

Fiecon Model Builder terms and conditions (these "Terms and Conditions")

1 Interpretation

1.1 In these Terms and Conditions, unless the context requires otherwise, the following expressions shall have the following meanings:

Access Term: the period set out on the Order Form where access to Fiecon Model Builder is granted to the Client in order to create a model Output, pursuant to the terms and conditions of the Agreement.

Additional Services: any services provided or to be provided by Fiecon under the Agreement, including any training on Fiecon Model Builder, or adaptations to the model Output or other support services as applicable (not including the Supported Access Services), or anything described as these services in the Order Form, or as otherwise agreed in writing between the Parties.

Agreement: these Terms and Conditions and the Order Form.

Authorised Users: those employees, officers, directors and contractors of the Client who are authorised by the Client to use Fiecon Model Builder and the Documentation, as further described in clause 2.3.5.

Business Day: any day other than (i) a Saturday, (ii) a Sunday, (iii) a day when the clearing banks are not physically open for business in the City of London, England.

Client: the client of Fiecon who agrees to obtain access to Fiecon Model Builder in exchange for payment of the Fees, and whose details are more particularly set out in the Order Form.

Client Content: the data inputted or uploaded into Fiecon Model Builder by the Client, Authorised Users, or Fiecon on the Client's behalf for the purpose of using Fiecon Model Builder, including any dummy data.

Confidential Information: means any information which is received by, or on behalf of, one Party from the other Party under or in connection with the Agreement and which is either marked as, or which a reasonable person would reasonably consider to be, confidential, whether disclosed or obtained before, on or after the date of the Agreement together with any reproductions of such information or any part of this information, and this includes: (a) where Fiecon is the discloser, Fiecon Model Builder and the Documentation; and (b) where Client or an Authorised User is the discloser, the Client Content.

Contaminants: means any computer software routine intended or designed to disable, damage, erase, disrupt or impair the normal operation of, or provide unauthorised access to, or modification or monitoring of, any computer system or any software or information stored on any computer system, including viruses, worms, time bombs, time locks, drop-dead devices, access codes, security keys, back doors or trap door devices.

Dependencies: any requirements for the Client to perform its obligations under the Agreement which may impact on the ability of Fiecon to be able to provide the Supported Access Services or the Additional Services (if applicable) (and at the times anticipated), including any obligations on the Client in the Order Form.

Documentation: the documentation made available to the Client by Fiecon online via <https://www.fieconmodelbuilder.com/> or such other web address stipulated by Fiecon to the Client from time to time, or any document that is otherwise provided by Fiecon to the

Client as part of the Supported Access Services (if applicable), or the Additional Services (if applicable), or otherwise, which sets out a description of Fiecon Model Builder and the user instructions for Fiecon Model Builder.

Effective Date: the date set out in the Order Form.

Expert Determination: a determination by a single independent expert appointed jointly by the Parties or, in default of agreement on the expert, by an expert appointed by the President for the time being of the British Computer Society (or if it ceases to exist, the nearest equivalent organisation), whose determination on any matter shall be final and binding on the Parties and not subject to appeal or other judicial review, save in the case of manifest error by the expert; the determination shall be in English and shall be held in London and the procedure of the determination shall be set by the expert; the costs of the determination shall be borne by the Party that the expert finds at fault or, if both Parties are found to be at fault, in such proportion as the expert shall determine according to the proportion of the fault of the Parties and, in the absence of a finding of fault, the costs shall be borne equally by the Parties.

Fees: the fees payable by the Client to Fiecon for the access to Fiecon Model Builder, the Supported Access Services (if applicable) and any Additional Services as stipulated in the Order Form.

Fiecon Model Builder: Fiecon's Model Builder software product, a cloud-based platform which automates the design and build of Microsoft Excel-based economic models, provided by Fiecon to the Client under the Agreement via <https://www.fieconmodelbuilder.com/> or any other website stipulated to the Client by Fiecon from time to time, as more particularly described in the Documentation and including the Fiecon Model Builder Content.

Fiecon Model Builder Content: means any information and materials (including works of authorship, files, processes, systems, ideas, know-how, concepts, methodologies, flowcharts, manuals, data, databases, digital content, database structures, content, descriptions, documents, notes, records, results, reports, text, research, lists, diagrams, artwork, designs, sketches, models, photographs, drawings, plans, specifications, images, logos, styles and graphics (in whatever form and on whatever media)) provided by Fiecon from time to time as part of Fiecon Model Builder.

Fiecon Supported Access: access to Fiecon Model Builder and the Supported Access Services.

General Elements: anything not expressly created for the Client and of general use by Fiecon, including: any pre-existing templates, the look, feel and form of Fiecon Model Builder or any Microsoft Excel formats; any source code or object code of any kind; pre-populated or pre-existing Fiecon data-sets; copy or design material; graphics; images; any general information, documents, knowledge, know-how, methods, methodologies, tools and materials; or any Intellectual Property Rights of Fiecon or its licensors.

Good Industry Practice: means in relation to any undertaking and any circumstances, the exercise of that degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of activity under the same or similar circumstances.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in

confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

Liability: has the meaning set out in clause 13.8.1.

Negligence: has the meaning set out in clause 13.8.2.

