provision of Services which the Supplier attempts to make; and

10.3.4 where the Purchaser has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier.

10.4 These terms shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier to the Purchaser.

11 Consequences of Termination

11.1 On termination of the Contract or any part of it for any reason:

11.1.1 where the Services are terminated, the Supplier shall immediately on request deliver to the Purchaser all Deliverables, whether or not then complete, and return all Purchaser Materials;

11.1.2 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;

11.1.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12 Assignment and Subcontracting

The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without obtaining the Purchaser's prior written consent. The Purchaser may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract.

13 Notices

- 13.1 Any notice required to be given to a party in connection with this Contract shall be in writing and shall be delivered to the other party personally, or sent by recorded or prepaid first-class post, or by courier, or if another address, as notified in writing. Any notice shall be received if delivered personally, when left at the address referred to above or, if sent by recorded or prepaid first-class post, at 9.00 am on the second Business Day after posting, or if delivered by courier, at the time and date that the courier's delivery receipt is signed.
- 13.2 This clause 13 shall not apply to the service of any proceedings or other documents in any legal action.

14 No Agency

No party shall have authority to act as agent for, or to bind, the other party in any way.

15 Third Parties

A person who is not a party to the Contract shall not have any rights under or in connection with it.

16 Waiver and Cumulative Remedies

A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach of default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

17 Severance

If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

18 Variation

Any variation to this Contract is only binding when agreed in writing and signed by the Purchaser.

19 Prevention of Corruption & Purchaser's Policies

- 19.1 The Supplier warrants to the Purchaser that it has not colluded and will not collude with any third party in relation to the terms offered in this Contract or in relation to any Purchase Order. The Supplier shall:
- 19.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

19.1.2 promptly report to the Purchaser any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Contract.

19.2 The Supplier shall comply with the following policies of the Purchaser:

19.2.1 anti-fraud & corruption policy;

19.2.2 equality and diversity policy;

19.2.3 Health & Safety policy;

19.2.4 Data Protection Policy;

19.2.5 Safeguarding policy; and

19.2.6 Code of conduct for service providers including contractors, consultants & suppliers.

all of which have been supplied to the Supplier, and in each case subject to any updates to be notified to the Supplier.

20 Data Protection

20.1 The Supplier shall:

20.1.1 at all times comply with the Data Protection Directive (95/46/EC) and any equivalent national laws (Data Protection Legislation) in the performance of its obligations under this Contract;

20.1.2 in relation to its processing of any personal data (as defined in the Data Protection Legislation) transferred to the Supplier by the Purchaser (or collected or generated by the Supplier on the Purchaser's behalf), ensure that appropriate technical and organisational measures are taken against unlawful processing and/or accidental loss of such personal data;

20.1.3 promptly notify the Purchaser on receipt of any subject access request requiring the release of such personal data and co-operate with the Purchaser promptly in responding to any such subject access request within such reasonable timescales as may be specified by the Purchaser; and

20.1.4 promptly notify the purchaser without delay if any of the Personal Data is lost, destroyed, or damaged or is the subject of any unauthorised or unlawful processing; and

20.1.5 not cause any such personal data to be transferred outside the European Economic Area without the Purchaser's prior written consent which may be given or withheld at the Purchaser's absolute discretion and, where given, may be conditional on entry by the Supplier into such further terms as may be prescribed or recommended by any court or regulatory body.

21 Governing Law

This Contract, and any dispute or claim arising out of or in connection with it or its subject matters or formation (including non-contractual disputes or claims) shall be governed by

the law of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

22 Annual Support Service

- 22.1 In consideration for payment by the Purchaser of the Annual Support Fee or Annual Fee where an Annual Subscription contract has been purchased, the Supplier shall commencing on the completion of the Software Implementation, provide the Software Support Service for each 12 calendar month period in which the Purchaser utilises the Software.
- 22.2 The Annual Support Service relates only to the Software and shall comprise (but is limited to) the following services, which shall be undertaken in accordance with the service level description in the Brief and subject to clauses 22.3 and 22.5:
- 22.2.1 fault diagnosis and, where feasible, recommendations for fault correction following the reporting of any fault via telephone, email or a Supplier support portal by the Purchaser to the Supplier. Diagnosis and solution of operational problems will be carried out remotely from the Suppliers site;
 - 22.2.2 reasonable support via telephone, email and any Supplier support portal on the routine use and operation of the Software;
 - 22.2.3 reasonable advice and assistance via telephone, email and any Supplier support portal on user procedures and on ideas and methods intended to assist the Purchaser in obtaining the best possible use from the Software;
 - 22.2.4 one copy of any Software Upgrades released by the Supplier (or installation of Software Upgrades if part of a Cloud Service);
 - 22.2.5 installation of minor releases (for instance, reflecting legislative or technical changes) of Software Upgrades, for modules other than Payroll Web in a locally installed environment, which can be undertaken remotely are provided at no additional cost, but installation of major releases of Software Upgrades are provided at additional cost (whether a new release is deemed a major or minor Software Upgrades is determined in the Supplier's reasonable opinion). Should the Purchaser request more frequent Software Upgrades then the Additional Services required to complete each Software Upgrade shall be agreed in writing, in the form of an Order Schedule, and charged appropriately prior to the update being applied; and
 - 22.2.6 Notification of all major problems or errors in the Software of which the Supplier become aware which relate to its user base generally.
- 22.3 The Annual Support Service does not extend to any defects or errors resulting from any modifications or enhancements made to the Software by or on behalf of the Purchaser or without the Supplier's written consent or resulting from incorrect use of the Software.
- 22.4 Provision of the Annual Support Service does not imply any guarantee that the Supplier will be able to assist the Purchaser in achieving any results which are not technically possible.
- 22.5 Any support or maintenance services which are outside the scope of this Agreement, including for the avoidance of doubt any training relating to Software Upgrades, will, at the Purchaser's request and the Supplier's option, be provided by the Supplier as an Additional Service.

23 Cloud Services

- 23.1 If Cloud Server services are incorporated into the Purchase Order, in consideration for payment by the Purchaser of the Cloud Server price, the Supplier shall provide the Cloud Server services.

Schedule 1 – Purchase Order

This Purchase Order form is issued under the Terms and Conditions dated _____ 2018 between Victory Housing Trust company registration number 05275586 and [] company registration number []

1. **Description and specification:** _____

2. **Quantity (if applicable):** _____

3. **Delivery date (deadline) :** _____

4. **Price:**
Calculated in accordance with Schedule 2 Price List
or
Quotation dated _____ in the sum of £ _____ (including VAT
(delete as applicable)

5. **Acceptance:**

Signed on behalf of the Supplier

Schedule 2 – Supplier’s Schedule of Rates

The Suppliers Schedules of Rates are the appended Price List.

Schedule 3 – Specification

The Specification is the appended ‘eProcurement Portal Software Services’ and the ‘Tender Brief for eProcurement Portal Software Services’ dated 15 December 2017, and Appendices B and Ci and Cii and Ciii and D and E

For and on behalf of the Supplier

[]

Co reg nr []

For and on behalf of the Purchaser

Victory Housing Trust

Co reg nr 05275586

Signature:

Signature:

Name:

Name:

Position:

Position:

Date:

Date:

Witness:

Witness:

Name:

Name: