



Bus Drivers' on Highway Toilet Facilities

7.3 In the event of a variation to the Services in accordance with this Agreement or the relevant Call-Off Contract that involves the payment of additional charges to the Service Provider, the Service Provider shall identify these separately on the relevant invoice.

7.4 The Authority shall consider and verify each invoice, which is submitted in accordance with this Clause 7, in a timely manner. If the Authority considers that the Charges claimed by the Service Provider in any invoice have under the relevant Call-Off Contract:

7.4.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (BACS)) or such other method as the Authority may choose from time to time within 30 days of receipt of such invoice or such other time period as may be specified in the relevant Call-Off Contract;

7.4.2 not been calculated correctly and/or if the invoice contains any other error or inadequacy, the Authority shall notify the Service Provider and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Service Provider shall submit a revised invoice to the Authority.

The Authority shall not be entitled to treat any properly submitted invoice as disputed or incorrect solely due to its own undue delay in considering and verifying it.

7.5 No payment made by the Authority (including any final payment) or act or omission or approval by the Authority or Procurement Manager or Call-Off Co-ordinator (whether related to payment or otherwise) shall:

7.5.1 indicate or be taken to indicate the Authority's acceptance or approval of the Services or any part of them or any act or omission of the Service Provider, or otherwise prejudice any rights, powers or remedies which the Authority may have against the Service Provider, or absolve the Service Provider from any obligation or liability imposed on the Service Provider under this Agreement or a Call-Off Contract; or

7.5.2 prevent the Authority from recovering any amount overpaid or wrongfully paid including payments made to the Service Provider by mistake of law or fact. Without prejudice to Clause 19, the Authority shall be entitled to withhold such amount from any sums due or which may become due to the Service Provider or the Authority may recover such amount as a debt under this Agreement or a Call-Off Contract.





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- 7.6 Except where otherwise provided in a Call-Off Contract, the Charges shall be inclusive of all costs of staff, facilities, equipment, materials and other expenses whatsoever incurred by the Service Provider in discharging its obligations under the Call-Off Contract.
- 7.7 Interest shall accrue at the rate of two percent (2%) above the base rate of the Bank of England from time to time on all sums due and payable under this Agreement or a Call-Off Contract from the due date until the date of actual payment (both before and after judgement). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty five (365) day year and compounded at monthly intervals. The Parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under the Contract in accordance with s8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

8. Warranties and Obligations

- 8.1 Without prejudice to any other warranties expressed elsewhere in this Agreement or implied by law, the Service Provider warrants, represents and undertakes that:

8.1.1 the Service Provider:

8.1.1.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform the Agreement and any relevant Call-Off Contract; and

8.1.1.2 is aware of the purposes for which the Services are required and acknowledges that the Authority is reliant upon the Service Provider's expertise and knowledge in the provision of the Services; and

8.1.1.3 is entering into this Agreement and any relevant Call-Off Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Agreement and any relevant Call-Off Contract;

- 8.1.2 the Agreement and Call-Off Contract is executed by a duly authorised representative of the Service Provider;

- 8.1.3 all materials, equipment and goods under the relevant Call-Off Contract or supplied by the Service Provider shall be of satisfactory quality within the meaning of the Sale of Goods Act





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1979 (as amended), sound in design and in conformance in all respects with the Specification set out in the relevant Call-Off Contract; and

8.1.4 all documents, drawings, computer software and any other work prepared or developed by the Service Provider or supplied to the Authority under the relevant Call-Off Contract shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person.

8.2 Each warranty and obligation in this Clause 8 shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Agreement.

9. Contractual Management

9.1 The Contracting Authority authorises the Procurement Manager to act as the Contracting Authority's representative for all purposes of this Agreement and the Service Provider shall deal with the Procurement Manager (or his or her nominated representative) in respect of all matters arising under this Agreement, unless notified otherwise. The Authority will appoint a Call-Off Co-ordinator in respect of each Call-Off Contract in relation to matters arising under a Call-Off Contract, unless otherwise notified by the Authority.

9.2 The Service Provider Manager shall act as the Service Provider's representative for all purposes of this Agreement. In respect of each Call-Off Contract, the Service Provider shall provide the Key Personnel. The Service Provider Manager and the Key Personnel shall procure that they:

9.2.1 diligently supervise the performance of the Services;

9.2.2 attend all contract meetings with the Authority (the location, frequency and time of which shall be specified by the Procurement Manager or the relevant Call-Off Co-ordinator from time to time); and

9.2.3 be available to the Authority to resolve any issues arising in connection with this Agreement or any relevant Call-Off Contract at such time periods as are specified in the relevant Call-Off Contract.

9.3 The Service Provider may only make any changes to the Service Provider Manager or Key Personnel (except in the event of sickness, incapacity or resignation) with the prior consent of the Authority (which shall not be unreasonably withheld).