Order Form: the order form in the form stipulated or provided by Fiecon, containing details of the specific access arrangements to Fiecon Model Builder and the Documentation, whether access is to be via Solo Access or Fiecon Supported Access, and any Additional Services to be supplied by Fiecon to the Client, and the Fees to be paid to Fiecon by the Client.

Output: the client specific data and data-set results presented as an output of the Microsoft Excel outputs pages as generated via Fiecon Model Builder pursuant to the Agreement and by virtue of the Client's access to Fiecon Model Builder and the input of the Client Content.

Parties: Fiecon and the Client.

Purpose: has the meaning set out in clause 2.1.

Solo Access: access to Fiecon Model Builder with no assistance or additional input from Fiecon.

Supported Access Services: the training, consultancy and support services provided by Fiecon to support the Client's access to Fiecon Model Builder whereby Fiecon personnel either provide virtual assistance or physically attend the Client's premises for a ½ day session (or any other period as set out in the Order Form), liaise with the Client with regards to its requirements and create the Output by making use of the Client Content and the Client's input.

UK Business Hours: the hours between 9:00 and 17:30, local time in London, on Business Days (other than on Fridays, when it is between 9:00 and 17:00).

US Business Hours: the hours between 9:00 and 17:30, local time in New York, on Business Days (other than on Fridays, when it is between 9:00 and 17:00).

- 1.2 Clause and paragraph headings shall not affect the interpretation of the Agreement.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 references to "includes" or "including" or like words or expressions shall mean without limitation.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Agreement. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Agreement under that statute or statutory provision.
- 1.6 A reference to "writing" or "written" includes in electronic form.
- 1.7 References to clauses are to the clauses of these Terms and Conditions.

2 Access to Fiecon Model Builder

- 2.1 Subject to the Client paying the Fees in accordance with clause 10, the restrictions set out in this clause 2 and the other terms and conditions of the Agreement (including anything in the Order Form), Fiecon hereby grants to the Client a non-exclusive, non-transferable right (without the right to grant access rights to any third party), to permit the Authorised Users to access and use Fiecon Model Builder and the Documentation during the Access Term to provide and use the Outputs in accordance with the Order Form solely for the Client's business operations in preparation of a cost-effectiveness model for a particular intervention (**Purpose**).
- 2.2 The Client acknowledges and agrees that the right to access and use Fiecon Model Builder, as set out in clause 2.1 is subject to the following:
- 2.2.1 the Client shall not attempt to access and use Fiecon Model Builder and/or the Documentation during any other period or use it for any other purpose, except with Fiecon's prior written agreement;
 - 2.2.2 the Client shall not copy, reproduce, disclose, download, disseminate, supply, sell, license, distribute, re-utilise, publish, post, broadcast, transmit or make available any aspect of Fiecon Model Builder or any of the Documentation, or attempt to do so, except with Fiecon's prior written agreement;
 - 2.2.3 the Client shall keep Fiecon Model Builder and the Documentation strictly confidential in accordance with clause 12;
 - 2.2.4 the Client shall not allow anyone other than the Authorised Users from viewing or seeing or accessing Fiecon Model Builder or any of the Documentation;
 - 2.2.5 the Client shall use Fiecon Model Builder and the Documentation only for the Purpose and not for any other use, including use with any third party, except with Fiecon's prior written agreement;
 - 2.2.6 the Client shall not allow or permit anyone to access Fiecon Model Builder using the Client's log-on details and the Client shall take all steps to preserve the confidentiality and security of the Client's Fiecon Model Builder log-on details;
 - 2.2.7 the Client shall procure that all Authorised Users comply with the terms and conditions of the Agreement as applicable; and
 - 2.2.8 the Client shall contact Fiecon immediately if the Client has cause to become concerned that any unauthorised third party may have obtained or used the Client's Fiecon Model Builder log-on details.
- 2.3 The Client undertakes that:
- 2.3.1 it will not (except to the extent that the Order Form provides otherwise or Fiecon expressly agrees in writing) allow any username or password assigned to an Authorised User to be used by more than that one individual Authorised User or to be transferred to any other Authorised User, without Fiecon's prior written consent;
 - 2.3.2 the passwords for the Authorised Users are kept strictly confidential and shall not be disclosed to any third party, including other Client personnel, without Fiecon's prior written consent;

- 2.3.3 it will use all reasonable endeavours to prevent any access to or use of Fiecon Model Builder and the Documentation by anyone other than the Authorised Users;
 - 2.3.4 it shall be liable for any use of or access to Fiecon Model Builder using an Authorised User's username and password; and
 - 2.3.5 the Authorised User is at all times an employee, officer, director or contractor (acting in a similar role to an employee) or authorised representative of Client, save that any independent contractor of the Client who operates within the same industry as Fiecon shall not be an Authorised User and shall not be permitted to make use of Fiecon Model Builder.
- 2.4 The Client shall not access, store, distribute or transmit any Contaminants, or any material during the course of its use of Fiecon Model Builder that:
- 2.4.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 2.4.2 facilitates illegal activity;
 - 2.4.3 is otherwise illegal or causes damage or injury to any person or property;
- and Fiecon reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this clause 2.4.
- 2.5 The Client shall not:
- 2.5.1 attempt to access and copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the software comprising Fiecon Model Builder and/or the Documentation (as applicable) in any form or media or by any means; or
 - 2.5.2 attempt to access and de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the software comprising Fiecon Model Builder (except if and only to the extent that any applicable non-excludable law provides to the contrary); or
 - 2.5.3 access all or any part of Fiecon Model Builder and/or the Documentation in order to build a product or service which competes with Fiecon Model Builder and/or the Documentation; or
 - 2.5.4 use Fiecon Model Builder or the Documentation or any associated Fiecon or its licensors' Intellectual Property Rights to provide or resell products or services to third parties; or
 - 2.5.5 subject to clause 23.1, grant access to, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make Fiecon Model Builder and/or the Documentation available to any third party except the Authorised Users; or
 - 2.5.6 attempt to obtain, or assist third parties in obtaining, access to Fiecon Model Builder and/or the Documentation, other than as provided under this clause 2.
- 2.6 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, Fiecon Model Builder and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Fiecon.

