



## General Terms & Conditions - version Two (2023)

These General Terms & Conditions of Xebia apply to the Services Xebia performs and all agreements Xebia enters into with its Client and apply to any specific Service as specified in the SoW(s).

Xebia and Client may each be referred to as a "Party" or collectively as the "Parties".

### 1. Definitions

In these General Terms & Conditions, the following definitions are applicable:

For the purpose of this Section,

"Affiliate" is defined as those persons or entities located in various countries throughout the world which directly, or indirectly, individually or in combination, Control, are Controlled by, or are under common Control with Xebia's or the Client's ultimate parent company.

"Agreement" means these Terms together with each applicable SoW, which will each represent a separate and entire agreement between Xebia (or Xebia's Affiliate) and the Client (or Client's Affiliate) regarding the subject matter hereof.

"Control" means ownership of more than 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.

"Client" means the organisation or company with whom the Agreement is entered into.

"Confidential Information" means any information related to the Services disclosed by the Client to Xebia and by Xebia to the Client, respectively, either directly or indirectly. Confidential Information may include, by way of example but without limitation, products, specifications, formulae, equipment, formulas, models, employee interviews, records, quality monitoring schemes/programs, training materials, business strategies, customer lists, know-how, drawings, pricing information, inventions, ideas, personal data and other information, or its potential use, that is owned by or in possession of the Client and Xebia, respectively.

"Effective Date" means (a) in case these Terms are signed by both the Parties, the date on which these Terms are last signed in writing/electronically; and (b) in case these Terms are incorporated by way of a hyperlink into or enclosed to a SoW signed by both the Parties, the Effective Date as set forth in the SoW.

"Expenses" will have the meaning as specified in the Expenses Section of these Terms.

"Fees" means the charges for Services exclusive of taxes as further specified in the applicable SoW.

"Intellectual Property Rights" or "IPR" means all rights in and related to brands, logos, trademarks, trade names, service marks, (internet) domain names, models and designs, (technical) know-how, innovations, discoveries, compositions, artwork, combinations, techniques, technical developments, information (whether or not protectable under copyright laws of any jurisdiction), patents, copyrights (including all rights relating to software) and including updates and upgrades of copyrighted materials, rights relating to databases, semiconductor topographies, and moral rights, as well as all other industrial and intellectual rights, in any case independent from whether or not they have been registered and with the inclusion of registration applications as well as all equivalent rights or means of protection (e.g. trade secrets) leading to a similar result anywhere in the world.

"Materials" means all materials owned by Xebia and/or its Affiliates delivered, licensed or developed, to be delivered or otherwise made available by Xebia to the Client under the Agreement, such as but not limited to: accelerators, tools, enhancements, software, source code, object code, interfaces, concepts and methods, websites, applications, data files, databases, information, hardware, training materials, testing materials, analyses, designs, documentation, reports and any updates, upgrades, and improvements and innovations therein.

"New IPR" means all IPR - other than Xebia Existing IPR - resulting from the Services.

"Services" means all services Xebia performs including without limitation information technology professional, outsourcing, and consultancy services in general as set forth in a SoW.

"Subcontractor" means either an Affiliate of Xebia, or an independent contractor, respectively, which is qualified to perform the applicable Services as contemplated by the Agreement, and has been contracted by Xebia accordingly, as evidenced by an agreement in writing.

"SoW" means a statement of work or other similar agreement(s) specifying the applicable Services and which incorporate these Terms by way of reference.

"Term" means the term as specified in the SoW.

"Terms" means these General Terms & Conditions for Services.

"Xebia" means the entity specified as such in a SoW and/or the entity as mentioned above (where applicable).

"Xebia IPR" means both Xebia Existing IPR and New IPR, excluding any third party IPR owned by Xebia's suppliers or licensors.

"Xebia Existing IPR" means all IPR existing and vested in Xebia, its licensors and/or suppliers prior to the moment of provision of the Services for which the Intellectual Property rights are used (and whether or not incorporated or embedded in the (elements of the) Materials), but excluding any New IP Rights.

### 2. Considerations

The provisions of these Terms shall be implemented by Xebia and Client, and/or their respective Affiliates entering into SoWs, modified as may be necessary. When an Affiliate of Client or Xebia executes a SoW under the Terms, all references to "Client" or "Xebia" in these Terms will refer to the Client's or Xebia's respective Affiliate who is a party to the applicable SoW.

