

# **PACCA OUT OF SCHOOL CLUB**

## **Terms and Conditions**

Please make sure you read the terms and conditions carefully.

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*Last updated 28/03/2019*

### **1. Definitions and Interpretation.**

#### **1.1 Definitions:**

**Assigned Materials:** all of the Deliverables excluding any Deliverables or parts of them, which are Third-Party Materials in respect of which PACCA has approved, under Clause 9.6, the obtaining of a licence, as opposed to an assignment.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**PACCA:** means the English company which the Order states is ordering the Goods and/or Services, which shall be PACCA After School Club Ltd, registered company number 10644974 with the registered office at 81 Lothian Road, London, England, SW9 6TS.

**PACCA Materials:** means as set out in Clause 5.3(j).

**Commencement Date:** means as set out in Clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with Clause 17.8.

Contract: the contract between PACCA and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

Control: shall be defined as in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Goods: the Goods (or parts of them) set out in the Order.

Goods Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by PACCA and the Supplier.

Intellectual Property Rights: copyright and neighbouring and related rights, moral rights, trade marks and service marks, patents, business names and domain names, rights in designs, rights in computer software, database rights, utility models, rights to inventions, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Mandatory Policies: Pacca's business policies and codes which apply to this Contract and which PACCA provides to the Supplier which may include but not be limited to the Anti-Bribery Policy or Data Protection Policy.

Order: PACCA's order for the supply of Goods and/or Services, as set out in PACCA's purchase order form, or in PACCA's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Services: the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Service Specification: the description or specification for Services agreed in writing which may include in the Order by PACCA and the Supplier.

Subcontractor: any third party engaged by the Supplier to provide any part of the Services or Deliverables.

Supplier: the person or firm from whom PACCA purchases the Goods and/or Services.

Third-Party Materials: any work or materials authored, created or performed by a third party and either commissioned for, or used in relation to, the Services, including library images.

## **1.2 Interpretation:**

(a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors and permitted assigns.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made that statute or statutory provision.

(d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(e) A reference to writing or written includes emails.

## **2. Basis of contract**

2.1 The Order constitutes an offer by PACCA to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

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

(a) the Supplier issuing written acceptance of the Order; or

(b) any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (Commencement Date).

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

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

## **3. Supply of goods**

3.1 The Supplier shall ensure that the Goods shall:

(a) correspond with their description and any applicable Goods Specification;

(b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by PACCA, expressly or by implication, and in this respect PACCA relies on the Supplier's skill and judgement;

(c) where they are manufactured products, be free from defects in design, materials and

workmanship and remain so for 12 months after delivery; and  
(d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 PACCA may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.4 If following such inspection or testing PACCA considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at Clause 3.1, PACCA shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 PACCA may conduct further inspections and tests after the Supplier has carried out its remedial actions.

#### **4. Delivery of goods**

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (c) it states clearly on the delivery note any requirement for PACCA to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order or, if no such date is specified, then within 3 days of the date of the Order;
- (b) to such location as is set out in the Order or as instructed by PACCA before delivery (Delivery Location); and
- (c) during PACCA's normal hours of business on a Business Day, or as instructed by PACCA.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 If the Supplier delivers more or less than the quantity of Goods ordered, PACCA shall be entitled to reject the goods or to accept the goods and reject any excess. If accepted, the

Supplier shall make a pro rata adjustment to the invoice for the Goods. Any rejected Goods shall be returnable at the Supplier's risk and expense.

4.5 The Supplier shall not deliver the Goods in instalments without PACCA's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle PACCA to the remedies set out in Clause 6.1.

4.6 Title and risk in the Goods shall pass to PACCA on completion of delivery.

## **5. Supply of services**

5.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to PACCA in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Order or that PACCA notifies to the Supplier and time is of the essence in relation to any of those performance dates.

5.3 In providing the Services, the Supplier shall:

- (a) co-operate with PACCA in all matters relating to the Services, and comply with all instructions of PACCA;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Services Specification, and that the Deliverables shall be fit for any purpose that PACCA expressly or impliedly makes known to the Supplier;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) 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 PACCA, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, and with the Mandatory Policies;
- (i) observe all health and safety rules and regulations and any other security requirements that apply at any of PACCA's premises;
- (j) hold all materials, equipment and tools, drawings, specifications and data supplied by PACCA to the Supplier (PACCA Materials) in safe custody at its own risk, maintain PACCA Materials in good condition until returned to PACCA, and not dispose or use PACCA Materials other than in accordance with PACCA's written instructions or authorisation;
- (k) not do or omit to do anything which may cause PACCA to lose any licence, authority,

consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that PACCA may rely or act on the Services; and  
(l) comply with any additional obligations as set out in the Services Specification.