2.7 The rights provided under this clause 2 are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client.

3 Suspension rights

3.1 Fiecon reserves the right to suspend or disable access to and use of Fiecon Model Builder and the Documentation by the Client and its Authorised Users if:

3.1.1 Fiecon reasonably suspects that the Client or any Authorised User is in breach of the Agreement (or any other agreement between Fiecon and Client); or

3.1.2 Fiecon reasonably believes that there is likely to be or has been a breach of security, or misuse of any username or password of the Client or its Authorised Users or use of Fiecon Model Builder by an individual or organisation who is not (or no longer is) an Authorised User; or

3.1.3 the Client or any Authorised User is misusing Fiecon Model Builder or infringing Fiecon's Intellectual Property Rights. This suspension may be without warning and whether by use of a code, by disabling access on its servers, by remote access or by physical attendance at any place where Fiecon Model Builder is being accessed from or otherwise.

3.2 If Fiecon suspends or disables access to and use of Fiecon Model Builder and the Documentation by Client and Authorised Users pursuant to this clause 3, it shall promptly inform the Client following such suspension providing the Client with reasons for such suspension in order that the Client can address the concerns raised by Fiecon and/or remedy the same to Fiecon's reasonable satisfaction, at which point Fiecon shall lift the suspension.

4 Fiecon's obligations in relation to Fiecon Model Builder

4.1 Fiecon shall use commercially reasonable endeavours to make Fiecon Model Builder available 24 hours a day, seven days a week, except for:

4.1.1 planned maintenance carried out outside of UK Business Hours and US Business Hours; and

4.1.2 unscheduled maintenance performed outside UK Business Hours and US Business Hours, wherever possible, provided that Fiecon has used its reasonable endeavours, where practical, to give the Client at least 6 UK Business Hours' prior written warning.

4.2 The Agreement shall not prevent Fiecon from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.

4.3 Fiecon reserves the right at any time to revise or amend the format and/or content of Fiecon Model Builder and the Documentation from time to time, provided that if it does so, it shall use its reasonable endeavours to ensure that there is no adverse change in the content, quality or performance of Fiecon Model Builder and/or the Documentation.

4.4 Fiecon shall use its reasonable commercial endeavours to ensure that Fiecon Model Builder and the Outputs are robust and reliable, but Fiecon will not be responsible for any delays or failures to provide access to Fiecon Model Builder, the Documentation and the Outputs resulting from a third party's failure to provide hosting, security or other requirements

necessary for Fiecon Model Builder, or as otherwise required by Fiecon in order to perform its obligations under the Agreement.

5 Warranty and disclaimer

- 5.1 Fiecon warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement.
- 5.2 Fiecon warrants that it:
 - 5.2.1 shall use reasonable skill and care in providing access to Fiecon Model Builder and the performance of its obligations under the Agreement in accordance with Good Industry Practice;
 - 5.2.2 has full capacity and authority to enter into the Agreement;
 - 5.2.3 shall use its reasonable endeavours in accordance with Good Industry Practice not to introduce into Fiecon Model Builder any Contaminants; and
 - 5.2.4 shall use an industry-recognised security software program (to which latest recent patches and updates have been applied) in accordance with Good Industry Practice to detect the presence of any Contaminant and that, upon detection of any Contaminant, it shall be promptly eradicated or quarantined by Fiecon.
- 5.3 Fiecon gives no warranty:
 - 5.3.1 as to the completeness or suitability of Fiecon Model Builder or the Documentation, or that Fiecon Model Builder, the Documentation or and/or the Outputs will meet any of the Client's or Authorised User's specific individual needs or requirements;
 - 5.3.2 that Fiecon Model Builder, the Documentation or the Outputs will be compatible with the Client's systems other than those meeting the minimum specification (as stipulated by Fiecon from time to time);
 - 5.3.3 that the Outputs will be fit for any purpose of the Client, or will achieve any outcome or meet any requirements or criteria specified by a Health Technology Assessment Body, or any similar or replacement body, or otherwise. It is the Client's responsibility to satisfy itself that the Outputs are accurate and are adequate for the Client's intended use; or
 - 5.3.4 that access to Fiecon Model Builder, the Documentation or the Outputs will be delivered without interruption, fault or error. It may be necessary to suspend or restrict access to Fiecon Model Builder, the Documentation and/or the Outputs at any time for any reason including for any urgent or planned maintenance.
- 5.4 Fiecon warrants that Fiecon Model Builder will conform substantially with the Documentation and any other specification agreed in writing between the Parties from time to time.
- 5.5 The warranty at clause 5.4 shall not apply to the extent of any non-conformance which is caused by use of Fiecon Model Builder contrary to Fiecon's instructions, or modification or alteration of Fiecon Model Builder by any party other than Fiecon or Fiecon's duly authorised contractors or agents.
- 5.6 If Fiecon Model Builder does not conform with the warranty at clause 5.4, Fiecon shall, at its expense, use all reasonable commercial endeavours to correct any such non-conformance

promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 5.4. Notwithstanding the foregoing, Fiecon:

- 5.6.1 does not warrant that the Client's use of Fiecon Model Builder will be uninterrupted; or that Fiecon Model Builder, the Documentation and/or the Outputs or any other information obtained by the Client through Fiecon Model Builder will meet the Client's requirements; and
- 5.6.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that Fiecon Model Builder, the Documentation and the Output may be subject to limitations, delays and other problems inherent in the use of such communications facilities and accordingly Fiecon does not warrant that access to Fiecon Model Builder or the Documentation will be uninterrupted or that it will be available at any particular speed.
- 5.7 Fiecon shall use its reasonable endeavours to ensure that the information, data-sets and algorithms and calculations encompassing Fiecon Model Builder are accurate and up-to-date. However, Fiecon Model Builder, the Documentation and the Outputs are for general guidance only. The Client acknowledges and agrees that it is its responsibility to review the Outputs and to obtain professional or specialist advice before taking, or refraining from, any action on the basis of Fiecon Model Builder and/or the Outputs.
- 5.8 Except as expressly set out in the Agreement, all warranties, conditions, undertakings or terms, express or implied, are hereby excluded to the fullest extent permissible by law.
- 5.9 Although Fiecon uses a firewall and takes steps against Contaminants and uses virus and content filtering software in accordance with Good Industry Practice, Fiecon cannot guarantee 100% security and shall not have any Liability for damage to, unauthorised access to, or Contaminants that may affect, Fiecon Model Builder and/or the Outputs or any computer equipment, software, data or other property. Fiecon shall also not have any Liability for the actions of third parties in breaching any security measures.

6 Fiecon Supported Access and Additional Services

- 6.1 In providing the Supported Access Services (if applicable) or any Additional Services (if any), Fiecon shall:
 - 6.1.1 use its reasonable skill and care in providing the Supported Access Services and/or Additional Services (as applicable);
 - 6.1.2 supply any such services in accordance with Good Industry Practice;
 - 6.1.3 ensure its employees, officers, directors and contractors have the necessary skill to provide the Supported Access Services and/or Additional Services; and
 - 6.1.4 ensure that such services are provided in a professional, competent and workmanlike manner.
- 6.2 Fiecon shall provide the Supported Access Services and/or the Additional Services (if applicable) in accordance with what is stipulated in the Order Form but it otherwise does not warrant that the Supported Access Services and/or the Additional Services will meet the

individual requirements of the Client. The Client is responsible for any deliverables and services that it needs to obtain from someone other than Fiecon.

6.3 Fiecon shall use its reasonable endeavours to perform the Supported Access Services and/or the Additional Services (if applicable) within any timescales set out in the Order Form, but Fiecon shall not have any Liability for any delays or failure to accurately perform its obligations:

6.3.1 if it has used those endeavours; or

6.3.2 if caused by any failure or delay in any Dependencies set out in the Order Form, including any failure or delay on the part of the Client or its employees, officers, directors or contractors to perform their obligations or by any breach by the Client of the Agreement or of any other agreement with Fiecon.

6.4 If there is any slippage in time, Fiecon shall use its reasonable endeavours to reschedule delayed tasks to a mutually convenient time.

6.5 If Fiecon is delayed or hindered in providing the Supported Access Services and/or the Additional Services (if applicable) as a result of any failure or delay in any Dependencies set out in the Order Form, including any breach, delay or failure by the Client to perform any of its obligations under the Agreement or of any other agreement between the Parties, then Fiecon may charge the Client at its current rates for any time reasonably incurred as a result of the hindrance or breach (including the time it actually spends in providing the Supported Access Services, and/or the Additional Services (if applicable), and any wasted time for which Fiecon had anticipated that its personnel would spend in providing Supported Access Services, or the Additional Services (as the case may be) under the Agreement but become unable to do so at that time as a result of the Client's act or omission and which resources Fiecon cannot reasonably re-allocate).

6.6 The Client may purchase enhanced support services separately at Fiecon's then current rates.

7 Client Content

7.1 The Client shall own all right, title and interest in and to all of the Client Content and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Client Content, and the Outputs which incorporate the Client Content.

7.2 The Client acknowledges and agrees that the accuracy and the quality of the Outputs are dependent on the accuracy, quality and the completeness of the Client Content. The Client further acknowledges that the Client must have relevant health economic experience in order to input the Client Content and make use of the Outputs. Fiecon shall have no responsibility with regards to the use of Fiecon Model Builder or the Outputs which incorporate the Client Content.

8 Outputs

8.1 The Client may enable each Authorised User to download the Outputs and/or print off copies of the Outputs in hard copy but solely for the Purpose and provided that any and all copyright and proprietary notices are kept intact.