When Affiliates of Xebia are providing the Services directly to the Client or a Client's Affiliate under a SoW, the terms and conditions of the Agreement (including limitations of responsibilities and/or liabilities) shall extend to all such current and future Affiliates of Xebia. Both Parties agree that (i) each Party or its Affiliate is a separate and distinct legal entity; and (ii) each Party or its Affiliate shall be solely responsible for its actions (or omissions) hereunder.

The termination of these Terms will not terminate the application of these Terms for purposes of then existing SoW(s) between Xebia (and/or its Affiliates) and Client (and/or its Affiliates). Any and all claims in respect of a SoW against Xebia or its Affiliates shall only lie against the respective entity being a party to the respective SoW i.e. either Xebia or its respective



Affiliate. Other general terms and conditions are hereby expressly rejected.

A SoW is effective only if both Parties have accepted and signed the SoW. Commitments from or agreements with Xebia's personnel or third parties engaged by Client for a specific SoW are only enforceable when Xebia has confirmed such commitments and/or agreements in writing by its duly authorized representative.

Each Party may propose changes to these Terms from time to time owing to change in circumstances and business practices. Party proposing a change will inform the other Party thereof by e-mail. In such case, Parties will in good faith enter into discussion to explore the possibility of incorporating the essence of the changes in the form and manner acceptable to both Parties. If the Parties agree on the changes, these changes will take effect when Parties recorded them in writing by way of an amendment duly signed by the Parties.

If any part of this Agreement is held to be unenforceable or waived, in whole or in part, such holding will not affect the validity of the other parts of this Agreement.

These Terms supersede any and all prior oral and written quotations, communications, agreements and understandings of Parties and shall apply in preference to and supersede any and all terms and conditions of any order placed by the Client and any other terms and conditions submitted by the Client. Failure by Xebia to object to terms and conditions set by the Client shall, in no event be construed as an acceptance of any terms and conditions of the Client. Neither Xebia's commencement of performance nor Xebia's delivery of Services shall be deemed or constituted as acceptance of any of Client's terms and conditions. Any communication or conduct of the Client which confirms an agreement for the provision of Services by Xebia, as well as acceptance by the Client of any provision of Services from Xebia shall constitute an unqualified acceptance by the Client of these Terms.

### 3. Fees

Fees shall be agreed between the Parties in respective SoWs. Unless agreed otherwise in a SoW:

1. When Parties agree on any change(s) to the scope of work and any extra work over and above what is agreed in a SoW, the same shall be charged extra at least at Xebia's then prevailing rates for such Services as may be notified by Xebia. If the Client doesn't object within a 5 workdays period, the then prevailing rates will take effect.

2. All Fees shall be non-refundable.

3. Any extra costs arising from or related to any unreasonable delays in the completion of the Services stemming from the failure of the Client to duly make available to Xebia the requested information and documentation, shall be fully borne by the Client. Xebia will exercise commercially reasonable efforts in good faith to minimize such extra costs.

4. Client shall pay all taxes, duties and other charges assessed by government authorities in connection with the provision of Services under the Agreement.

### 4. Performance

Xebia has a commercially reasonable efforts obligation to deliver the Services and/or Materials and where appropriate, in accordance with generally accepted industry standards. Only when Xebia is expected to deliver a certain result as part of the Services, the same must be agreed and described with sufficient determinability in an applicable SoW.

The Client will provide Xebia and its employees with access to all locations, systems, environments, Client personnel, hardware, and software as necessary to properly perform the Services.

During performance of the Services, the Parties will continue to provide

each other with information, data, material, content, and/or documentation that may reasonably affect the duration, quality, price and/or scope of the Services.

The Parties acknowledge that success of the Services to be carried out by Xebia depends on proper and timely mutual cooperation between the Parties involved. Client shall always provide all reasonable cooperation, data or information necessary for Xebia to enable the proper execution of the Services in a timely manner in order to enable the proper execution of the Services. Client guarantees the accuracy and completeness of the data, information, designs and specifications provided by it to Xebia. Prior to the execution of Services, Client shall have provided Xebia with all necessary information.

The Client hereby accepts that the time schedule allocated for the performance of the Services may be subject to change in case of amendment to the Services and/or the Services to be provided thereunder after conclusion of the Services.

