

Open Tender Specification

Tender Title	Growth Curve Marketing Campaign
Procurement Process N°	PR2029
Issue of Specification	30 th September 2020
Deadline	16th October 2020 – 5pm

1. About us

- 1.1. The South East Midlands Local Enterprise Partnership (SEMLEP) has a central role in determining local economic priorities and securing investment to support business innovation and growth. To do this we link together the public and private sectors with academia to coordinate housing, transport, commercial development, energy infrastructure and raise workforce skills, in line with employers' needs, for the benefit of the wider economic area. We prioritise driving up productivity, creating jobs and promoting long-term, sustainable growth.
- 1.2. SEMLEP has three main roles in delivering strategic economic growth.
 - 1.2.1. Setting the strategic direction for the area's future economic opportunities, challenges and priorities.
 - 1.2.2. Direct intervention to increase growth. We are responsible for securing and overseeing the spend of two main sources of growth funding as well as coordinating business support through our Growth Hub
 - 1.2.3. Facilitating growth by convening partners to assist cross-boundary collaboration on short and long-term economic issues.

2. General Information

- 2.1. Please check this document together with all accompanying documents, particularly the Specification, and if any pages are missing, duplicated or the text is indistinct please notify SEMLEP at once, as we will accept no liability for such errors or omissions.
- 2.2. All items in the Pricing Schedule should be priced. Our Payment terms are 30 days after approved invoice. This must be replicated as a maximum for subcontractors used on this project.
- 2.3. It is important, for the proper comparison of Tenders that no unauthorised alterations have been made to the Tender Documents. Tenders containing unauthorised alterations or qualifications may be rejected. If you consider that changes are necessary, your proposals for such changes must be submitted to SEMLEP at once for consideration and if SEMLEP approves them, they will be circulated to all other potential suppliers.

- 2.4. Any attachments/additions that are not identified or are general sales material maybe excluded at no liability to SEMLEP. You are therefore asked not to enclose any documents, brochures or other materials unless you are specifically requested to do so. You must retain the sequence of the questions and the numbering in your response.
- 2.5. Bids shall remain open for acceptance for a minimum of 90 days. SEMLEP expects to decide award of contract within 30 days of the closing date for submission of Tenders.
- 2.6. SEMLEP is not bound to accept any Tender or make any award from this Invitation to Tender. The contract will be awarded on the basis of the Most Economically Advantageous Tender, based on the award criteria as set out below subject to satisfying SEMLEP's requirements set out in Part A (selection Criteria). Acceptance of the tender by SEMLEP shall be in writing and on the SEMLEP's terms and conditions, which are supplied as part of our Tender requirements.
- 2.7. Please note this is not an order. If your Tender is accepted, an official purchase order will be raised. The order will be subject to the Terms and Conditions of Contract as published with this tender or referenced by this tender as the case may be.

3. Assessment of your Organisation and Tender

- 3.1. If SEMLEP finds conflicting or false information has been provided in a bidder's submission SEMLEP reserves the right to reject the tender at any stage.
- 3.2. Your organisation is assessed on the suitability assessment questions contained in Part A.
- 3.3. The suitability assessment questions are to ensure bidders meet requirements or minimum standards of suitability, capability, legal status or financial standing to perform the contract to be awarded. Bidders must pass in order to be deemed suitable to proceed with Part B. A pass will be achieved provided the bidder has successfully demonstrated the requirements and minimum standards for each question and provided evidence if requested. SEMLEP has set minimum standards and requirements which are relevant and proportionate to the subject matter of the Contract. The aim is to achieve an appropriate balance between fair competition and safeguarding public money.
- 3.4. If SEMLEP requires a reference to demonstrate experience, this will need to demonstrate sufficient capability to perform the Contract. In particular, SEMLEP will have regard to the degree to which your experience is relevant to the subject matter of the Contract and demonstration of the relevant ability, skills and resource required to perform the Contract.
- 3.5. If you are unable to meet any minimum standards or requirements, SEMLEP may reject your tender at its absolute discretion. SEMLEP may, but has no obligation to do so, consider alternative means of demonstrating suitability in the event that you are unable to meet any minimum standards or requirements. The SEMLEP's decision is final in all respects.
- 3.6. SEMLEP reserves its rights not to award a contract to any bidder which does not pass basic credit checks or if, for any other reason, SEMLEP considers any bidder's financial

standing is a material risk to the delivery of the services.

- 3.7. After passing Part A, your response to Part B will be assessed as follows. Part B contains the award criteria to determine the most economically advantageous tender for the award of the contract.

Resources/Quality = 65 % Costs = 20 % Presentation = 15 %

4. Resources/Quality

- 4.1. The marks available for the quality aspect of your submission will be split into a range of individual elements and weighted according to their importance. Evaluations will be a measure of the extent to which you have met the requirements of the service specification. The evidence you provide in terms of the Quality Information you submit will be assessed and scored accordingly. Each member of the evaluation team will assess each submission and a collective score awarded.

5. Costs

- 5.1. The tender with the lowest cost (that has met all quality thresholds) will gain full marks available for the price element of the evaluation.
- 5.2. All other tenders over and above the lowest price tender will score a proportion of the marks available on a pro-rata basis. This is calculated using the percentage their cost would need to reduce to match the lowest price and reducing their score by the same percentage. This is calculated using the following formulae:-

$$\frac{\text{Lowest cost offered}}{\text{Price offered by a particular tenderer}} \times YY$$

An example of this price evaluation formula being applied is provided below:-

	COST OF THE PROPOSAL	MARKS GAINED OUT OF THE 20 AVAILABLE
Tenderer A	£9,000	20.00
Tenderer B	£10,000	18.00
Tenderer C	£12,000	15.00
Tenderer D	£18,000	10.00
Tenderer E	£30,000	06.00

6. Presentation

- 6.1. SEMLEP will only invite those bidders to attend a presentation which could achieve the most economically advantageous tender in view of the marks obtained for Costs and Resource/Quality. For the avoidance of any doubt, this means that all bidders whose respective marks for Costs and Resources/Quality, when added to the maximum marks

available for the presentation, could not achieve the most economically advantageous tender, will not be invited to take part in the presentation.