8.2 Any deletions, additions or amendments that are made to the Outputs other than by or on behalf of Fiecon, or created via Fiecon Model Builder, or any use of an Output for a different intervention or indication to what it was originally designed for, are made or used without

endorsement or approval from Fiecon (including as to their accuracy) unless Fiecon expressly gives its express written endorsement or approval.

9 Client's obligations

9.1 The Client shall:

9.1.1 provide Fiecon with:

- (a) all necessary co-operation in relation to the Agreement; and
- (b) all necessary access to such information and locations as may be required by Fiecon;

to enable Fiecon to provide access to Fiecon Model Builder and to provide the Supported Access Services (if applicable) and any Additional Services, including Client Content, security access information and configuration services;

9.1.2 without affecting its other obligations under the Agreement, comply with all applicable laws and regulations with respect to its activities under the Agreement;

9.1.3 carry out all other Client responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the Parties, Fiecon may adjust any agreed timetable or delivery schedule as reasonably necessary;

9.1.4 ensure that the Authorised Users use Fiecon Model Builder and the Documentation in accordance with the terms and conditions of the Agreement and shall be responsible for any Authorised User's breach of the Agreement;

9.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Fiecon, its contractors and agents to perform their obligations under the Agreement, including the Supported Access Services and any Additional Services;

9.1.6 be responsible for ensuring that its network and systems meet the minimum specification stipulated by Fiecon from time to time and that it has downloaded any prerequisite software as stipulated by Fiecon from time to time. Fiecon shall not be responsible for any failure of Client or an Authorised User to access Fiecon Model Builder and/or the Outputs to the extent caused by a failure of Client systems or Client to ensure that the Client systems meet the minimum specification and it has access to all the prerequisites software; and

9.1.7 be, to the extent permitted by law and except as otherwise expressly provided in the Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Fiecon's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.

10 Fees and payment

10.1 Unless otherwise set out in the Order Form or expressly agreed in writing by Fiecon, the Client shall pay the Fees in advance of the ability to access or use Fiecon Model Builder and the Documentation or before the commencement of the relevant Access Term.

- 10.2 All sums due to Fiecon are exclusive of VAT and other duties or taxes (if applicable) which Client shall pay to Fiecon in addition at the same time as payment of the Fees.
- 10.3 Payment shall be in the currency of England from time to time.
- 10.4 Payment of all sums due under the Agreement shall be made by Client without any set-off, deduction or withholding whatsoever.
- 10.5 Fiecon shall issue an invoice to the Client for the Fees.
- 10.6 Client shall pay Fiecon for the Fee in accordance with clause 10.1 (and in any event within 28 days of the date of Fiecon's invoice). Client shall pay Fiecon by any payment method reasonably stipulated by Fiecon or otherwise agreed in writing by the Parties.
- 10.7 If the laws of any part of the territory where Client is based require Client to withhold tax on any payment which Client is obliged to make to Fiecon under the Agreement, the Parties shall use their respective reasonable endeavours to conduct their accounting arrangements where legally possible to avoid the application of withholding tax (such as for Client to contract and pay through a company in a jurisdiction where withholding tax would not apply). If withholding tax does apply, Client shall:
- 10.7.1 obtain a proper receipt and discharge for the tax so deducted and forward it without delay to Fiecon;
- 10.7.2 do all such other things and take such other steps as may be reasonably required to enable Fiecon to obtain any tax credit which may be available to it in connection with any tax payment; and
- 10.7.3 in the event that any taxes deducted cannot be reclaimed or used by Fiecon as a credit against any tax payable by Fiecon, at such time as Fiecon reasonably requires make up to Fiecon any shortfalls in payment attributable to such tax deductions.
- 10.8 If Client is late in paying any part of any monies due to Fiecon (under the Agreement or any other agreement between Fiecon and the Client), Fiecon may (without prejudice to any other right or remedy available to it whether under the Agreement or any other agreement between Fiecon and the Client or by any statute, regulation or by-law) do either or both of the following:
- 10.8.1 charge interest and other charges on the amount due but unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from time to time from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly; or
- 10.8.2 give Client at least 24 hours prior written warning that it is suspending Client's and Authorised Users' access to Fiecon Model Builder and the Documentation with immediate effect until Fiecon receives the outstanding amounts in full.

11 **Intellectual property**

11.1 The Client:

- 11.1.1 warrants that the receipt and use of the Client Content in the performance of the Agreement by Fiecon, its directors, officers, staff, agents, sub-contractors or consultants shall not infringe the rights, including any Intellectual Property Rights of or breach obligations of confidentiality by the Client to any third party; and

