



# Future Care Consulting

## CONDITIONS OF BUSINESS

### 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

<b>Applicable Laws</b>	: all applicable laws, statutes and regulations from time to time in force.
<b>Business Day</b>	: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>Client</b>	: the person who or firm which purchases Services from FCC.
<b>Client Default</b>	: has the meaning set out in clause 4.2.
<b>Commencement Date</b>	: has the meaning set out in the Specification.
<b>Conditions</b>	: these terms and conditions as amended from time to time in accordance with clause 14.4.
<b>Confidential Information</b>	: all technical, financial, operational, administrative, marketing, economic and other information relating to the business or businesses of the Client or its affiliates in or with which FCC or the Representative has been involved or concerned at any time in the course of providing the Services, and any other information which is reasonably designated by the Client as confidential provided that information shall not be, or shall cease to be, Confidential Information if and to the extent that it comes to be in the public domain otherwise than as a result of the unauthorised act or default of FCC or any personnel of FCC.
<b>Contract</b>	: the contract between FCC and the Client for the supply of Services in accordance with these Conditions.
<b>Data Protection Legislation</b>	: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in

force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

<b>FCC</b>	: Future Care Consulting
<b>Fee</b>	: the fee payable by the Client to FCC as set out in the Specification.
<b>Intellectual Property Rights</b>	: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, 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.
<b>Loss</b>	: any damage, loss, liability, charge, cost, claim, expense or penalty (including, without limitation, legal and other professional fees).
<b>Order</b>	: the Client's order for Services as set out in the Client's written acceptance of FCC's quotation or proposal.
<b>Representative</b>	: Any employee, director, consultant, advisor or sub-contractor of FCC.
<b>Services</b>	: the services to be supplied by FCC to the Client as set out in the Specification.
<b>Specification</b>	: the details of the parties to the Contract and of the Services set out in the attachment to these Conditions and which forms part of these Conditions.
<b>Term</b>	: the period of thirteen weeks commencing on the Commencement Date, or such longer period as may be set out in the Specification.



## 1.2 Interpretation:

- 1.2.1 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 under that statute or statutory provision.
- 1.2.2 A reference to writing or written includes an email.

## 2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when FCC issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by FCC, and any descriptions or illustrations contained in FCC's catalogues, brochures, videos, blogs or other material released on social media are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by FCC shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.
- 2.6 The Contract shall consist of these Conditions, the Specification and any amendment to these completed in accordance with Clause 14.

## 3. SUPPLY OF SERVICES

- 3.1 FCC shall supply the Services to the Client during the Term in accordance with the Specification and these Conditions in all material respects.
- 3.2 FCC shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

- 3.3 FCC reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and FCC shall notify the Client in any such event.

- 3.4 FCC warrants to the Client that the Services will be provided using reasonable care and skill.

- 3.5 FCC will use reasonable endeavours to procure that the consultant identified in the Specification (if any) shall be FCC's Representative who is primarily responsible for delivering the Services, but FCC reserves the right to deploy a substitute as necessary.

- 3.6 It is accepted that the Specification may be amended if both parties to this Contract agree that the Services should be changed in any material way and the description of the Services (and amount of the Fees) need to be altered. Any revised Specification must be agreed in writing (to include emails) by both parties.

## 4. CLIENT'S OBLIGATIONS

### 4.1 The Client shall:

- 4.1.1 ensure that the terms of the Order are complete and accurate;
- 4.1.2 co-operate with FCC in all matters relating to the Services;
- 4.1.3 provide FCC with such information and materials as FCC may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 4.1.4 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 4.1.5 ensure that FCC and its employees, agents, consultants, directors and subcontractors are informed of all relevant health and safety, risk assessment and protective personal equipment requirements before accessing any site in order to perform the Services;
- 4.1.6 ensure that FCC, its employees, agents, consultants and subcontractors are provided with access to any site as required in order to perform the Services. Failure by the Client (or any other party instructed by the Client) to provide FCC with such access may result in delays in the performance of

the Contract for which FCC shall not be responsible;

4.1.7 promptly provide or procure the provision to FCC of all information available to it concerning the Client's business and affairs which is relevant to FCC for the proper provision of the Services, and all such further information as FCC may reasonably request, all of which will be accurate and complete in all material respects at the time it is provided; and

4.1.8 promptly correct any information so provided to FCC if it subsequently appears that any such information was or has become inaccurate or misleading in any respect. The Client understands that FCC may rely upon, and will not be responsible for independently verifying the accuracy of any information provided to it with respect to the Client and FCC shall not be liable for any inaccuracies therein.