- 6.2. If a bidder is selected to attend to provide a presentation, further instructions will be issued, however it is anticipated that this will involve a short verbal/visual presentation no longer than 10 minutes in length. The content should focus on how the bidder will ensure that the Growth Curve marketing campaign that it proposes to run will deliver the appropriate number and type of businesses to match the required outputs over the life of the project.

Specification of Works, Supplies or Services

Background

Project purpose

SEMLEP intends to award a contract for a marketing agency to work with the Growth Hub team on the delivery of the Growth Curve Programme. Direct contact will be with the SEMLEP marketing and communications staff with support from the wider Growth Curve team.

Introduction to project

Growth Curve is a programme for potential growth and high growth businesses in the South East Midlands.

The programme started in July 2019, with the official launch taking place in January 2020. Most aspects of the programme are now fully operational, and we are in a position to procure marketing support for the remainder of the project until end of June 2022.

The aim is do as much as we can to provide tailored support to scale up and pre-scale up businesses to generate economic opportunity, jobs and expansion by gaining new knowledge. Assessing their growth to date and putting in place robust plans for the future and to support them through the key challenges they are faced with when scaling their businesses. Through business growth workshops in partnership with business experts from three local universities they develop a growth plan and learn how to action it; 1:1 business coaching and Peer to peer networks provide ongoing support to businesses in their growth ambitions.

The universities we have partnered with are the University of Bedfordshire, Cranfield University and University of Northampton. All have business management expertise and are local to the businesses we are supporting.

Overall project targets for the three-year project are:

- 500 businesses supported over 3 years
- 380 of which through university courses – 12 hours
- 500 will receive 3 hours support from a business adviser, 50 of which will receive further support from a business coach
- 65 businesses will be awarded grants
- Business growth of organisations that have received support
 - a. Increased turnover, employee number etc
 - b. Case study examples of proven growth

- 180 jobs created in client businesses

In year 1 we have had 57 businesses complete the university masterclasses and 20 businesses have been awarded grants.

Target audience

Two audiences have been identified in the project brief.

Prescale businesses – upwards of £200K/3 staff and aspiration to grow 20% year on year for next three years. (Represents approx. 75% of the target audience)

Why? From the experience of our business advisers – once a company has reached £200K / 3 staff, they have demonstrated that they have the traction to scale their business and are unlikely to be lifestyle businesses. We are looking for companies who have the potential to grow to “scale up” size and this metric filters out those who have not demonstrated the ability to grow to some kind of scale.

Scale up businesses – upwards of 10 staff and have demonstrated 20% year on year growth over past three years. (Represents approx. 25% of the target audience)

Why? This group meets the scale up definition. Working with them helps us to understand and connect with the ambitions and ingredients a company requires in order to grow their business to a scale up. At this stage, we are likely to see greater traction in terms of growth (in real term numbers of employee growth and turnover), and there is an important linkage to be made with pre-scale businesses as a learning point for the future.

Key requirements

SEMLEP would like to appoint a marketing agency with digital expertise to help generate awareness and support the lead generation for the Growth Curve Project.

The appointed agency will develop and deliver:

- an integrated marketing campaign to run for the remaining duration of the contract, including setting clear, measurable targets for the campaign. The campaign is to integrate with Google Campaigns and the Growth Hub website.
- Creative materials for the digital campaign and wider marketing activity, including developing key messaging
- Reporting on a monthly basis and advising on all activity on a quarterly basis

The objective of this activity is to:

- Identify, target and raise awareness of Growth Curve amongst potential growth and high growth businesses in the geographical area
- Support the team's lead generation targets through targeted campaigns

This will include:

- Liaising with the SEMLEP project and Communications teams to discuss overall plan and key target areas and campaign rationale.
- Creating a digital focused integrated marketing plan that covers all mediums to June 2022.
- Preparing communications and creative to deliver plan.
- Booking media.
- Setting up Google Campaigns and integrating with Growth Hub website.
- Delivering social sponsored and advert campaigns, or adwords campaigns
- Advising SEMLEP marcomms team on organic Social Media use to support of campaign.
- Creating a monthly reporting dashboard, including updating and sending to client monthly.
- Quarterly video meeting with marcomms team to discuss performance and if any updates are needed to plan.
- Designing support materials for SEMLEP, including flyer and pull up banners.

a. Marketing plan

The agency will develop and implement an impactful integrated marketing plan for Growth Curve, with particular emphasis on digital marketing activity.

You will liaise with the Growth Curve Project Manager and SEMLEP Marcomms team to review programme strategic messaging, advise on the most appropriate channels to reach the key audience, providing a clear rational for the approach and develop a digital campaign accordingly for the duration of the project.

Desired outcome: a measurable campaign is created and delivered that reaches new prospective Growth Curve participants, supports the awareness raising, increases relevant Growth Curve enquiries and reinforces Adviser efforts to meet lead generation targets.

b. Messaging and creative design

The contracted agency will advise on how to best articulate and present key messages and the most effective tools to deliver these messages to the key audience.

