

## GENERAL TERMS AND CONDITIONS TIE KINETIX 2022

### 1 GENERAL

#### 1.1 General

- 1.1.1 **Applicability:** These General Terms and Conditions shall apply to all proposals, offers, negotiations, legal relationships and agreements (hereinafter referred to as “**Agreement**”) with a customer (herein referred to as “**Customer**”), under which TIE Kinetix Holding BV, or one of its subsidiaries (including but not limited to TIE Nederland BV, TIE Kinetix DACH GmbH, Performance Analytics GmbH, TIE Kinetix SAS and TIE Commerce, Inc.) anywhere in the world (hereinafter referred to as “**TIE Kinetix**”), provides a license for Software, Software as a Service, the use of the FLOW Partner Automation Platform (hereinafter referred to as “**FLOW Platform**”) or any other services, licenses, consultancy, project management, maintenance or support of any nature (hereinafter referred to as “**Services**” or “**SaaS Services**”), to the Customer irrespective of whether these are provided pursuant to a written or oral agreement between the Customer and the respective TIE Kinetix organization as mentioned in the proposal, offer or otherwise.
- 1.1.2 **Validity term proposals:** A proposal submitted by TIE Kinetix shall be valid for a period of thirty (30) days unless stated otherwise in the proposal or offer.
- 1.1.3 **Changes to the Agreement:** changes, derogations and additions to these General Terms and Conditions and/or the Agreement(s) concluded between TIE Kinetix and the Customer shall only be valid if expressly agreed and recorded in writing in the Agreement. If, and to the extent that, there are conflicts between the Agreement(s) and the General Terms and Conditions, the provisions of the Agreement(s) shall prevail unless explicitly agreed otherwise in writing.
- 1.1.4 **Purchase conditions:** Any purchase conditions or other conditions of the Customer shall not apply, even not in case these purchase conditions or other conditions are referred to in a purchase order or otherwise.
- 1.1.5 **New versions of the General Terms and Conditions:** At all times TIE Kinetix has the right to make reasonable amendments and/or additions to the General Terms and Conditions, for example subject to changes in the delivery portfolio, legislation or market conditions. The Customer will be informed of the amendments and/or additions via the regular communication with the Customer and/or via a notification on the invoice and/or otherwise. The amended and/or supplemented General Terms and Conditions shall apply as from 30 days following the communication, unless a motivated objection in writing has been lodged against one or more amendments and/or additions, within 30 days of the communication. In such case TIE Kinetix and the Customer shall discuss in good faith a solution.
- 1.1.6 **Invalid provision:** In the event that one or more of the provisions of these General Terms and Conditions and/or the Agreement(s) concluded between TIE Kinetix and the Customer are void, or will be void, all other provisions of the General Terms and Conditions and/or the Agreement(s) shall remain in full effect and force. TIE Kinetix and the Customer shall consult on the provisions that are void or will be void in order to negotiate in good faith replacement provisions. TIE Kinetix and the Customer will aim to maintain the goal and the purpose of the provisions which are void or will be void, to the extent possible.
- 1.1.7 **Applicable law:** The law of the country / state where the delivering TIE Kinetix subsidiary resides, shall apply to all Agreement(s) concluded between TIE Kinetix and the Customer. The applicability of the Vienna Sales Convention is expressly excluded. Where relevant, these General Terms and Conditions can contain specific clauses that only apply for the country as indicated in this clause.
- 1.1.8 **Dispute resolution:** Any dispute about, and/or as a result of, (an) Agreement(s) concluded between TIE Kinetix and the Customer shall be discussed in good faith on management level. In case no

solution can be reached, all disputes shall exclusively be submitted to the competent Court in the region / state where the respective TIE Kinetix subsidiary resides, unless the Parties agree upon Alternative Dispute Resolution or mediation in writing.