Where applicable, the Client guarantees that Xebia's employees deployed at Client's premises shall at all times work under safe conditions, in accordance with the relevant occupational health and safety regulations and gender based workplace regulations as well as environmental rules, and Client shall indemnify Xebia against all losses, expenses or damages arising from or relating to this guarantee by the Client.

### 5. Intellectual Property Rights

5.1. It is understood that Xebia and/or its suppliers and/or licensors shall own all of the Xebia IPR, including those subsisting in or arising in connection with the Services and/or Materials. Client is granted the license to use the Materials as specified in Section 5.4. Client shall have no rights in Xebia IPR other than those specifically granted under the Agreement and the Client at no point of time can claim any other rights with regard to the Xebia IPR either by way of compensation, royalty or otherwise in any form or manner, unless and to the extent specifically agreed otherwise, in writing in the Agreement.

5.2. In case of Professional Services (as defined in the applicable SoW), Xebia undertakes to transfer New IPR subsisting in or arising in connection with (elements of the) Materials, to the Client. Such undertaking may only be explicitly effected in writing in the SoW by clearly identifying New IPR and transfer shall always be subject to Client's payment in full of the applicable Fees and any other costs or expenses, taxes or charges due by Client to Xebia. Such New IPR are transferred "AS IS" and without express or implied warranties of any kind.

5.3. Any rights, title or interest in or relating to any Xebia Existing IPR and any third party IPR shall never be transferred and the Agreement shall never be deemed or construed to transfer ownership in whole or in part of any such Xebia Existing IPR and/or third party IPR and this shall be irrespective of the Xebia Existing IPR and/or the third party IPR being incorporated or embedded in the (elements of the) Materials.

5.4. Upon payment in time by the Client of the agreed Fees, Xebia grants the Client for the term of the Agreement (unless a different term has been agreed upon in writing in the Agreement) a non-exclusive, non-transferable, non-pledgeable and non-sublicensable license to use the Materials under the conditions laid down in the Agreement. The license to use is limited to use solely for Client's internal business purposes and not for any other use, including without limitation for any (re)sale or any other commercial exploitation, except prior and explicit written consent of Xebia.

5.5. Software shall only be licensed in machine-readable form, unless specifically agreed otherwise in the Agreement.

5.6. The Client acknowledges that the products, software and Services delivered by Xebia to Client (whether or not incorporated or embedded in the Materials), may contain (elements of) third party products, software and/or services, including open source software, freeware and output created by means of artificial intelligence (tooling).



The Client further acknowledges and agrees that (a) the third party products, services and/or software may be subject to specific (license) terms of the respective author or licensor, and (b) it hereby accepts the terms of such third party (software license) terms. Xebia will indicate in the Agreement if such third party's products, services and/or software are included in the products, Services and/or software delivered by Xebia and will inform Client about such third party license terms. The terms and conditions of these third parties shall prevail over the Agreement, in so far it concerns these third-party products, software or services.

5.7. Xebia is permitted to take technical measures to protect the Materials which the Client is granted access to (partially or in full), in the context of an agreed upon restriction in the content or the duration of the right to use these objects. The Client may not remove or circumvent these technical measures or have these removed or circumvented.

5.8. To Xebia's best knowledge and belief Xebia IPR does not infringe any third-party IPR. If a third-party claims that the Materials infringe a third-party Intellectual Property Right, Client must promptly notify Xebia thereof in writing, and in any event not later than 10 days of the Client becoming aware of such claim. Xebia will try to resolve such claim and indemnify Client from such third-party claims, provided: (a) the claim is based on an alleged, direct infringement by the Materials of an IPR which that third party can enforce in the country where Materials are delivered to the Client, and b) that Client gives Xebia (i) prompt written notice of such claim, (ii) authority to control and direct the defense and all related settlement negotiations, of such claim, and (iii) provides assistance to such claim as Xebia may reasonably request, in connection with such defense or settlement. To that purpose the Client must grant Xebia the required powers-of-attorney and provide Xebia with any assistance it may require.

5.9. Upon the occurrence of a claim mentioned in Section 5.8, or in the event that Xebia believes that such a claim is likely, Xebia may, at its sole option and expense (a) procure for Client the right to continue using the affected Materials; (b) replace or modify the affected Materials with a functionally equivalent alternative so that it does not infringe; or, if (a) and (b) are not commercially feasible, (c) terminate the relevant Agreement for convenience by giving notice of termination, take back the affected Materials and reimburse Client for pro-rated Fees paid by the Client that is directly attributable to the affected Materials and period.