The agency will produce targeted and timely content including, sponsored editorial, publicity material, adverts and case studies in written, online, including video and print formats (where appropriate) amongst others to deliver the campaign.

You will create core marketing materials, building on current collateral in use. Further supporting content could include promotional creative, online adverts or other online materials.

All materials will meet accessibility requirements and will adhere to SEMLEP Brand Guidelines. You will supply all digital files to SEMLEP. The Tender does not include print costs.

Desired outcome: a suite of good quality assets that support and enhance the overall project marketing activity are created for use by the agency, SEMLEP and partners such as the university marketing teams.

c. Monitoring and evaluation

You will provide a monthly dashboard reporting key metrics shown against objectives which will be agreed on upon commencement of the campaign. This will include Google Campaigns.

Desired outcome: a monthly dashboard report to demonstrate the campaign successes against agreed targets and a quarterly meeting to agree updates/changes based on reports.

d. Social Media

The contractor will advise on the use of organic and paid social media, including supporting and developing existing channels or proposing new channels to help achieve the project objectives. The contractor will use social media as part of a campaign as required to achieve the communication objectives.

Desired outcome: for targeted paid campaigns to be delivered, with support provided to SEMLEP's marcomms team to align campaign messages across the business services offer on all SEMLEP channels.

The budget for this work is up to £35,000 including VAT.

7. Tender Timelines

7.1. Below is an indication of this Tender timeline, this may change and SEMLEP will not be liable for any changes.

Activity	Date
Last date for receiving questions	12 th October 2020
Deadline for receipt of Tenders	16th October 2020 – 5pm
Evaluation of tender responses	17 th – 22 nd October 2020
Supplier presentations (If required)	2 nd and 3 rd November 2020
Award of Contract	5 th November 2020
Target contract commencement date or delivery date	16 th November 2020
Inception Meeting	11am 16 th November 2020
Contract End Date	30 th June 2022

8. Help and Support

8.1. SEMLEP will provide as much support and information as it can to help guide you through the Tender process. Questions asked together with the response, will be made available to all firms quoting, to ensure a fair and consistent approach to all. If there is anything you are not sure of or need clarification of, then please contact us

using the procurement email (see below).

9. Return of Tender

9.1. Please note that your response must include:

- SEMLEP 's Application Form fully completed
- Any additional information you wish to provide to support your response. Please keep additional information to no more than 3 A4 pages.
- All prices quoted shall be fixed and firm and shall apply for the full duration of the contract.
- All costs are deemed to include expenses and any other on-cost.
- All prices quoted shall be inclusive of Value Added Tax (VAT)
- Any queries regarding completion of the response please email procurement@SEMLEP.com or contact us on 01234 436100
- Please send your completed forms and any supporting information electronically to procurement@SEMLEP.com with the name of the tender in the subject header before the deadline as any tenders received after the deadline will automatically be disqualified. Please note we do not want hard copies to be sent in the post.

10. Indicative Budget

10.1. The total budget is £35,000 including VAT. All prices submitted shall be in Pounds Sterling, including any extra costs and VAT.

RFQ Application Form

RFQ Name:

Please return this form and any additional document as part of your response.

SECTION 1: BUSINESS DETAIL

Business name

Contact name

Contact position

Company address
including post code

Principal activities

Legal status

Sole Trader | Partnership | Limited Company | Other:

Company number

Number of FTE employees

Can you confirm your business is VAT registered? If yes, please provide a number

Business incorporation
date

Date trading commenced

Telephone number

Mobile number

Email address

Website

SECTION 2: REFERENCES

Please provide a contact name, organisation details, telephone number, the value and the type of work carried out.

Reference 1:

Reference 2:

PART A (SELECTION CRITERIA)

The questions 1, 3, 6 and 7 are pass/reject questions. If your application passes on those questions the it will progress to "Part B".

SECTION 3: ECONOMIC AND FINANCIAL STANDING OF APPLICANT

Suitability to pursue procurement, technical and professional ability.

1. In the last three years, has your organisation committed any criminal offences or other matters (See “Summary of ineligibility conditions”, available after section 6 of this application form) related to your business which would qualify as “mandatory exclusions” under Regulation 57 of the Public Contracts Regulations 2015 or discretionary exclusions under Regulation 58. If yes, rejected.	Yes/No		
2. What has the turnover of your organisation been over the last three years . A copy of your financial accounts <i>may</i> be required in due course.	Year		£
	Year		£
	Year		£

SECTION 4: SUITABILITY

3. In the last three years have you been prosecuted for any environmental offence or do you have any case pending? If yes, rejected.	Yes/No
4. Has your company initiated any processes or actions in relation to improving your environmental performance?	Yes/No

SECTION 5: EQUALITY

5. In the last three years have any findings of unlawful discrimination been made against you or your firm by the Employment Tribunal, the Employment of Bill Tribunal or any other court or incomparable proceedings in any other jurisdiction? If yes, rejected.	Yes/No
6. Is it your policy as an employer to comply with your statutory obligations under the Equality Act 2010 not to treat any one group of people less favourably than others because of their “race, gender, age, religion, belief, gender re-assignment, disability, pregnancy/maternity or sexual orientation”? If no, rejected.	Yes/No
7. In the last three years has your organisation been prosecuted or had notice served on it for contravention of the Health & Safety at Work Act 1974 or associated regulations or been a subject of a full investigation by the Health & Safety Executive or similar body. If yes, rejected.	Yes/No
8. Does your organisation have a written health and safety at work policy with arrangements for implementing and monitoring the policy? You <i>may</i> be asked to provide a copy.	Yes/No

SECTION 6: INSURANCE

9. Please advise below what Employers, Public & Professional Indemnity Liability Insurance you hold. Have you made any claims above £50,000 in value within the last three years? (if so, give details below).