- 11.1.2 shall, on an unlimited basis indemnify, keep indemnified and hold harmless Fiecon, (including, Fiecon's directors, officers, staff and agents) against any and all losses, liabilities, costs (including legal and professional costs), expenses, claims and demands suffered or incurred by Fiecon as a result of or in connection with any breach by the Client of clause 11.1.1 or any claim brought against Fiecon, its directors, officers, staff, agents, sub-contractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights or unauthorised use of third party confidential information, arising out of, or in connection with, the receipt or use in the performance of the Agreement of the Client Content, save to the extent that they were caused by Fiecon's own fraud, wilful default or material breach of the Agreement.
- 11.2 Subject to payment in full of the Fees, and any additional charges and expenses payable by the Client under the Agreement, all Intellectual Property Rights in the Outputs which arise from the Client's use of Fiecon Model Builder in accordance with the Agreement (but not in any General Elements), shall be owned by the Client and Fiecon hereby assigns to the Client all of its Intellectual Property Rights in such Outputs (but not in any General Elements), to be automatically effective from the date Fiecon receives from the Client all amounts due to Fiecon under the Agreement in respect of such Outputs.
- 11.3 Fiecon also hereby grants to the Client a perpetual, irrevocable, worldwide, non-exclusive, assignable, sub-licensable licence to use the General Elements, solely to be able to use the Outputs.
- 11.4 Nothing in this clause 11 shall:
- 11.4.1 assign or transfer any Fiecon or its licensors' Intellectual Property Rights used or arising in connection with the performance of the Agreement by Fiecon, including in respect of preparation, processing and delivery of the Outputs (or any other deliverables including General Elements provided in the course of the Agreement); or
- 11.4.2 give any right to prevent or restrict Fiecon's use of its or its licensors' Intellectual Property Rights, or any General Elements for any purpose.
- 11.5 The Client grants to Fiecon a royalty-free, worldwide, perpetual, irrevocable, non-exclusive licence to:
- 11.5.1 use the Client Content for the purposes of performing the Agreement;
- 11.5.2 use and reproduce the Outputs and any derivations or meta-data thereof for performing the Agreement;
- 11.5.3 use and reproduce the Outputs and any derivations or meta-data thereof for its own internal business purposes in order to develop, refine and improve Fiecon Model Builder and Fiecon's connected services; and
- 11.5.4 use and reproduce the Client's name and logo to perform the Supported Access Services and/or the Additional Services (if applicable), and for Fiecon's marketing purposes including in any website, promotional material, pitch document or on social media and describing who its clients are (including when pitching for new business). This is subject to Fiecon complying with any reasonable and standard corporate branding guidelines of the Client that are made known with reasonable prior written warning to Fiecon.

- 11.6 The Client acknowledges and agrees that Fiecon and/or its licensors own and shall exclusively retain ownership in all Intellectual Property Rights in Fiecon Model Builder and the Documentation. Except as expressly stated herein, the Agreement does not grant the Client any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of Fiecon Model Builder or the Documentation.
- 11.7 In the event of any claim being brought against the Client that the normal use of Fiecon Model Builder or the Documentation in accordance with the Agreement infringes the Intellectual Property Rights of a third party (a **Claim**), Fiecon shall indemnify the Client against any damages that are awarded by a court of competent jurisdiction or agreed by way of settlement to be paid to any such third party in respect of such Claim provided that the Client:
- 11.7.1 as soon as reasonably practicable informs Fiecon in writing of any such Claim of which Client becomes aware;
 - 11.7.2 does not make any admission as to liability or compromise or agree any settlement of the Claim without Fiecon's prior written consent (such consent not to be unreasonably withheld or delayed), or otherwise prejudice Fiecon or any other third party's defence of such Claim;
 - 11.7.3 gives Fiecon, or such person as Fiecon shall direct, immediate and complete control of the conduct or settlement of all negotiations and litigation arising from the Claim; and
 - 11.7.4 upon payment of its reasonable costs, gives Fiecon, and other third parties as Fiecon directs, all reasonable assistance with the conduct or settlement of any such negotiations or litigation.
- 11.8 The indemnity in this clause 11.7 shall not apply to the extent that any Claim arises out of Fiecon's use of any Client Content.
- 11.9 Client shall promptly inform Fiecon in writing in the event that it becomes aware of any unauthorised use of or access to Fiecon Model Builder and/or the Documentation or any actual or suspected infringement of any of Fiecon's Intellectual Property Rights, and Client shall provide all further co-operation reasonably requested by Fiecon.
- 11.10 Fiecon shall promptly inform the Client in writing in the event that it becomes aware of any unauthorised use of or access to the Client Content or the Outputs or any actual or suspected infringement of any of the Client's Intellectual Property Rights, and Fiecon shall provide all further co-operation reasonably requested by the Client.
- 11.11 Client acknowledges that it has no right to have access to the underlying software comprising Fiecon Model Builder including in any source code or object code form.
- 11.12 This clause 11 shall survive termination of the Agreement howsoever arising.

12 Confidentiality

- 12.1 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations or exercise its rights under the Agreement. A Party's Confidential Information shall not be deemed to include information that it can show:

- 12.1.1 is or becomes publicly known other than through any act or omission of the receiving Party;
 - 12.1.2 was in the other Party's lawful possession before the disclosure;
 - 12.1.3 is lawfully disclosed to the receiving Party by a third party without restriction on disclosure; or
 - 12.1.4 is independently developed by the receiving Party, which independent development can be shown by written evidence.
- 12.2 Subject to clause 12.4, each Party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Agreement.
- 12.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees, officers, directors, contractors or agents in violation of the terms of the Agreement.
- 12.4 A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other Party as much warning of such disclosure as possible and, where prior warning of disclosure is not prohibited and is given in accordance with this clause 12.4, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 12.5 Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.6 Notwithstanding the provisions of this clause 12, Fiecon shall have an unlimited, perpetual, non-exclusive licence to make use of the Client Content and the Outputs in accordance with clause 11.5.3, for the purposes of analysis and to make improvements to Fiecon Model Builder or otherwise to improve the services Fiecon provides. This licence shall not permit Fiecon to use the Client Content or any other Client Confidential Information for any other purpose or to resell or sub-license the right to use the Client Confidential Information.
- 12.7 Subject to clause 11.5.4, neither Party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other Parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 12.8 The above provisions of this clause 12 shall survive termination of the Agreement, however arising.