5.10. Xebia shall have no obligation or liability to the extent that the alleged infringement arises from (1) the integration, operation or use of the Materials with products, information, materials, software, technologies, business methods or processes and the like not furnished by Xebia, (2) modifications to the Materials not made by Xebia, (3) failure to use updates or upgrades to the software components of Materials, or (4) use of the Materials other than in accordance with the documentation or other specifications provided by Xebia.

5.11. THESE PROVISIONS ABOVE CONSTITUTE THE ENTIRE LIABILITY OF XEBIA, AND CLIENT'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY THIRD-PARTY CLAIMS OF ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF XEBIA IPR.

5.12. Client may not use the Materials in an unlawful manner, including but not limited to, for infringement of IPR of any person, violation of applicable laws, transmitting infringing, threatening, offensive, libelous, or otherwise unlawful material, or to store or transmit malicious code.

5.13. Client guarantees that no rights of third parties prevent provision to Xebia of any equipment, software, material meant for websites and/or data files and/or databases and/or tools, applications, hardware, analyses, designs, documentation, reports and/or any other materials and/or designs and the like ("Client Materials") that are made available to Xebia for the performance of Services and delivery of the Materials and Client guarantees that it has obtained of will obtain any required license or consent with respect to any means Xebia may need. In case of any claim by a third party which is based on an alleged infringement of any right of that third party by any of the means that Client Materials have been made available by Client to Xebia for the

performance of the Services, Client will try to resolve such claim and indemnify Xebia from such third-party claims, provided: (a) the claim is based on an alleged, direct infringement by Client Materials of a right which that third party can enforce in the country where Client Materials are delivered to Xebia, and b) that Xebia gives the Client (i) prompt written notice of such claim, (ii) authority to control and direct the defense and all related settlement negotiations, of such claim, and (iii) provides assistance to such claim as Client may reasonably request, in connection with such defense or settlement. To that purpose Xebia must grant Client the required powers-of-attorney and provide Client with any assistance it may require.

5.14. Notwithstanding the foregoing, indemnifying Party shall not settle any third-party claim against indemnified Party unless such settlement completely and forever releases indemnified Party with respect thereto or unless indemnified Party provides its prior written consent to such settlement. In any action for which indemnifying Party provides defense on behalf of indemnified Party, indemnified Party may participate in such defense at its own expense by counsel of its choice.

5.15. To the extent (elements of the) Materials contain Xebia's or third party's or Client's Confidential Information as mentioned in Section 1 of these Terms, it shall be subject to Section 9 of these Terms. The Client is not entitled to remove or alter any reference to the confidential nature or notices of the relevant IPR, such as copyrights and trademarks and the like.

## 6. Employees

Unless stated otherwise by law, Xebia's employees always remain under the management and supervision of Xebia.

Xebia will ensure that Xebia employees appointed to perform the Services possess the qualifications, knowledge and expertise needed to properly perform the Services. Each Party will be, and act as, an independent contractor and not as an agent or partner of, or joint venture with, the other Party for any purpose related to the Services or any other work. Neither party is authorized to contract for or bind the other Party in any manner whatsoever.

During performance of the Services, Xebia may, where applicable and in good faith consultation with the Client, replace Xebia employees with equally or better qualified employees.

Xebia may engage and/or subcontract certain (part of the) Services (to be) provided under these Terms by one or more third parties having specific expertise as elected by it for which Xebia will notify the Client (such notification is not required in relation to provision of the Services by Subcontractors as defined above). However, Xebia will remain responsible and liable towards the Client for the performance of those Subcontractors.

Xebia shall have these Subcontractors enter into confidentiality obligations similar to the confidentiality obligations applicable to Xebia. If requested by the Client, Xebia shall identify these Subcontractors, specifying in each case their specific expertise.

## 7. Expenses

Unless specified otherwise in a SoW Client will reimburse Xebia for travel, lodging, living expenses and expenses on additional software/license/subscription, hardware (such as but not limited to a mobile phone), etc. incurred by Xebia in the performance of the Services ("Expenses"), provided such Expenses are mutually agreed between the Parties from time to time.

If Expenses are incurred by Xebia in emergency situations to mitigate any risks or damage where it is not practical to obtain Client's prior approval, Client shall reimburse such Expenses invoiced by Xebia for which mutual agreement between the Parties will not apply. All adjustments (if any) agreed by both Parties shall reflect in a separate invoice issued by Xebia.