Yes/No

Employers Liability Insurance

£

Professional Indemnity Liability

£

Public Liability

£

PART B (AWARD CRITERIA)

If your application passes "Part A" it will progress to "Part B". Please note that the sections 7 to 10 below are part of the award criteria.

SECTION 7 – PRICE (Weighting 20%)

It is necessary to illustrate the value for money in the proposal please provide details of how your proposal will deliver the best value per £ of public funds and provide information related to the prices requested on the Specification.

Item Description	Qty	Price	VAT	Total - Including VAT
Total		£		

Additional Costs (*to be considered at the discretion of SEMLEP*)

Please set out below any additional costs **related that is relevant to the specification** that you believe are necessary to complete this work (*insert additional rows if necessary*):

Item Description	Qty	Price	VAT	Total - Including VAT
Total including additional costs (if applicable) and VAT		£		
Hourly Rate (if applicable)		£		

Questions in this section are linked to the subject matter of this contract as detailed in the specification and Key Performance Indicators (KPI's) relating to that specification. Your answers should reflect this.

If there is an “**R**” after the points it indicates that there is also a ‘**minimum**’ Threshold to that question and suppliers will be rejected if they do not meet a minimum requirement threshold. The minimum threshold is 30% and a score below this level will lead to the rejection of your tender entirely.

The scoring mechanism below will be used as a general guide with specifics added to each question where applicable. Questions with higher or lower scores attributed to them will be generally adjusted pro-rata, i.e. a question with 30 points will have 24 to 30 as the excellent score, 12 to 18 as the average score and 0 to 6 as a poor score.

Table 1: General Scoring Methodology

Score	Rating	Criteria for Awarding Score
0-2	Poor	Does not meet the Council's requirements and/or Significantly Falls short of meeting the Council's requirements in several areas and/or raises concerns in several areas and/or many information omissions. The information submitted has insufficient evidence that the specified requirements can be met and/or does not demonstrate an acceptable level of quality of the proposed solution. This may include significant omissions of relevant details, or an unrealistic method statement.
3		Score exceeds Poor, but does not meet Average
4-6	Average	Achieves a minimum standard in most respects but may raise some concerns. The information submitted may have some minor omissions against the specified requirements and/or shows limited evidence that the specified requirements can be met and/or demonstrate only limited level of quality of the proposed solution. For a 5/6 score minimum standard must be achieved.

Score	Rating	Criteria for Awarding Score
7		Scores exceeds Average, but does not meet Excellent
8-10	Excellent	The information submitted provides compelling, strong and coherent evidence of best of sector capability to deliver the specified requirements and/or will provide additional benefits or exceed the performance requirements of the Council with a high degree of dependability. Provides full confidence and/or no concerns with the level of quality of the proposed solution.

SECTION 8 – Method Statement (20 Points) (R) Please confirm you can achieve our specification. If not what part can you not meet? Provide detailed information on your proposed method for carrying out the Contract for all services identified in the specification including provisional items and any work that will be sub-contracted (including list of the sub-contractors). Provide information on how you propose to target the business audience and geographic area. The method and rationale you will use to put the plan together. Detail materials to be used and warranties, any risks involved in this Contract and how you suggest these could be managed effectively. (1,500 words max)

SECTION 9: Resources (20 Points) Detail the resources and your technical ability to carry out the service. Provide Information on: the workforce to be employed for performance of the service and level of experience and level of resources to be used e.g. time, key contacts and time they will spend on contract, experience of working with Universities and SMEs previously.

(1000 words max)

SECTION 10: Implementation Plan (20 Points) Please include an implementation plan that outlines roles and responsibilities (with associated resource requirements), which covers all aspects of the proposed

service implementation for each of the service elements for the whole period from award of Contract to Project completion.

Please also provide information on how you will effectively communicate with the SEMLEP during mobilisation and throughout the contract.

(800 words max)

SECTION 11: Monitoring (20 points) Provide information on monitoring of the contract and how you will ensure our required outcomes are met. How will you keep the client and the project team up to date with progress? What type of report will you create and how will this information be shared with the client? How will you address any campaign activity that doesn't meet targets? How will you monitor activity against overall targets? How will you set up campaigns to create meaningful data analysis? How will you deliver final evaluation of the campaign to provide an overview of outputs achieved, conversion rates etc. to inform future campaign activity.

(800 words max)

SECTION 10: SOCIAL VALUE (12 points) Demonstrate how your proposal offers the social, economic or environmental benefits to the community and take into account social provisions over and above the provision of the service. This could include (but not limited to) creating jobs, improving skills, increasing local volunteering opportunities, supporting diversity and equality or improving environmental conditions over the relevant area. "the relevant area" means the area consisting of the area or areas of the one or

more relevant authorities on whose behalf a public services contract is, or contracts based on a framework agreement are, intended to be made.

(500 words max)

SECTION 11: DECLARATION

I confirm that the information provided herein is correct to the best of my knowledge. I understand that my data is protected under the terms of the Data Protection Act 2018.

Declaration of conflict of interest

Contracted organisations will strive to avoid any conflict of interest between the interests of the organisation (SEMLEP Board or any member of staff) and personal or professional or business interests of another. This is to ensure integrity and transparency of SEMLEP's decision making process and the reputation of the organisation and staff.

I hereby declare that, to my knowledge, I nor anyone working on the project has any conflict of interests with any individuals or contractors who have applied to participate in this procurement procedure or submitted a tender for this procurement or are involved in the project delivery.

To the best of my knowledge and belief, there are no facts or circumstances, past or present, which might call into question the independence of the staff within the business.