- 1.1.9 **Start of the Agreement:** TIE Kinetix shall only be obliged to execute the Agreement(s) concluded between TIE Kinetix and the Customer after a duly signed or approved copy of a proposal submitted by TIE Kinetix has been received by TIE Kinetix. In case the deliveries have started on request of the Customer, while the Customer has not (yet) returned the signed or approved proposal or Agreement to TIE Kinetix, the Customer accepts the contents of the proposal / Agreement submitted by TIE Kinetix.
- 1.1.10 **Webshop:** In case an offer or proposal of TIE Kinetix is made via the internet (for example via a webshop), the mandatory local regulations with respect to purchasing via internet apply, under the condition that the Customer can lawfully invoke this.
- 1.1.11 **Export Compliance:** All deliveries of TIE Kinetix are subject to the export laws and regulations of the United States. Customer represents that it is not named on any U.S. government denied-party or restricted-party list during the execution of the Agreement. Customer shall not require, encourage or solicit the attendance of any events or other use of deliveries by individuals in a U.S. embargoed country or region or use the Services in violation of any U.S. export law or regulation.
- 1.1.12 **Anti-Corruption:** Customer affirms that it has not and agrees that it will not, in connection with the purchase of and the use of the deliveries contemplated by the relevant Agreement or in connection with any other business transactions involving TIE Kinetix, make or promise to make any payment or transfer anything of value, directly or indirectly: (i) to any governmental official or employee (including employees of government corporations or instrumentalities); (ii) to any officer, director or employee of TIE Kinetix; or (iii) to any other person or entity, if such payment or transfer would violate the laws of the country or jurisdiction in which Customer or TIE Kinetix operates or conducts commerce, or the laws of the United States, including but not limited to the U.S. Foreign Corrupt Practice Act (“FCPA”), 15 U.S.C. § 78m, 78dd-1, 78dd-2, and 78dd-3.
- #### 1.2 Term, renewal and termination
- 1.2.1 **Term SaaS Services:** The Agreement(s) for SaaS Services and the Agreement(s) for Maintenance and Support for (On Premise) Software, will be concluded for the term as agreed upon in the Agreement (hereinafter referred to as “**Initial Term**”), proposal or otherwise, failing which an Initial Term of sixty (60) months shall apply, starting at the 1<sup>st</sup> day or the month after signature date of the Agreement. In case an explicit start date is mentioned in the Agreement, this will be the start date of the Initial Term.
- 1.2.2 **Term License (On Premise):** In case a one-off license fee for (On Premise) Software is agreed upon, the license will be valid for an indefinite term. In case a periodic payment of fees is agreed upon for use of the Software, the Initial Term and renewal of the license, is subject to article 1.2.1.
- 1.2.3 **Renewal:** After the Initial Term and each year thereafter, the Agreement will be renewed automatically and therefore tacitly extended for a period of twelve (12) months, unless the Agreement is terminated in accordance with article 1.2.4.
- 1.2.4 **Termination for convenience:** Notice of termination of an Agreement may be given by both TIE Kinetix and the Customer and must be by authorized signed letter via e-mail to the regular business contact. The notice of termination must be received by the other Party no later than ninety (90) calendar days prior to the renewal date of the Agreement. Notwithstanding the clauses related to termination for reason, it is not possible to terminate the Agreement for convenience prior to the end of the Initial Term or prior to the renewal date, unless a) the termination notice is received well in time, or b) the Customer pays the remainder of the fees, to be calculated as the Agreement was not terminated early

for convenience.

Partner(s), or due to other reasons attributable to Customer.

**1.2.5 Termination for reason:** Unless stated otherwise by mandatory local law, each of the Parties may terminate the Agreement with immediate effect in whole or in part, if the other Party a) has been granted a moratorium, a bankruptcy petition (including but not limited to chapter 7 and chapter 11 protection regulations in the US) has been filed for the other Party or b) if the other Party's company has been dissolved or terminated or c) if the other Party, even after a detailed, written demand stating a reasonable period, still fails to fulfill its obligation.

**1.2.6 No revoke or repayment:** TIE Kinetix shall not be obliged to refund amounts received or to pay any damages as a result of dissolution or termination of the Agreement, termination of the License or termination of Maintenance and Support. If the Customer at the moment of termination already received work and/or Services, this work and/or Services and the related payment obligation cannot be revoked unless the Customer proves that TIE Kinetix is in default with respect to the work and/or Services. Amounts invoiced by TIE Kinetix before termination relating to (SaaS) Services already performed or delivered by TIE Kinetix under the Agreement(s), will remain payable with due regard for the provisions of the previous sentence and will be directly due and payable on the moment of termination.