## **6. Remedies available to PACCA**

6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, PACCA shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by PACCA in obtaining substitute Goods and/or services from a third party;
- (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
- (e) to claim damages for any additional costs, loss or expenses incurred by PACCA which are in any way attributable to the Supplier's failure to meet such dates.

6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in Clause 3.1, then, without limiting or affecting other rights or remedies available to it, PACCA shall have one or more of the following rights, whether or not it has accepted the Goods: (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;

- (b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by PACCA in obtaining substitute Goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by PACCA arising from the Supplier's failure to supply Goods in accordance with Clause 3.1.

6.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement Goods supplied by the Supplier.

6.5 PACCA's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

## **7. PACCA'S obligations**

7.1 PACCA shall:

- (a) provide the Supplier with reasonable access at reasonable times to PACCA's premises for the purpose of providing the Services; and
- (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

## **8. Charges and payment**

### **8.1 The price for the Goods:**

- (a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by PACCA.

8.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by PACCA, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

8.3 In respect of the Goods, the Supplier shall invoice PACCA on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice PACCA on completion of the Services. Each invoice shall include such supporting information required by PACCA to verify the accuracy of the invoice, including but not limited to the relevant purchase order number. All invoices should be sent to [invoices@the-PACCA.org](mailto:invoices@the-PACCA.org) or by post to Finance Dept, PACCA Network, Mezz Floor, Elizabeth House, 39 York Road, London, SE1 7NQ.

8.4 In consideration of the supply of Goods and/or Services by the Supplier, PACCA shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

8.5 All amounts payable by PACCA under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to PACCA, PACCA shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

8.6 If PACCA fails to make a payment due to the Supplier under the Contract by the due date, then PACCA shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this will accrue each day at 4% a year above the Bank of England's base rate from time to time.

8.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow PACCA to inspect such records at all reasonable times on request.

8.8 PACCA may at any time, without notice to the Supplier, set off any liability of the Supplier to PACCA against any liability of PACCA to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, PACCA may convert either liability at a market rate for the purpose of set-off. Any exercise by PACCA of

its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## **9. Intellectual property rights**

9.1 It is the intention of the parties that:

- (a) PACCA shall own all of the Deliverables;
- (b) PACCA shall own all Third-Party Materials comprised in Deliverables, where an assignment of such materials is available on commercially reasonable terms which have been approved by PACCA in accordance with Clause 9.6; and
- (c) where no assignment of Third-Party Materials is available on commercially reasonable terms PACCA shall receive a direct licence of such materials for such commercial purposes as PACCA requires.

9.2 The Supplier hereby irrevocably, unconditionally and absolutely assigns to PACCA, with full title guarantee, and without restriction, all right, title and interest in and to all existing and future Intellectual Property Rights (including future copyright and design right) subsisting in or relating to all Assigned Materials from the date of their creation, development or production whether on or after the Commencement Date, in all countries and with the right to sue for damages and other relief for past infringement of any of those Intellectual Property Rights.

9.3 To the extent that Clause 9.2 is not effective to assign legal title to the Intellectual Property Rights in or to the Assigned Materials, then the Supplier shall assign to PACCA such Intellectual Property Rights as and when requested by PACCA by executing any assignment documents reasonably requested by PACCA. Until such time as those Intellectual Property Rights are assigned to PACCA, the Supplier shall hold all such Intellectual Property Rights on trust for PACCA and PACCA shall have an exclusive worldwide, royalty-free licence under those Intellectual Property Rights and to use the Assigned Materials for any purpose.

9.4 The Supplier warrants that it has obtained or shall obtain from all Subcontractors an unconditional assignment without restriction of the legal and beneficial ownership of all existing and future Intellectual Property Rights subsisting in or relating to Assigned Materials created or developed by such Subcontractors in all countries, and that the assignment under Clause 9.2 includes assignment of those Intellectual Property Rights.

9.5 The Supplier shall not incorporate and/or use Third-Party Materials in any Deliverable without the prior written consent of PACCA to do so. The Supplier shall give PACCA reasonable prior notice of its intention to include any such Third-Party Materials and at the same time shall notify PACCA in writing:

- (a) if possible, of the cost of an assignment to PACCA of the relevant Third-Party Materials; and
- (b) if no such assignment is possible for a reasonable cost, the cost of obtaining a licence of such materials for such commercial purposes as PACCA requires. The Supplier shall not propose the inclusion of any Third-Party Materials in any Deliverable unless the Supplier is able to negotiate a licence of such materials for such commercial purposes as PACCA requires.



9.6 Following receipt of the Supplier's notice under Clause 9.5, PACCA shall notify PACCA in writing of whether inclusion of the relevant Third-Party Material is approved, and whether the Supplier is required to obtain an assignment (if available) or a licence, and if so, the extent of such licence required and the approved cost thereof. PACCA may also require the Supplier to negotiate prices at which the licence obtained may, at PACCA's option, be extended. PACCA's approval under this Clause shall be approval of the cost of obtaining the relevant rights for the purposes of Clause 9.8.