I confirm that if I discover, or should it become apparent during the course of the procurement process (including performance of or amendment to the contract) that such a conflict exists, I will declare it immediately to SEMLEP.

I confirm that I will keep all matters entrusted to me confidential. I agree to hold in trust and confidence any information or documents disclosed to me, discovered by me or prepared by me in the course of, or as a result of contact award. I agree that any information received will be used only for the purposes of this contract and will not be disclosed to any third party.

If there are any potential conflicts of interest, please provide details below:

Name:		Position:	
Signature:		Date:	

SUMMARY OF INELIGIBILITY CONDITIONS

- a) is bankrupt or is being wound up, where his affairs are being administered by the court, where he has entered into an arrangement with creditors, where he has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;
- b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or of an arrangement with creditors or of any other similar proceedings under national laws and regulations;
- c) has been convicted by a judgment which has the force of res judicata in accordance with the legal provisions of the country of any offence concerning his professional conduct;
- d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate;
- e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;
- f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;
- g) is guilty of serious misrepresentation in supplying the information required under this Section or has not supplied such information;
- h) has been the subject of a conviction for participation in a criminal organisation, as defined in Article 2(1) of Council Joint Action 98/733/JHA;
- i) has been the subject of a conviction for corruption, as defined in Article 3 of the Council Act of 26 May 1972 and Article 3(1) of Council Joint Action 98/742/JHA3 respectively;
- j) has been the subject of a conviction for fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities;

- k) has been the subject of a conviction for money laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10.6.1991 on prevention of the use of the financial system for the purpose of money laundering. Statement confirming that items (a) to (k) do not apply.

Please remember to email this response to procurement@semlep.com before the deadline specified in Timescales.

Terms and Conditions of Contract

Supply of Services

To

South East Midlands Local Enterprise Partnership

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DEFINITIONS AND INTERPRETATIONS

In these Terms and Conditions, the following expressions shall have the meanings hereby ascribed to them:

- **Act of Parliament:** reference to any Act of Parliament or to any Order, Regulation, Statutory Instrument, or the like shall include any amendments or re-enactment of the same;
- **Affiliate:** means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company or firm;
- **Agreement:** this Agreement and its Appendices referred to herein;

- **Assignment:** work to be carried out / professional service to be provided by the Supplier as specified in the Proposal;
- **Business Day:** means any week day, other than a bank or public holiday in England;
- **Charges:** means the charges specified in the Proposal / the Supplier's Rate multiplied by the number of man-hours spent by the Supplier's personnel performing the Services, plus expenses payable by the Customer to the Supplier;
- **Control:** means: (a) the legal power to directly or indirectly control the management of a company, firm or other entity; (b) the right to select the majority of the directors (or their equivalent) of a company, firm or other entity; and/or (c) ownership of more than 50% of the voting shares in a company; and "Controlled" will be construed accordingly;
- **Customer:** means the client for Services under the Agreement as specified in the Supplier's Booking Confirmation;
- **Data Protection Legislation:** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
- **Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
- **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** take the meaning given in the GDPR.
- **Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
- **Data Subject Access Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
- **DPA 2018:** Data Protection Act 2018
- **Day, week, month and year:** calendar day, calendar week, calendar month and calendar year respectively;
- **Deliverables:** all things to be provided to SEMLEP by the Supplier as part of the Assignment, including but not limited to, advice, brochures, computer programs, oral and written reports;
- **Effective Date:** means the earlier of:
 - (a) the date when the Supplier sends to the Customer its written confirmation that the Agreement is agreed; or
 - (b) the date when the Supplier begins supplying the Services to the Customer; in each case following the Customer's acceptance of these Terms and Conditions for the Supply of Services;
- **English Law:** this agreement shall be governed by and construed in accordance with English Law, and the English Courts who shall have jurisdiction over any dispute or difference which shall arise between SEMLEP and the Supplier;

- **GDPR:** the General Data Protection Regulation (Regulation (EU) 2016/679)
- **Force Majeure Event:** means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);
- **Hourly Rate:** means the Supplier's standard hourly labour rate as specified in the Proposal on notified by the Supplier to the Customer and varied in accordance with Clause 5;
- **LED:** Law Enforcement Directive (*Directive (EU) 2016/680*)
- **Meaning of words:** words importing the masculine gender include the feminine gender and vice versa; words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa;
- **Premises:** means the premises of the Customer where the Services will be provided, in whole or part, by the Supplier, as agreed by the Supplier and the Customer in writing;
- **Principals:** SEMLEP, for the purposes of Clause 10.4;
- **Proposal:** means a proposal document issued by SEMLEP to the Supplier detailing the scope of the Services and other matters relating to the Service Level Agreement;
- **Protective Measures:** appropriate technical and organisational measures, which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
- **SEMLEP's Representative:** the person specified by SEMLEP as being the person to whom the Supplier's Representative should report;
- **Service:** means the services supplied by the Supplier to the Customer under the Agreement, details of which are set out in the Proposal;
- **Sub-processor:** any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement
- **Supplier:** means [];
- **Supplier's Representative:** the person named in the Proposal as having primary responsibility for carrying out the Assignment
- **Term:** means the term of the Agreement.

Engagement

- 2.1 The Supplier confirms it has the know-how, qualifications and necessary ability to undertake the Assignment.
- 2.2 The Supplier and any parent or subsidiary company, partner or joint venture partner, warrants that it has no commercial or other interests which might conflict with or influence its advice to SEMLEP and warrants that it is not disbarred in any way from working on the Assignment.

- 2.3 Subject to 2.1 and 2.2 above SEMLEP hereby engages the Supplier and the Supplier hereby accepts such engagement to serve SEMLEP as a supplier.