13 Liability

- 13.1 This clause 13 sets forth the entire Liability of each Party, and the sole and exclusive remedies of the other Party, in respect of:
- 13.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of the Agreement or of Fiecon Model Builder or any Outputs in connection with the Agreement; or

- 13.1.2 otherwise in relation to the Agreement or entering into the Agreement.
- 13.2 Neither Party excludes or limits its Liability for:
- 13.2.1 its fraud; or
 - 13.2.2 death or personal injury caused by its Negligence;
 - 13.2.3 any infringement of the other Party's Intellectual Property Rights; or
 - 13.2.4 any other Liability which cannot be excluded or limited by applicable law.
- 13.3 Subject to clause 13.2, each Party does not accept and it hereby excludes any Liability for Negligence other than any Liability arising pursuant to the terms of the Agreement.
- 13.4 Subject to clause 13.2 and clause 11.1, neither Party shall have Liability in respect of any:
- 13.4.1 special or indirect or consequential losses, damages, costs or expenses;
 - 13.4.2 loss of actual or anticipated profits;
 - 13.4.3 loss of contracts (including, funding or subsidy agreements);
 - 13.4.4 loss of use of money;
 - 13.4.5 loss of anticipated savings;
 - 13.4.6 loss of revenue;
 - 13.4.7 loss of goodwill;
 - 13.4.8 loss of reputation;
 - 13.4.9 ex gratia payments;
 - 13.4.10 loss of business;
 - 13.4.11 loss of operation time;
 - 13.4.12 loss of opportunity; or
 - 13.4.13 loss of, damage to, degradation of or corruption of, data;
- whether or not such losses were reasonably foreseeable or the Party in default or its agents had been advised of the possibility of the other incurring such losses. For the avoidance of doubt, clauses 13.4.2 to 13.4.13 apply whether such losses are direct, indirect, consequential or otherwise.
- 13.5 Subject to clause 13.2, and subject to any specific right or remedy expressly set out in the Agreement that explicitly provides that the following cap may be exceeded, the total aggregate Liability of each Party shall be limited to the greater of (a) £250,000 or (b) 100% of the total sums paid and total other sums payable, in aggregate, by the Client to Fiecon under the Agreement, as specified in the Order Form.
- 13.6 The limitation of Liability under clause 13.5 has effect in relation both to any Liability expressly provided for under the Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of the Agreement.

- 13.7 The Client shall not limit its Liability for failure to pay the Fees.
- 13.8 In the Agreement:
- 13.8.1 "**Liability**" means liability in or for breach of contract (including liability under any indemnity), tort (whether deliberate or not), Negligence, breach of statutory duty, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with the Agreement, including liability expressly provided for under the Agreement or arising by reason of the invalidity or unenforceability of any term of the Agreement (and for the purposes of this definition, all references to "the Agreement" shall be deemed to include any collateral contract); and
- 13.8.2 "**Negligence**" means the breach of any (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty).
- 13.9 The above provisions of this clause 13 shall survive termination of the Agreement, however arising.
- 14 Term and termination**
- 14.1 The Agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue until termination or expiry of the Access Term.
- 14.2 Either Fiecon or the Client may terminate the Agreement by notifying the other Party with immediate effect if:
- 14.2.1 the other Party is in material breach of any of its obligations under the Agreement or any other agreement between the Parties which are incapable of remedy;
- 14.2.2 the other Party fails to remedy, where capable of remedy, any material breach of any of its obligations under the Agreement or any other agreement between the Parties after having been required in writing to remedy such breach within a period of no less than 30 days; or
- 14.2.3 the other Party gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts as they come due, or enters into any compromise or arrangement with any of its creditors (other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party), or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order or the other Party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.
- 14.3 Upon termination or expiry of the Agreement:

- 14.3.1 The Client shall procure that all Authorised Users shall, immediately cease accessing and using Fiecon Model Builder and the Documentation and cease using any username or password in relation to Fiecon Model Builder; and
- 14.3.2 each Party may at its option require the other Party to promptly delete the Confidential Information of the other Party from any computer disks, devices, tapes, memory, storage or other material in that other Party's possession or under that other Party's control or promptly deliver up or destroy materials and tangible items in that other Party's possession or under that other Party's control which contain any Confidential Information of the Party requiring the action (and this includes the Client procuring that Authorised Users do likewise). Each Party may require an officer or authorised representative of the other Party to provide a written declaration, signed by such officer or other authorised representative of such Party, stating that there has been full compliance with this clause 14.3.2.
- 14.4 Termination or expiry of the Agreement will be without prejudice to any other rights or remedies which the Parties may be entitled to under the Agreement or at law or in equity and will not affect any accrued rights or liabilities of either Party nor the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination or expiry.
- 15 Force majeure**
- 15.1 Fiecon shall have no Liability to the Client under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, any act of God, actions or omissions of third parties (including hackers, suppliers, couriers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, national emergencies, terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detentions of any competent authority, blockade, strikes or combinations or lock-out of workmen, epidemic, fire, explosion, storm, flood, drought, adverse weather conditions, loss at sea, earthquake, volcano, ash cloud, natural disaster, accident, collapse of building structures, failure of plant machinery or machinery or third party computers or third party hardware or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation, regardless of whether the circumstances in question could have been foreseen. Fiecon shall inform the Client of such an event and its expected duration.
- 16 Non-solicitation**
- 16.1 In order to protect the legitimate business interests of Fiecon, the Client covenants with Fiecon that it shall not (and shall procure that no member of the Client's group shall) except with the prior written consent of Fiecon:
- 16.1.1 attempt to solicit or entice away; or
- 16.1.2 solicit or entice away,