4.2 If FCC's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("**Client Default**"):

4.2.1 without limiting or affecting any other right or remedy available to it, FCC shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays FCC's performance of any of its obligations;

4.2.2 FCC shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from FCC's failure or delay to perform any of its obligations as set out in this clause 4.2; and

4.2.3 the Client shall reimburse FCC on written demand for any costs or losses sustained or incurred by FCC arising directly or indirectly from a Client Default.

4.3 The Client confirms that it has the right to supply all information supplied to FCC under this Contract and warrants that the supply of such information by the Client and its receipt by FCC for the purposes of the Services, will not infringe any rights held by any third party, involve the unauthorised use of confidential information belonging to a third party or result in a breach by FCC of any law, regulatory obligation, fiduciary duty owed to any third party, intellectual property rights or agreement.

## 5. PAYMENT FOR THE SERVICES

5.1 The Client agrees to pay the Fee for the Services.

5.2 FCC shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom FCC engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by FCC for the performance of the Services, and for the cost of any materials. Such expenses will be invoiced monthly or as set out in the Specification.

5.3 FCC shall invoice the Client for the Fees and expenses as set out in the Specification.

5.4 The Fee set out in the Specification shall be payable by direct debit from the Client's bank account on a day which shall be specified in the direct debit mandate and which shall normally be 7 days after the date of the FCC invoice sent to the Client each month

5.5 The Client shall ensure that there are sufficient funds in its bank account to pay the direct debit as each payment becomes due

5.6 Before or on signing this contract, the Client shall provide FCC with a completed and signed direct debit mandate showing full details of its bank account from which payments of the Fees will be made. Any failure to do so shall entitle FCC to terminate the contract immediately in accordance with Clause 12.2

5.7 Any additional Fees or expenses incurred by the /client in excess of the Fee shall be invoiced separately each month to the Client which or who shall pay such invoice as provided in this Clause 5

5.8 The Client shall pay each invoice submitted by FCC:

5.8.1 within the period set out in the Specification being the number of days following the date of each relevant invoice; and

5.8.2 in full and in cleared funds to a bank account nominated in writing by FCC, and time for payment shall be of the essence of the Contract.

5.9 All amounts payable by the Client under the Contract are subject to the addition of Value Added Tax chargeable from time to time as set out in the relevant invoice.

5.10 If the Client fails to make a payment due to FCC under the Contract by the due date, then, without limiting FCC's remedies under clause 12, the Client 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 clause 5.10 will accrue each day at 10% a year above the base rate of National Westminster Bank plc from time to time, such amount to accrue day to day and be compounded monthly.

5.11 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

5.12 FCC will not, and shall procure that its personnel will not, authorise an expenditure or incur liability on the Client's behalf without first seeking the written consent of the Client which shall not be unreasonably withheld or delayed.

5.13 In the event that the Client cancels any appointment or visit by FCC personnel for the provision of the Services within 72 hours of the start of such appointment or visit, then the Client shall pay any fees that would otherwise have been payable had the appointment or visit taken place and any expenses actually incurred by such personnel in attempting to attend any such appointment or make any such visit.

5.14 In the event that the Client fails to pay any amount outstanding within 90 days of falling due, FCC has the right to engage a debt collection agency or other professional third party to recover the amount due and any costs incurred by FCC in recovering payment from the Client.

## 6. NON-SOLICITATION

6.1 The Client shall not, during and for a period of 12 months from the end of the Term, solicit, entice or induce or attempt to solicit, entice or induce any person who, at the end of the Term, was an employee, consultant, contractor or director of FCC to cease working for or providing services to FCC whether or not any such person would thereby commit a breach of contract.

6.2 Without prejudice to any other rights or remedies that FCC may have, the Client acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this clause 6 by the Client. Accordingly, FCC shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this clause 6.

## 7. INTELLECTUAL PROPERTY RIGHTS

7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by FCC.

7.2 FCC grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy, use or modify the materials created by FCC for the use of the Client as part of the Services (excluding materials provided by the Client) for the purpose of receiving and using those materials in its business.

7.3 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 7.2.

7.4 The Client grants FCC a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to FCC for the term of the Contract for the purpose of providing the Services to the Client.

## 8. DATA PROTECTION

8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 (Data Protection) is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

8.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and FCC is the processor. The scope, nature and purpose of processing by FCC, the duration of the processing and the types of personal data and categories of data subject are set out in the Specification.

8.3 Without prejudice to the generality of this clause, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to FCC for the duration and purposes of this Contract.