3. TERM

- 3.1 The Supplier shall commence as soon as is practicable and shall complete the Assignment by the date stated in the purchase order or as otherwise agreed by both parties.

4. CONDITIONS OF ENGAGEMENT

- 4.1 The Supplier shall carry out the Assignment subject to and in accordance with the following (hereinafter collectively referred to as "the Conditions of Engagement");

4.1.1 SEMLEP's Procurement Procedure Rules and Financial Regulations;

4.1.2 This Agreement and any appendices to it

Note: In the absence of any Supplier's Proposal, SEMLEP shall provide a Work Plan, to be incorporated into this agreement.

- 4.2 The Supplier's Representative shall report to SEMLEP's Representative.

- 4.3 The Supplier's Representative in addition to and in respect of carrying out the Assignment shall do and perform all matters and things which are usually done and performed by people/officers/staff providing those services according to the practice of their relevant professions including the giving of regular reports and advice to SEMLEP during the Assignment and attending Committees/Panels of SEMLEP if and when required.

- 4.4 The Supplier shall, while this Agreement is in force or until the completion of the Assignment, unless prevented by ill health, ensure that the Supplier's Representative and any of his/her colleagues engaged in the assignment devote such of their time, attention and abilities to the Assignment as may be necessary for the completion thereof to SEMLEP's satisfaction.

- 4.5 The Supplier agrees to:

4.5.1 Advise and assist SEMLEP with respect to all aspects of the Assignment and in that context to comply with all reasonable requests and directions of SEMLEP;

4.5.2 Use all reasonable endeavours to comply with all local or internal policies and regulations operated by or affecting SEMLEP; and

4.5.3 When carrying out the Assignment exercise reasonable skill and care in conformity with the highest standards of the Supplier's profession.

5. FEES

- 5.1 Fees shall be fixed for the duration of this Agreement and shall be (except where agreed otherwise) inclusive of costs and expenses incurred by the Supplier in providing the Service.

6. EXPENSES

- 6.1 Where SEMLEP agree to pay expenses, it shall only reimburse these to the Supplier, at cost, which are properly and reasonably incurred directly in performing the Assignment and are either identified in the Proposal or have been approved beforehand by SEMLEP's Representative.

7. PAYMENT

- 7.1 Unless otherwise agreed, invoices will be paid within 30 days following receipt of each invoice issued on acceptance of the Service.
- 7.2 Invoices submitted by the Supplier, which are incorrect, shall be returned to the Supplier for correction and re-submission and not payable until re-submitted.

8. COPYRIGHT

- 8.1 The copyright in any Deliverables prepared by the Supplier pursuant to this Agreement shall, following payment of the Supplier's fees, be the property of SEMLEP absolutely.
- 8.2 Without prejudice to the foregoing, if the Supplier ceases to act for any reason SEMLEP may make full use of all or any materials or documents prepared by the Supplier pursuant to this Agreement.
- 8.3 The copyright and other intellectual property rights in any materials or software (whether written or machine-readable) created by or licensed to the Supplier prior to or outside this Agreement and any subsequent modifications to the same will remain vested in the Supplier (or its licensor) but to the extent that these form part of any of the Deliverables SEMLEP is hereby granted a licence to use them in accordance with Clause 8.4 below.
- 8.4 The licence to SEMLEP is a non-exclusive, non-transferable licence to use the materials and software referred to in Clause 8.3 above for its own internal use and only for the purposes for which they were delivered.

9. CONFIDENTIALITY

- 9.1 The Supplier shall not, without the prior written consent of SEMLEP, during or after the termination or expiry of this Agreement disclose, directly or indirectly, to any person (including a person who is associated with or is part of the Supplier's organisation, but not engaged on the Assignment), firm, company, or third party, and shall only use for the purposes of this Agreement, any information relating to the Assignment, SEMLEP, its business, customers, suppliers or any other information of whatever nature which is not in the public domain and which comes into the Supplier's possession in connection with this Agreement.

10. LIABILITY AND INSURANCE

- 10.1 The Supplier is engaged for its ability and expertise in the subject matter of the Agreement, upon which SEMLEP will rely. The Supplier shall be liable to SEMLEP for any loss or damage suffered by it as a result of information negligently supplied by the Supplier.
- 10.2 Accordingly, the Supplier undertakes to take out and maintain professional indemnity insurance cover with a reputable insurance company against such liability to the level set out at clause 10.4 below.
- 10.3 The Supplier shall indemnify and keep indemnified SEMLEP from and against any action, costs, claims and proceedings in injury or damage to any property, real or personal, arising out of or in the course of carrying out this Agreement unless due to any act or neglect of SEMLEP or its servants. Without thereby limiting its responsibilities under this Condition, the Supplier SHALL INSURE with a reputable insurance company against all loss of and damage to property and injury to, or death of, persons arising out of or in consequence of the Supplier obligations under the Contract and against all actions, claims, demands, proceedings, damages, costs, charges and expenses in respect thereof.
- 10.4 For all matters to which this Clause 10 applies, the insurance cover shall be a sum not less than:
- Public Liability insurance cover - £2.5 Million per incident
 - Employers Liability insurance cover - £5 Million per incident
 - Professional Indemnity cover - £5 Million per incident

or such greater sum as the Supplier may choose in respect of any one incident and the insurance policy providing such cover shall contain an indemnity to Principals clause, or shall otherwise expressly by its terms confer its benefits upon SEMLEP. The Supplier shall exhibit to SEMLEP forthwith upon demand satisfactory evidence that it has taken out such insurance.