from the employment or service of Fiecon the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of Fiecon.

16.2 The Client shall be bound by the covenant set out in clause 16.1 during the term of the Agreement, and for a period of 12 months after termination or expiry of the Agreement.

16.3 For the purposes of this clause 16, a "**Restricted Person**" shall mean any firm, company or person employed or engaged by during the term of the Agreement, who has been engaged in the provision of the Supported Access Services and/or the Additional Services (if applicable) or the management of the Agreement either as principal, agent, employee, independent contractor or in any other form of employment or engagement.

17 **Dispute Resolution**

17.1 The Parties will attempt in good faith promptly to resolve disputes or claims arising out of or in relation to the Agreement following this clause 17.

17.2 The Parties shall use their best endeavours to negotiate in good faith and settle amicably any dispute or claim that may arise out of or relate to the Agreement (or its construction, validity or termination) (a **Dispute**). For this purpose, a Dispute shall include a failure to agree any matter which in accordance with any provision of the Agreement is to be agreed between the Parties (except where such provision expressly provides to the contrary). If a Dispute cannot be settled through negotiations by appropriate representatives of each of the Parties having authority to settle the matter, either Party may give to the other a notice (a **Dispute Notice**). Within seven days of the Dispute Notice being given, the Parties shall each refer the Dispute to their senior representatives nominated by a director or senior executive of each Party, who shall meet in order to attempt to resolve the Dispute.

17.3 If the Dispute is not settled by agreement in writing between the Parties within 21 days of the Dispute Notice, then the Dispute will be referred to an expert for Expert Determination, who shall be deemed to act as expert and not as arbitrator.

18 **Variation**

18.1 No variation of the Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

19 **Waiver**

19.1 No failure or delay by a Party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20 **Rights and remedies**

20.1 Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21 Severance

- 21.1 If any provision or part-provision of the Agreement 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 the Agreement.
- 21.2 If any provision or part-provision of the Agreement is deemed deleted under clause 21.1, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

22 Entire agreement

- 22.1 The Agreement 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.
- 22.2 The terms of the Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by the Client (including any terms in the Client's invoices, documents or otherwise). These Terms and Conditions apply to all use of Fiecon Model Builder and the Documentation.
- 22.3 Each Party acknowledges that in entering into the Agreement 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 Agreement.
- 22.4 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.
- 22.5 Nothing in this clause shall limit or exclude any liability for fraud.

23 Assignment

- 23.1 Subject to any assignee (in the case of an assignment) confirming in writing to be bound by the provisions of the Agreement, Fiecon may assign, transfer, novate or sub-contract its rights, liabilities or obligations under the Agreement either in whole or in part to any other person, firm or company. Fiecon shall promptly give notice to the Client of any such assignment.
- 23.2 The Client shall not (and shall not purport to) assign, sub-license, transfer, novate, charge or otherwise encumber, create any trust over or deal in any manner with the Agreement or any of its rights, liabilities or obligations under the Agreement without the prior written consent of Fiecon (such consent not to be unreasonably withheld or delayed).

24 No partnership or agency

- 24.1 Nothing in the Agreement is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

25 **Third Party rights**

25.1 The Agreement does not confer any rights on any person or party (other than the Parties to the Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

26 **Notices**

26.1 Any notice required or authorised to be given under the Agreement shall be in writing and served by personal delivery or (if being served within the UK) by recorded delivery or by overnight commercially recognisable courier addressed to the relevant Party at its address stated in the Order Form or at such other address as is notified by the relevant Party to the other Party for this purpose from time to time or at the address of the relevant Party last known to the other Party.

26.2 Any notice shall be deemed to have been received:

26.2.1 if delivered by hand, on signature of a delivery receipt, or if delivery is not in UK Business Hours, at 9am on the first Business Day following delivery; or

26.2.2 if given by recorded delivery or overnight commercially recognisable courier, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

27 **Governing law and Jurisdiction**

27.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. All dealings, correspondence and contacts between the Parties shall be made or conducted in the English language. In respect of any disputes:

27.1.1 If the Client is domiciled in the United Kingdom or European Union, the exclusive forum for settling any disputes which may arise out of or in connection with this Agreement shall be the English courts.

27.1.2 If the Client is not domiciled in the United Kingdom or European Union, any dispute which may arise out of or in connection with this Agreement shall be exclusively referred to and finally resolved by arbitration under the LCIA Rules. Those Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.

Last updated September 2019