## 8. Payment

Unless agreed otherwise in the applicable SoW, Client shall pay invoiced amounts within 30 days of receiving Xebia's invoice. Any delay in payment shall attract a late payment fee of 2% per month on the overdue amounts. Payments shall be made to such bank account and through such payment mode including without limitation electronic or wire transfer as may be agreed in the SoW or specified by Xebia from time to time on the invoice.

If any sum payable under the Agreement is not paid by the due date, then (without prejudice to Xebia's other rights and remedies) Xebia may, by giving written notice, suspend the Services until the date on which payment is received, except in the case of a genuine dispute being handled under Clause 16 and 17 in connection with the unpaid sum. When Services have been suspended and payment is received from Client, Xebia and Client shall subsequently agree a date to recommence the Services.

## 9. Confidentiality

The Parties agree to maintain each other's Confidential Information secret and treat it in the same manner as it treats its own Confidential Information (but always with a reasonable degree of care). The Parties will not share each other's Confidential Information with third parties without the prior written consent of the other Party. The Parties may agree on additional confidentiality terms if desired. Each Party can disclose the information to its Affiliates and with that of their employees, Subcontractors and/or auditors on a need to know and confidential basis and in response to a notice or order from a legally competent authority.

Notwithstanding the foregoing, the provisions of this Section shall not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the receiving Party; (iii) is rightfully communicated to the receiving Party by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the receiving Party's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the receiving Party; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information of the other Party to the limited extent required (a) to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order or law shall first have given written notice to the other Party and shall have made a reasonable effort, at the request and expense of the other Party, to obtain a protective order; or (b) to establish the Party's rights under these Terms, including to make such court filings as it may be required to do. Xebia remains entitled to use the knowledge, expertise and know how it gained from performance of the Services and apply it with third parties.

## 10. Warranties

EXCEPT AS EXPRESSLY WARRANTED IN THESE TERMS, MATERIALS, THE SERVICES, AND ANY OTHER MATERIAL, SOFTWARE, AND/OR DATA PROVIDED BY XEBIA, ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND XEBIA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. XEBIA DOES NOT WARRANT THAT MATERIALS OR SERVICES AND ANY OTHER MATERIAL, SOFTWARE, AND/OR DATA PROVIDED UNDER THESE TERMS WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

## 11. Liability

EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY WHATSOEVER, IS LIMITED TO THE LOWER OF (A) DIRECT DAMAGES UP TO A MAXIMUM OF EUR 100,000 WHERE XEBIA ENTITY IS DOMICILED IN EUROPE AND USD 100,000 WHERE XEBIA ENTITY IS DOMICILED OUTSIDE EUROPE OR (B) THE AMOUNT PAID OR PAYABLE BY CLIENT FOR THE RESPECTIVE SOW DURING

A 6 (SIX) MONTHS' PERIOD IMMEDIATELY PRECEDING THE DATE WHEN SUCH CLAIM AROSE. NO PARTY IS LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES SUCH AS BUT NOT LIMITED TO, PUNITIVE DAMAGES, LOSS OF BUSINESS, COSTS OF DELAY, FAILURE OF DELIVERY, LOST SAVINGS, LOST REVENUES, LOST PROFITS, OR LOSS OF GOODWILL, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OF ANY KIND.

THE LIMITATIONS OF LIABILITY SET OUT HEREIN DO NOT APPLY FOR PAYMENT OBLIGATIONS OF CLIENT AND IN CASE OF A PARTY'S INTENTIONAL OR GROSS NEGLIGENCE OR ANY OTHER TERMS HEREOF FOR WHICH LIABILITY CANNOT BE LIMITED UNDER APPLICABLE LAW.

## 12. Personal Data

If performing the Services requires Xebia to process personal data, the following will apply:

- a) Client is considered the 'controller'.
- b) Xebia is considered the 'processor' and will only process such personal data in accordance with Client's (written) instructions.
- c) Xebia shall maintain adequate technical and organizational measures to protect such personal data against loss or wrongful processing in accordance with Xebia's Privacy Policy (<https://xebia.com/privacy-statement/>) which will apply to such personal data.
- d) In the context of these Terms, Xebia as well as the Client shall, at their own respective expense, ensure that they comply with and assist the other Party to comply with the requirements of all applicable legislations as well as regulatory requirements in force from time to time relating to the use of personal data, including but not limited to:
  - (i) the General Data Protection Regulation ((EU) 2016/679);
  - (ii) all applicable privacy laws existing within the jurisdiction of the Republic of India;
  - (iii) all applicable privacy laws existing within the jurisdiction of the United States of America, and/or;
  - (iv) all other applicable international, regional, federal or national data protection laws, regulations and regulatory guidance, in force from time to time and applicable to Xebia, Client, the supply of the Services and Xebia's use thereof ("Data Protection Laws"), as applicable.This Section 12 is in addition to, and does not reduce, remove or replace, a Party's obligations arising from such requirements.
- e) In the event personal data in the meaning of the Data Protection Laws are being processed or transferred, this will always be governed by the Data Protection Laws and the parties will in such case agree on the details of processing in the SoW and/or agree to enter into a separate data processing agreement and as the case may be a transfer agreement based on the EU model clauses, which shall be deemed to form part of the Agreement.

## 13. Term and Termination

Unless agreed otherwise, these Terms shall apply per the Effective Date and shall apply to a SoW for the Term specified therein and shall continue in respect of a SoW until such SoW is terminated or expires. The Parties may agree in writing to a renewal of the SoW. An automatic renewal of a SoW does not apply.

In case these Terms are signed between the Parties on a standalone basis in writing/electronically, these Terms shall remain in effect for the purpose of other current and prospective SoWs, unless specifically terminated in accordance with the conditions applicable to termination of the Agreement.

Unless agreed otherwise in the SoW, either Party may terminate the Agreement or a SoW for convenience without liability, taking into account a notice period of 30 days. In this case, Client will compensate Xebia for Fees and Expenses in relation to the Services actually performed up to the time of termination.

A Party may terminate the Agreement immediately with written notice if the other Party (a) breaches its obligations under the Agreement and fails



to substantially cure such breach within 30 days of receiving notice thereto; (b) requests or is granted a moratorium of payment; and/or (c) if a petition for bankruptcy or insolvency is filed and not withdrawn within 30 days, or a Party is being declared bankrupt or insolvent.

Upon termination the removal or destruction of either Party's Confidential Information will be done in accordance with requesting Party's instructions and upon that Party's expense (if any), subject to retention requirements necessary to substantiate compliance under the Agreement and applicable law.

The termination or expiration of a SoW shall not impact the validity of any other SoW. Termination or expiration of the Agreement does not release the Parties from those obligations which, by their nature, are intended to remain in effect, including provisions with respect to payment of Fees, intellectual property, payment of taxes, liabilities, applicable law & jurisdiction and dispute resolution which will remain in effect in perpetuity, while terms related to personal data, confidentiality, and indemnity will remain in effect for a period of 5 (five) years after the expiry or earlier termination of the Agreement, unless a longer duration is specified under applicable law in which case such longer duration shall apply.

#### 14. Non-Solicitation

During the term of the Agreement and for a term of twelve (12) months after its expiration or termination, neither Party shall (directly or indirectly) solicit, hire, or entice away (or seek or attempt to solicit, hire or entice away) from the employment of the other Party and/or any of its Affiliates any personnel employed by the other Party in the provision of the Services (or who has been so employed in the preceding six (6) months by the other Party) with whom that Party comes into contact as a result of the relationship created by the Agreement without the prior written consent of the other Party.

Parties acknowledges that the prohibition and restriction contained in this Section are reasonable in the circumstances and necessary to protect the business of Parties.

#### 15. Force Majeure

Force Majeure ("**Force Majeure**") means an event preventing a Party performing any of its obligations stemming from these Terms, which is beyond their control and occurring without their fault or negligence, which could not have been reasonably foreseen or prevented by reasonable precautions, such as, but not limited to, acts of God or of the public enemy; civil war; insurrections or riots; acts of war; acts of government; acts of terrorism; fires; floods; storms; explosions; earthquakes or accidents; unusually severe weather; strikes or labour troubles causing cessation, slowdown or interruption of work; failures or fluctuations in electrical power, heat, light, air conditioning or telecommunication equipment; abrupt inflation; epidemic or pandemic or quarantine restrictions; lockdowns, curfews or movement prohibitions; cyber security attacks like DDoS (distributed denial of service), advance persistent threat (APT), and ransomware; and other similar events, or any event referred to above preventing a Subcontractor from performing its obligations under a subcontract.