8.4 Without prejudice to the generality of this clause, FCC shall, in relation to any personal data processed in connection with the performance by FCC of its obligations under this agreement:

8.4.1 process that personal data only on the documented written instructions of the Client unless FCC is required by Applicable Law to otherwise process that personal data. Where FCC is relying on the laws of a member of the European Union or European Union law as the basis for processing personal data, FCC shall promptly notify the Client of this before performing the processing required by the Applicable Law unless the Applicable Law prohibits FCC from so notifying the Client;

8.4.2 ensure that it has in place appropriate technical and organisational measures to

protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it).

8.5 Without prejudice to clause 9 (Confidentiality), ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

8.5.1 not transfer any personal data outside of the European Economic Area; and

8.5.2 notify the Client without undue delay on becoming aware of a personal data breach.

8.6 Without prejudice to clause 14.2 (Assignment and other dealings), the Client consents to FCC appointing its consultant(s) as third party processor(s) of Personal Data under this agreement. FCC confirms that it has entered or (as the case may be) will enter, with any third party processor, into a written agreement incorporating terms which are substantially similar to those set out in this clause 8 (Data protection) and in either case which FCC confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Client and FCC, FCC shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 8.6.

## 9. CONFIDENTIALITY

9.1 During the Term, FCC and its Representatives will have access to and be entrusted with Confidential Information. Accordingly, FCC gives the undertakings set out in this clause 9 to the Client and shall procure that any of its Representatives shall comply with the undertakings set out in this clause 9.

9.2 Subject to clause 9.3, FCC agrees that it shall, and shall procure that its Representatives shall, keep the Confidential Information including, for the avoidance of all

doubt, all personal information relating in any way to the Client's staff and service users, secret and confidential and shall not during the Term or afterwards use, exploit or disclose or divulge it to any third party for any purpose by any means.

9.3 Clause 9.2 shall not apply where the disclosure of any Confidential Information is:

9.3.1 reasonably necessary in the proper performance of the Services and with the prior express written consent of the Client which shall not be unreasonably withheld or delayed; or

9.3.2 required by law or regulation.

9.4 Subject always to the right of FCC to retain copies of its work product as set out in clause 7 (Intellectual Property Rights), FCC shall not, and shall procure that its Representatives shall not, during the Term or at any time after the Term, except for the benefit of the Client or its affiliates, make any copy, record, or memorandum (whether or not recorded in writing or on computer disk or tape) of any Confidential Information.

9.5 The Client agrees to treat as Confidential Information the Specification, FCC's proposal(s), its fee structures, fees and personnel and any opinions or advice (whether written or oral) of FCC or its personnel.

9.6 Each party may disclose Confidential Information to its professional advisers and lawyers under conditions of confidentiality.

## 10. LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

10.1 FCC has obtained insurance cover in respect of its own legal liability for individual claims of negligence and the limits and exclusions in this clause reflect that cover. The Client is responsible for making its own arrangements for the insurance of any excess loss.

10.2 References to liability in this clause 10 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.3 Nothing in this clause 10 shall limit the Client's payment obligations under the Contract.

10.4 Nothing in the Contract limits any liability which cannot legally be limited, including, but not limited, to liability for:

10.4.1 death or personal injury caused by negligence; or



- 10.4.2 fraud or fraudulent misrepresentation.
- 10.5 Subject to clause 10.4 (Liabilities which cannot legally be limited), FCC's total liability to the Client for all loss or damage shall not exceed the total fees received by FCC from the Client for the Services in respect of which the Client has made a claim.
- 10.6 The caps on FCC's liabilities shall be reduced by:
- 10.6.1 payment of an uncapped liability;
- 10.6.2 amounts awarded or agreed to be paid under this contract by FCC; and
- 10.6.3 amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 10.7 Subject to clause 10.3 (No limitation of Client's payment obligations) and clause 10.4 (Liabilities which cannot legally be limited), this clause 10.7 sets out the types of loss that are wholly excluded:
- 10.7.1 loss of profits.
- 10.7.2 loss of sales or business.
- 10.7.3 loss of agreements or contracts.
- 10.7.4 loss of anticipated savings.
- 10.7.5 loss of use or corruption of software, data or information.
- 10.7.6 loss of or damage to goodwill; and
- 10.7.7 indirect or consequential loss.
- 10.8 FCC has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 10.9 Unless the Client notifies FCC that it intends to make a claim in respect of an event within the notice period, FCC shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 10.10 This clause 10 shall survive termination of the Contract.

- 10.11 FCC accepts no liability whatsoever for any claims the Client brings, or may wish to bring, against any third party supplier ('Supplier') of goods or services introduced by FCC to the Client. If the Client wishes to acquire or use such goods or services, then it is for the Client to enter into a direct contract with any such Supplier which should regulate the liability between those parties.