**1.2.7 End of rights after termination:** After each termination of the Agreement, Parties cannot derive any rights from the Agreement (including the right to make use of Software, the (SaaS) Services, the FLOW Platform and / or right to receive Maintenance and Support services) , without prejudice to the continuation of the obligations of TIE Kinetix and the Customer that by their nature are intended to continue after termination of the Agreement, for instance, but not limited to pay the agreed fees for Services correctly performed, confidentiality, intellectual property, liability and indemnification. After termination of the Agreement or termination of the license for the Software, the Customer shall destroy or return to TIE Kinetix the Software including, if any, all (back-up) copies and, if applicable, provide TIE Kinetix with a confirmation of destruction.

### 1.3 Transfer

**1.3.1** The Agreement(s) concluded between TIE Kinetix and the Customer and the rights and/or obligations arising thereof cannot be transferred and/or sold by the Customer to a third party or in any manner be made available to a third party without the prior written approval of TIE Kinetix.

**1.3.2** TIE Kinetix reserves the right to transfer any Agreement(s) concluded between TIE Kinetix and the Customer and/or the rights and/or obligations thereof in whole or in part to a TIE Kinetix group company.

### 1.4 Cooperation by the Customer; (duty of) disclosure

**1.4.1 Information and cooperation:** The execution of the Agreement is based upon and subject to the information, specifications, data, IT & communication facilities and cooperation as provided by the Customer and/or its (ERP) supplier(s) and/or its customers or partners, hereinafter referred to as "**Business Partner(s)**". The Customer ensures the accuracy, completeness and timely availability of such information, specifications, data, IT & communication facilities and cooperation. In case of incorrectness, incompleteness, or lack of cooperation, parties shall discuss how to solve the issue in the best and practical manner, in order to enable TIE Kinetix to execute the Agreement and adapt the planning if necessary.

**1.4.2 Setup:** Unless stated otherwise in the Agreement, the fees for setup and fees for subscription of the FLOW Platform and availability of the (SaaS) Services will be due in advance by Customer, as from the 1st day of the month following the Signature Date of this Agreement and each month thereafter, even in case the Customer does not use the FLOW Platform or (SaaS) Services (in full), for example as a result of lack of cooperation by its (project)employees, or Business

**1.4.3 Compliance with legal and statutory obligations, house & safety rules of Customer:** Parties will comply with all legal and statutory obligations, including tax, data protection, security and privacy. In the event that (an) employee(s) or a contractor of TIE Kinetix performs work at the location of the Customer, the Customer shall, free of charge, provide facilities which are reasonably required by the TIE Kinetix employee or contractor, such as working space with computer, data and telecommunication facilities complying with all current (legal) requirements and regulations regarding working conditions. The Customer shall inform the employees or contractors of TIE Kinetix in a timely manner to be aware of the house (safety) rules and security rules that apply within its organization. If for the performance of the Agreement(s) telecommunication or internet facilities are used, the Customer shall be responsible for the proper choice of the facilities required and the timely availability of these facilities with the exception of the facilities in direct use and under direct control of TIE Kinetix. The Customer shall indemnify TIE Kinetix for any claims from third parties, including employees or contractors of TIE Kinetix that have incurred damage as result of acts or omissions of the Customer or unsafe conditions in the Customer's organization.

### 1.5 Nondisclosure of confidential data

**1.5.1** Each of the Parties guarantee that all information and data received from the other Party, of which the Party is aware or (reasonably) should be aware that the information or data is confidential (hereinafter referred to as "**Confidential Information**"), remains confidential unless there is a statutory duty to disclose such Confidential Information. The Party receiving the Confidential Information shall only use the Confidential Information for the purpose it was provided for within the context of the Agreement. Each of the Parties agree to undertake and maintain the confidentiality of all Confidential Information relating to each other's organization, each other's Business Partners, the files, the software and the hardware of which the Parties become aware while performing work for each other or for customers of the Customer. Data or information will in any case be considered Confidential Information if one of the parties designates the data as confidential.