Upon the occurrence of a Force Majeure, the Parties and/or their Subcontractors shall be excused from their obligations and their rights hereunder shall be stalled during the continuation of such Force Majeure and the time for completing that portion of their rights and obligations which have been delayed shall be extended by a period equivalent to the delay so caused.

If the period of Force Majeure continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 30 days, either Party may terminate this Agreement upon mutual written consent, not to be unreasonably withheld.

Nothing contained in this Section shall apply to Parties' payment obligations hereunder.

#### 16. Applicable law & Jurisdiction

These Terms and all other agreements in relation thereto between the Parties are governed by the laws of the state or country set forth below, based upon Xebia's entity location without giving effect to its conflict of law principles and excluding the U.N. Convention on Contracts for the International Sale of Goods. Any suit or proceeding relating to these Terms shall be brought exclusively before the court/tribunal/arbitrator of competent jurisdiction in the applicable jurisdiction set forth below, unless different law system and/or jurisdiction is agreed in an SoW.

**For all Xebia based entities in Europe and the European Union**, Dutch law. All disputes arising from or relating to these Terms or any agreement in relation thereto between the Parties will be brought before the competent court of the city of Amsterdam, The Netherlands.

**For all Xebia based entities in United Kingdom and Poland**, English law. All disputes arising from or relating to these Terms or any agreement in relation thereto between the Parties will be brought before the competent court of the city of London, England.

**For all Xebia entities based in countries specified in the applicable Schedule (if any) included in these Terms, terms specified in such Schedule will apply.**<sup>7</sup>

**For Xebia USA Inc. and Rest of World**, Delaware law. All disputes arising from or relating to these Terms or any agreement between the Parties will be brought before the competent court of the city of Delaware, United States.

Any disputes arising in countries not recognizing or not executing court verdicts from the jurisdiction Xebia sets forth in this Applicable Law & Jurisdiction Section shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("**ICC**"). Such disputes or claims shall be settled by simplified arbitration arranged by ICC in accordance with the rules of arbitration procedure adopted by ICC and in force at the time when such proceedings are commenced. Arbitration shall be conducted before the ICC office in the jurisdiction where the contracting Xebia entity executing the SoW is registered before a sole arbitrator appointed in accordance with the ICC Rules. Arbitral proceedings shall be conducted in English. The award rendered thereon by the arbitrator shall be final and binding on the Parties thereto and judgement thereon shall be confidential and may be entered in any court of competent jurisdiction. Nothing in this Section shall prevent either Party from applying to a court of competent jurisdiction for equitable or injunctive relief. Client may only resolve disputes with Xebia on an individual basis and Client agrees not to bring or participate in any class, consolidated, or representative action against Xebia or any of Xebia's employees or Affiliates. The Parties hereby expressly waive the right to have any dispute or other matters arising here from adjudicated by way of jury trial.

#### 17. Dispute Resolution

Promptly following a written notice of dispute from one Party to the other regarding a dispute that arises pursuant to these Terms, management of both Parties will meet with each other and endeavor in good faith to resolve the dispute. If management cannot resolve the dispute, informally within a reasonable time not exceeding 2 months from the date the informal process is requested by notice in writing, the dispute will be escalated to executive management for a further good faith effort at resolving the dispute. If the Parties fail to settle the dispute via the escalation procedure described above, the Parties will investigate the possibilities of submitting the dispute to mediation before starting litigation. Any litigation will be as set forth in the Section 'Applicable Law & Jurisdiction' of these Terms.

#### 18. Agreement

Where these Terms are included by way of a hyperlink in or enclosed with executed SoWs, these Terms do not require any physical, electronic, or digital signature and inclusion of these Terms by way of hyperlink in or as an enclosure to executed SoWs shall be sufficient for these Terms to be effective between the Parties. If the Parties otherwise mutually agree, these Terms can be signed in wet-ink or e-signatures.



In case of any conflict between the Terms, and SoWs, the order of precedence shall be (a) SoW, and (b) Terms, wherein (a) will prevail over (b).

#### **19. Assignment**

Neither Party shall assign the Agreement or any part thereof without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Xebia may, however, without such consent, assign its rights and/or obligations under these Terms to an Affiliate or successor pursuant to a merger, demerger, spin-off, amalgamation, or similar corporate restructuring exercise. No assignment shall relieve any Party of responsibility for the performance of any accrued obligation which such Party has under the Agreement. Any assignment shall be contingent upon the assignee assuming in writing all of the obligations of its assignor under this Agreement.