11. DEFAULT

- 11.1 Without prejudice to clauses 11.2 and 11.3 below, if the Supplier shall be guilty of any serious breach or non-observance of any of the conditions of this Agreement or shall neglect or fail or refuse to carry out the duties assigned to it hereunder, SEMLEP shall be entitled to terminate its engagement hereunder with immediate effect by giving written notice to the Supplier, without prejudice to any additional rights or claims SEMLEP may have against the Supplier arising out of such default.
- 11.2 Without prejudice to clause 11.1, if the Supplier:
- 11.2.1 Commits a breach of any of its obligations under the Contract;
 - 11.2.2 Makes a composition or arrangement with its creditors, or has a proposal in respect of the company for the voluntary arrangements for a composition

of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;

- 11.2.3 Has an application made under the Insolvency Act 1986 in respect of the company to the Court for the appointment of an administrative receiver;
- 11.2.4 Has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- 11.2.5 Has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
- 11.2.6 Has an administrative receiver, as defined in the Insolvency Act 1986, appointed;
- 11.2.7 Has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge;
- 11.2.8 Is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver, or which entitle the Court to make a winding-up order;
- 11.2.9 Offers or gives to any person any gift or consideration as an inducement for doing, or forbearing to do, any action in relation to obtaining any Contract with SEMLEP, or commits any offence under the Bribery Act 2010, or if such acts are done by any person employed by, or acting on behalf of the Supplier, with or without the Supplier's knowledge;

then SEMLEP may without prejudice to any accrued rights or remedies under the Contract, terminate the Supplier's engagement under the Contract by notice in writing either with immediate effect or on such date as specified in the notice.

12. TERMINATION

- 12.1 The Agreement may be terminated by either party on written notice with immediate effect if the other party commits a material breach of any term of this Agreement, which is not remedied following a written request to remedy the breach within 14 days.
- 12.2 Upon termination of this Agreement or the Supplier 's engagement whichever shall be the earlier, the Supplier shall immediately deliver to SEMLEP all correspondence reports, documents, specifications, papers, information (on whatever media) and property belonging to SEMLEP which may be in its possession or under its control.
- 12.3 In the event that SEMLEP is not satisfied with the Services provided, in its absolute discretion, SEMLEP may end the agreement forthwith by written notice to that effect;

giving full explanation for their reason and thereupon SEMLEP shall be released from any obligation to pay any outstanding fees.

13. ENTICEMENT

- 13.1 The Supplier undertakes that it shall not without SEMLEP's prior written consent either during or 6 months after completion or termination of this Agreement whichever is the later, engage employ or otherwise solicit for employment, any person who during the relevant period was an employee of SEMLEP or any of SEMLEP's customers.

14. UNDERTAKINGS BY THE SUPPLIER

- 14.1 The Supplier shall not whether as principal, employee, supplier, contractor, or otherwise:
- 14.1.1 during the term of this Agreement directly or indirectly either for itself or on behalf of any other person, firm or company advise or undertake any work or enter into employment or consultancy with anyone where the work to be done is in conflict or competition with any work undertaken by the Supplier for SEMLEP;
- 14.1.2 during this Agreement and for a period of six months after completion of the Assignment, directly or indirectly, either for itself or for any other person firm or company, solicit the business of any customer, supplier or agent of SEMLEP which the Supplier has become aware of as a result of entering into this Agreement, if such business would in the view of SEMLEP be detrimental to SEMLEP. For the avoidance of doubt this Clause 14.1.2 shall not apply to any pre-existing Clients of the Supplier who may also be a customer, supplier or agent of SEMLEP.

15. ASSIGNMENT

- 15.1 The Supplier shall not without the prior written consent of SEMLEP:
- 15.1.1 Dispense with the services of, or replace, the Supplier's Representative.
- 15.1.2 Transfer or assign the whole or any part of this Agreement.
- 15.2 None of the services described in the Proposal here to shall be sub-contracted without the prior written consent of SEMLEP.

16. FORCE MAJEURE

- 16.1 Neither Party will be liable to the other for any failure to fulfil its obligations caused by circumstances outside its reasonable control.

17. WAIVER

- 17.1 No delay by either Party in enforcing any of the terms or conditions of this Agreement will affect or restrict SEMLEP's own rights and powers arising under the

Agreement. No waiver of any term or condition of this Agreement will be effective unless made in writing.

18. NOTICES

- 18.1 Notices must be served either personally, sent by pre-paid registered post or faxed to the address of the other Party given in this Agreement or to any other address as the Parties may have notified during the period of the Agreement. Any notice sent by post will be deemed to have been delivered on the first working day following its dispatch.

19. SURVIVAL

- 19.1 The provisions of this Agreement which expressly or by implication are intended to survive its termination or expiry will continue to bind both Parties.

20. VALIDITY OF AGREEMENT PROVISIONS

- 20.1 If any provision of this Agreement is held to be invalid, in whole or in part, such provision shall be deemed not to form part of the Agreement. In any event the enforceability of the remainder of the Agreement will not be affected.

21. RESOLVING DISPUTES

- 21.1 Should any dispute arise between them, the Parties will attempt to resolve the dispute in good faith by senior level negotiations. Where both Parties agree that it may be beneficial, they will seek to resolve the dispute through mediation by the Centre for Effective Dispute Resolution. If the dispute is not resolved through negotiation or mediation both Parties agree that the High Court of England will have exclusive jurisdiction in resolving the dispute.

22. STATUS OF SUPPLIER

- 22.1 The termination, determination or expiration of this Agreement by effluxion of time shall not constitute unfair dismissal nor shall the Supplier be entitled to the payment of any compensation, redundancy payments or otherwise upon the occurrence of the same.