9.7 The Supplier shall ensure that all licences of Third-Party Materials are granted directly to PACCA or its group companies as PACCA shall notify to the Supplier.

9.8 The Supplier shall, at any time on request, provide to PACCA such information on the rights acquired in respect of any Third-Party Material in such other format as PACCA may reasonably request, and warrants that any usage rights information provided to PACCA shall be accurate and complete.

9.9 The Supplier shall procure that its personnel, Subcontractors or their personnel and all artists, photographers, actors, models and other third parties used by the Supplier in connection with the provision of the Services shall unconditionally and irrevocably waive all of their moral rights described in Chapter 4 of Part 1 of the Copyright Designs and Patents Act 1988 (or any similar or equivalent legislation anywhere in the world) in respect of the Deliverables. Any such waiver of any waivers to PACCA, on request.

9.10 The Supplier shall procure from all artists, photographers, actors, models, performers of music, owners of any other Intellectual Property Rights in materials incorporated into the Deliverables and all other third parties used by the Supplier in connection with Deliverables, all necessary consents, releases, and approvals (in a form, and including those terms, as may be requested by PACCA) to use their work or images for such commercial purposes as PACCA requires. The Supplier shall obtain such consents, releases and approvals in writing before production of the relevant Deliverables and provide copies of them to PACCA on request.

9.11 PACCA grants the Supplier a non-exclusive, non-transferable, royalty-free licence to use the Deliverables solely to the extent necessary to enable the Supplier to provide the Services during the Term.

9.12 All PACCA Materials are the exclusive property of PACCA.

## **10. Indemnity**

10.1 The Supplier shall indemnify PACCA against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by PACCA arising out of or in connection with:

(a) any claim made against PACCA for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or

use of the Goods, or receipt, use or supply of the Services (excluding PACCA Materials);  
(b) any claim made against PACCA by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and  
(c) any claim made against PACCA by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

10.2 This Clause 10 shall survive termination of the Contract.

## **11. Insurance**

During the term of the Contract and for a period of six years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on PACCA'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.

## **12. Confidentiality**

12.1 Each party undertakes it shall not at any time disclose to any person any confidential information concerning the business, affairs, young people, clients or suppliers of the other party, except as permitted by Clause 12.2.

12.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this Clause 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## **13. Termination**

13.1 Without affecting any other right or remedy available to it, PACCA may terminate the Contract:

- (a) with immediate effect by giving written notice to the Supplier if:
  - (i) there is a change of Control of the Supplier; or
  - (ii) the Supplier's financial position deteriorates to such an extent that in PACCA's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - (iii) the Supplier commits a breach of Clause 5.3(h),
- (b) for convenience by giving the Supplier 1 months' written notice.

13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

## **14. Consequences of termination**

14.1 On termination of the Contract, the Supplier shall immediately deliver to PACCA all Deliverables whether or not then complete, and return all PACCA Materials. If the Supplier fails to do so, then PACCA may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

14.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **15. Force majeure**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate this agreement by giving 1 days' written notice to the affected party.

## **16. Anti-modern slavery and anti-bribery and corruption**

16.1 The Supplier shall:

- (a) maintain in place suitable measures to eradicate modern slavery, trafficked labour, bribery and corruption from its business or supply chain including appropriate enforced policies and sufficient due diligence with regards to such matters;
- (b) promptly report to PACCA any request or demand for any undue financial or other advantage received by the Supplier in connection with the performance of this Contract or

any concerns regarding the use of slavery or trafficked labour in their supply chain; and  
(c) supply such evidence that PACCA reasonable requests at any time with regards to its compliance with this clause, the Bribery Act 2010 and the Modern Slavery Act 2015.

## **17. General**

### **17.1 Assignment and other dealings.**

(a) PACCA may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.

(b) The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other way with any of its rights and obligations under the Contract without PACCA's prior written consent.

### **17.2 Notices.**

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to a current active email address of a project member.

(b) A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if by email, at 9.00 am on the next Business Day after transmission.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**17.3 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**17.4 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**17.5 Status and Indemnity.** The Supplier is an independent contractor supplying goods and/or services and nothing in this agreement shall make the Supplier or any individual connected with them an employee, worker, agent or partner of PACCA. Accordingly the Supplier shall be fully responsible for and shall indemnify PACCA for:

- (a) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit transferred in respect of the Services, where such recovery is not prohibited by law;
- (b) all reasonable costs, expenses and any penalty, fine or interest incurred or payable by PACCA in connection with or in consequence of any such liability, deduction, contribution, assessment or claim;
- (c) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought against PACCA arising out of or in connection with the provision of the Services. PACCA may at its option satisfy such indemnities (in whole or in part) by way of deduction from payments due to the Supplier.

17.6 Entire agreement. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17.7 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

17.8 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

17.9 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

17.10 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.