#### **20. Survival**

These Terms by their nature are intended to survive termination or expiration of the Agreement such as but not limited to terms related to payment of Fees, committed usage, indemnity, liability shall so survive.

#### **21. Severability**

In case any provision in these Terms shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining terms shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality, or unenforceability. The Parties shall attempt to give maximum effect to such provision and replace such provision with an alternative provision having similar effect.

#### **22. Counterpart Signatures**

These Terms may be executed in several counterparts, including by way of a hyperlink in SoW signed by both the Parties, or enclosed to SoW signed by both the Parties, or in wet-ink or via e-signatures, each of which shall be deemed an original for all purposes, including judicial proof of the Terms hereof, and all of which together shall constitute and be deemed one and the same Agreement.

#### **23. Entire Agreement and amendments**

These Terms and the instruments referenced herein contain the entire understanding of the Parties with respect to the matters covered except

as specifically set forth herein, neither Xebia nor the Client makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of these Terms may be waived or amended other than by an instrument in writing signed by both Parties.

It is understood by the Parties that the Agreement is not exclusive. Nothing in the Agreement shall prevent either Party from providing to/availing from, a third party or otherwise dealing in the same or similar or competitive Services or Materials as those provided to the Client pursuant to the Agreement (irrespective of their similarity to the Materials provided hereunder). Parties agree that, subject to the terms of the Agreement, each Party shall have the right to retain a copy of Materials for its records.

#### **24. Attorney fees and expenses**

In a dispute arising out of or related to these Terms, the prevailing Party shall have the right to collect from the other Party its reasonable attorney fees and costs and necessary expenditures.

#### **25. Waiver**

The waiver of a breach of any provision of these Terms will not operate or be interpreted as a waiver of any other or subsequent breach.

#### **26. Further Assurance**

Each Party agrees to perform such further acts and execute such further documents as are necessary to effectuate the purpose hereof and/or as may be reasonably required by other Party to comply with applicable law.

#### **27. Disclaimer**

When providing the Services and creating the Materials, Xebia shall be entitled to use generative artificial intelligence tooling and is allowed to incorporate input from the Client with the output generated by such tooling in Materials. To the extent Xebia incorporates output generated by artificial intelligence ("AI") tooling in a Material, Xebia will take commercially reasonable precautions to ensure that such output and the Material in which it is incorporated does not infringe any third party's (Intellectual Property) rights. Provided that Xebia has taken such reasonable precautions, i) Xebia will not be liable for any damages incurred by Client as a result of the AI-generated portion of a Material infringing a third party (Intellectual Property) right and ii) the indemnity set forth in these Terms shall not apply to third party claims in respect of Materials which contain AI-generated output (unless the claim relates only to the non-AI generated portion of a Material).

## Schedule

This Schedule shall be deemed to be an integral part of Section 16 of the Terms.

**For all Xebia entities based in countries of Asia-Pacific and Middle-East regions specified below.** All disputes arising from or relating to these Terms or any agreement in relation thereto between the Parties will subject to such governing laws and be finally settled by institutional arbitration of such arbitration centre in accordance with rules thereof as are tabled below. The Parties agree that, where available, any arbitration commenced pursuant to this Section shall be conducted in accordance with the Expedited procedure set out in respective arbitration rules. The arbitral proceedings shall be conducted in the respective city of Venue and Seat in English language. A sole arbitrator appointed with mutual consent of the Parties shall preside over the arbitration proceedings, failing which a sole arbitrator shall be appointed in accordance with applicable rules of arbitration. Award passed by the arbitrator shall be final and binding upon the Parties.

<b>Country of Xebia entity</b>	<b>Institution</b>	<b>Governing Law</b>	<b>Venue and Seat</b>
India	Delhi International Arbitration Centre	Indian	New Delhi, India
Vietnam	Vietnam International Arbitration Centre	Vietnamese	Ho Chi Minh City, Vietnam
Singapore	Singapore International Arbitration Centre	Singapore	Singapore
Australia	Australian Centre for International Commercial Arbitration	Victoria, Australia	Melbourne, Victoria, Australia
UAE	Dubai International Arbitration Centre	Dubai, UAE	Dubai, UAE
Kingdom of Saudi Arabia	Saudi Centre for Commercial Arbitration	Saudi Arabia	Riyadh, Saudi Arabia