## 11. INDEMNITY

- 11.1 Subject to clause 11.2, the Client shall on demand indemnify in full and hold harmless FCC and its Representatives (each an "**Indemnified Person**") from and against any and all Loss which an Indemnified Person may suffer or incur in any such case arising out of, based upon or in connection with, whether directly or indirectly:
- 11.1.1 any act or omission of the Client and/or its personnel which directly or indirectly causes a breach of any of the agreements or arrangements between the Client or its affiliates; and
- 11.1.2 the provision of the Services, including, but not limited to, any injury to any of FCC's staff or Representatives which may arise from health and safety matters at the Client's premises.
- 11.2 The indemnity in clause 11.1 shall not apply to the extent that any claim or Loss has resulted from the gross negligence, fraud or wilful default on the part of any Indemnified Person.
- 11.3 The Indemnified Person shall:
- 11.3.1 notify the Client in writing as soon as practicable of any claim, and suspected or alleged claim;
- 11.3.2 consult with the Client regarding the conduct of the defence of any claim made against the Indemnified Person, and not enter into any settlement or compromise without the prior consent of the Client (such consent not to be unreasonably withheld or delayed); and
- 11.3.3 provide the Client with all reasonable assistance in conducting the defence of such a claim at the Client's expense.
- 11.4 This clause 11 may be enforced, with the prior written consent of FCC, by each Indemnified Person against the Client under the Contracts (Rights of Third Parties) Act 1999. The provisions of this clause may be varied or terminated by agreement between FCC and the Client which agreement shall not be unreasonably withheld or delayed.

## 12. TERMINATION

12.1 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:

12.1.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing to do so;

12.1.2 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), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, 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;

12.1.3 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; or

12.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

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

12.2.1 the Client fails to pay any amount due under the Contract on the due date for payment;

or

12.2.2 there is a change of control of the Client.

12.3 Without affecting any other right or remedy available to it, FCC may suspend the supply of Services under the Contract or any other contract between the Client and FCC if:

12.3.1 the Client fails to pay any amount due under the Contract on the due date for payment;

12.3.2 the Client becomes subject to any of the events listed in clause 12.1.3 or clause 12.1.4, or FCC reasonably believes that the

Client is about to become subject to any of them; and

12.3.3 FCC reasonably believes that the Client is about to become subject to any of the events listed in clause 12.1.2.

12.4 Either party may terminate this Contract without giving any reason for doing so to the other party on prior written notice served as set out in clause 14.7, of the Notice Period set out in the Specification. Unless otherwise agreed beforehand in writing between the parties, FCC shall continue to provide the Services and the Client shall continue to pay the fees and all other expenses as set out in the Schedule until the date of termination set out in the notice.

## 13. CONSEQUENCES OF TERMINATION

13.1 At the end of the Term, howsoever arising:

13.1.1 the Client shall immediately pay to FCC all of FCC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, FCC shall submit an invoice, which shall be payable by the Client immediately on receipt;

13.1.2 the Client shall return all of FCC materials and any other deliverables which have not been fully paid for. If the Client fails to do so, then FCC may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

13.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

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

## 14. GENERAL

### 14.1 Force majeure.

14.1.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure

results from events, circumstances or causes beyond its reasonable control.

- 14.1.2 Where a delay caused by third party events outside either party's control or influence causes such delay that the purpose of this agreement is wholly or significantly destroyed, either party shall be entitled to give the other party notice to terminate this agreement. In such circumstances, the Client will not make any further payments of fees but there will be no refund of payments already made (including any payments for that part of the agreement that remains unfulfilled) and FCC will be entitled to invoice the Client for costs and expenses reasonably and properly incurred up to such termination.

## 14.2 Assignment and other dealings.

- 14.2.1 FCC may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 14.2.2 The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of FCC.

## 14.3 Entire agreement.

- 14.3.1 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.
- 14.3.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 14.3.3 Nothing in this clause shall limit or exclude any liability for fraud.

- 14.4 **Variation.** No variation of the Contract or the Specification shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 14.5 **Waiver.** 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.

- 14.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

## 14.7 Notices

- 14.7.1 Any notice 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) and shall be sent by email to the address provided by each party in the Specification.

- 14.7.2 Any notice shall be deemed to have been received:

- if delivered by hand, 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; or
- if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 14.7.2c, business hours means 9.00am to 5.00pm on a Business Day.

- 14.7.3 This clause 14.7 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.

- 14.8 **Third party rights.** 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.



- 14.9 **Publicity.** FCC may from time to time publicise the fact that the Client is, or was, a client, utilise the Client's name and/or logo in publicity materials in this respect, and describe in general terms the type of work conducted for the Client.
- 14.10 **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.
- 14.11 **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.