

# **Terms and Conditions of Contract Supply of Services To South East Midlands Local Enterprise Partnership**

## **CONTENTS**

1. Definitions and Interpretations
2. Engagement
3. Term
4. Conditions of Engagement
5. Fees
6. Expenses
7. Payment
8. Copyright
9. Confidentiality
10. Liability and Insurance
11. Default
12. Termination
13. Enticement
14. Undertakings by the Supplier
15. Assignment
16. Force Majeure
17. Waiver
18. Notices
19. Survival
20. Validity of Agreement Provisions
21. Resolving Disputes
22. Status of Supplier
23. Third Party Rights
24. Contract Review
25. Data Protection

## 1. 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;
- **Supplier's Representative:** the person named in the Proposal as having primary responsibility for carrying out the Assignment;
- **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;
- **SEMLEP's Representative:** the person specified by SEMLEP as being the person to whom the Supplier's Representative should report;
- **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:
  - (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;
- **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;
- **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;
- **Service:** means the services supplied by the Supplier to the Customer under the Agreement, details of which are set out in the Proposal;
- **Supplier:** means *Buckinghamshire Business First*
- **Term:** means the term of the Agreement.

## 2. ENGAGEMENT

- 2.1 The Supplier purports to have 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 and complete the Assignment by the date agreed by the 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 is between SEMLEP and the Supplier

**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 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 inclusive of costs and expenses incurred by the Supplier in providing the Service and paid by SEMLEP to the Supplier.

## **6. EXPENSES**

6.1 SEMLEP shall only reimburse expenses 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.

## **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 Assignment upon which SEMLEP will rely. The Supplier shall be liable for any loss or damage suffered by SEMLEP 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.

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

- 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 If the Supplier shall be guilty of any serious misconduct or 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 rights or claims SEMLEP may have against the Supplier arising out of such default.

11.2 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 Prevention of Corruption Acts 1889 to 1916, 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 employment 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 SEMLEP's customer.

## **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 survive and 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 English Courts 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.

## 25. **DATA PROTECTION**

- 25.1 Where the supplier receives any personal data (as defined by the Data Protection Act 1998) ("the Act") from SEMLEP, it shall ensure that it fully complies with the provisions of the Act and only deals with the data to fulfil its obligations under the contract.
- 25.2 The supplier shall indemnify SEMLEP for any breach of the Act which renders the latter liable for any costs, claims or expenses.
- 25.3 In fulfilment of its obligations under the Act the supplier shall have such systems in place to ensure:
- 25.3.1 Full compliance with the Act
  - 25.3.2 In particular, compliance with the Seventh Data Protection Principle which deals with the security of personal data
  - 25.3.4 The reliability of all its employees who may be involved in processing the personal data
- 25.4 The Supplier shall take all reasonable steps to ensure that all its partners, contractors and agents comply with this clause where they are processing any of SEMLEPs personal data whilst carrying out the Assignment;

25.5 SEMLEP shall allow the Supplier reasonable access to such information as is necessary to ensure that it is complying with the above provisions and the Act as a whole.