23. THIRD PARTY RIGHTS

- 23.1 Unless expressly provided in this Contract, the parties hereto do not intend any provisions hereof to be enforceable by any third party under the provisions of The Contract (Rights of Third Parties) Act 1999 and as such no person other than the said parties shall have any rights under this Contract nor shall it be enforceable by them.

24. CONTRACT REVIEW

- 24.1 This contract is subject to continual review and as part of the process SEMLEP will review the works, goods and services required. Should the need for that service be no longer be required, either by the demand being transferred to another body or

that SEMLEP wishes to discontinue supplying that demand, then SEMLEP reserves the right to withdraw those works, goods and services from the contract. This removal will be undertaken giving 30 days' notice and the costs for those services will be deducted from the overall contract value. SEMLEP will not be liable for any addition costs attributed to the removal of those services.

- 24.2 We at SEMLEP expect our suppliers to work with us to constantly improve their service and create efficiencies for the future. Therefore we will conduct annual reviews to monitor progress on Communication, Customer Satisfaction, Product Rationalisation, Environment, Equalities, Improvements to Service, Innovation, Price and Quality standards. This review will not only focus on achievements made in these areas from the previous year, but also ideas and proposals for the following year.

Both the supplier and an authorised officer from SEMLEP will sign off all reviews. Should there be an inflationary clause in a long-running contract; no payment will be made against that clause until after the review has taken place.

DATA PROTECTION – Data controller to data processor

25. DATA PROTECTION

- 25.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, SEMLEP is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in the Schedule by SEMLEP and may not be determined by the Contractor.
- 25.2. The Contractor shall notify SEMLEP immediately if it considers that any of SEMLEP's instructions infringe the Data Protection Legislation.
- 25.3. The Contractor shall provide all reasonable assistance to SEMLEP in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of SEMLEP, include:
- 25.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 25.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services.
 - 25.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 25.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 25.4. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 25.4.1. process that Personal Data only in accordance with Schedule, unless the Contractor is required to do otherwise by Law. If it is so required the

Contractor shall promptly notify SEMLEP before processing the Personal Data unless prohibited by Law;

25.4.2. ensure that it has in place Protective Measures, which have been reviewed and approved by SEMLEP as appropriate to protect against a Data Loss Event having taken account of the:

- 25.4.2.1. nature of the data to be protected;
- 25.4.2.2. harm that might result from a Data Loss Event;
- 25.4.2.3. state of technological development; and
- 25.4.2.4. cost of implementing any measures;

25.4.3. ensure that :

25.4.3.1. the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Schedule);

25.4.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

25.4.3.2.1 are aware of and comply with the Contractor's duties under this clause;

25.4.3.2.2 are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;

25.4.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by SEMLEP or as otherwise permitted by this Agreement; and

25.4.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data; and

25.4.4. not transfer Personal Data outside of the EU unless the prior written consent of SEMLEP has been obtained and the following conditions are fulfilled:

25.4.4.1. SEMLEP or the Contractor has provided appropriate safeguards in relation to the transfer (whether in

- accordance with GDPR Article 46 or LED Article 37) as determined by SEMLEP;
- 25.4.4.2. the Data Subject has enforceable rights and effective legal remedies;
- 25.4.4.3. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist SEMLEP in meeting its obligations); and
- 25.4.4.4. the Contractor complies with any reasonable instructions notified to it in advance by SEMLEP with respect to the processing of the Personal Data;
- 25.4.5. at the written direction of SEMLEP, delete or return Personal Data (and any copies of it) to SEMLEP on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- 25.5. Subject to clause 25.6, the Contractor shall notify SEMLEP immediately if it:
 - 25.5.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 25.5.2. receives a request to rectify, block or erase any Personal Data;
 - 25.5.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 25.5.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 25.5.5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 25.5.6. becomes aware of a Data Loss Event.
- 25.6. The Contractor's obligation to notify under clause 25.5 shall include the provision of further information to SEMLEP in phases, as details become available.
- 25.7. Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 25.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- 25.7.1. SEMLEP with full details and copies of the complaint, communication or request;
 - 25.7.2. such assistance as is reasonably requested by SEMLEP to enable SEMLEP to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 25.7.3. SEMLEP, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 25.7.4. assistance as requested by SEMLEP following any Data Loss Event;
 - 25.7.5. assistance as requested by SEMLEP with respect to any request from the Information Commissioner's Office, or any consultation by SEMLEP with the Information Commissioner's Office.
- 25.8. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- 25.8.1. SEMLEP determines that the processing is not occasional;
 - 25.8.2. SEMLEP determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 25.8.3. SEMLEP determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 25.9. The Contractor shall allow for audits of its Data Processing activity by SEMLEP or SEMLEP's designated auditor.
- 25.10. The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 25.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- 25.10.1. notify SEMLEP in writing of the intended Sub-processor and processing;
 - 25.10.2. obtain the written consent of SEMLEP;
 - 25.10.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
 - 25.10.4. provide SEMLEP with such information regarding the Sub-processor as SEMLEP may reasonably require.
- 25.11. The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 25.12. SEMLEP may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar

terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

- 25.13. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. SEMLEP may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Schedule 2 - Processing, Personal Data and Data Subjects

1. The Contractor shall comply with any further written instructions with respect to processing by SEMLEP.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	
Duration of the processing	
Nature and purposes of the processing	
Type of Personal Data	
Categories of Data Subject	
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	

Signed For and on behalf of South East Midlands Local Enterprise Partnership			
Name (Print)			
Position		Date	

Signed For and on behalf of the Supplier			
Name (Print)			
Position		Date	