### 1.6 No agency / partnership / joint venture

**1.6.1** Nothing contained in the Agreement will be deemed to be construed by the Parties or any third party as creating a partnership, an agency relationship or joint venture between the Parties or any of their respective employees, representatives or agents.

### 1.7 Taking over personnel

**1.7.1** Each of the Parties shall during the term of the Agreement(s) and one (1) year after termination thereof, not hire or otherwise have directly or indirectly work for them, employees or (sub)contractors from the other Party, unless prior written consent of the other Party was provided. The above-mentioned consent may have conditions to be agreed upon in writing prior to the hire of the employee or (sub)contractor. The Parties ensure that all affiliated organizations will comply with this clause.

### 1.8 Liability and indemnity

**1.8.1 Notice of default:** TIE Kinetix's liability for a culpable failure to fulfill the obligations arising from the Agreement(s) concluded between TIE Kinetix and the Customer will only arise if the Customer gives notice of default to TIE Kinetix in writing immediately after the moment the Customer discovered the damage or reasonably could have discovered the damage, stating a reasonable period to cure the failure to fulfill the obligations (of at least 30 days) and TIE Kinetix even after the expiry of this period still culpably fails to fulfill its obligations arising from the Agreement(s). The notice of default must state a description as detailed as possible of the failure to allow TIE Kinetix to respond adequately.

**1.8.2 Liability for direct damage:** THE TOTAL LIABILITY OF TIE KINETIX FOR

DAMAGES IRRESPECTIVE OF THE GROUND FOR LEGAL ACTION FOR DAMAGES WOULD BE BASED ON, AS A RESULT OF, OR RELATED TO DELIVERIES FROM TIE KINETIX OR CULPABLE FAILURE IN THE PERFORMANCE OF THE AGREEMENT(S) CONCLUDED BETWEEN TIE KINETIX AND THE CUSTOMER, IS LIMITED TO PAYMENT OF THE DIRECT DAMAGE WITH A MAXIMUM EQUAL TO THE TOTAL OF THE COMPENSATIONS (EXCLUDING VAT) PAID BY THE CUSTOMER FOR THE PERIOD OF 12 (TWELVE) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT THAT IS THE BASIS FOR THE FIRST CLAIM.

of payment obligations or lack of cooperation by itself, its affiliates or its Business Partners.

1.8.3 **Limitation of liability** TIE KINETIX'S TOTAL LIABILITY WITH RESPECT TO DIRECT DAMAGE FOR WHATEVER REASON WILL NEVER EXCEED € 500,000 IN EUROPE AND \$ 500,000 IN THE USA. TIE KINETIX'S TOTAL LIABILITY FOR DAMAGE ARISING OUT OF DEATH OR BODILY INJURY, CONTRARY TO THE FOREGOING SENTENCE, WILL NEVER EXCEED € 1,250,000,- IN EUROPE AND \$ 1,250,000,- IN THE USA.

1.9.2 If a situation of force majeure has lasted for over ninety (90) calendar days, each of the parties has the right to terminate in writing the Agreement. A force majeure situation begins the moment the Party invoking force majeure informs the other Party hereof.

1.9.3 TIE Kinetix reserves the right, if a force majeure situation occurs, to claim payment for work already performed before the force majeure situation became known.

1.8.4 **Direct Damage:** Direct damage will only be taken to mean, the reasonable costs incurred by the Customer to determine the cause and the extent of the damage, the reasonable costs incurred by the Customer to prevent or limit the damage, the reasonable costs the Customer would have to incur to have TIE Kinetix's performance meet with the Agreement(s) and the reasonable costs incurred by the Customer for keeping the old system operational longer out of necessity. These damages, however, will not be paid if the relevant Agreement will be or was terminated by the Customer.

## 2 CONTENT, PRIVACY, DATA SECURITY & INTEROPERABILITY

### 2.1 Responsibility for Content / Privacy

1.8.5 **Exclusion of liability for indirect damage:** TIE Kinetix's liability for indirect or consequential damage (including but not limited to special damage, consequential loss, lost profit, missed savings, loss of business, less goodwill, loss due to business interruption, damage as a result of corruption, destruction or loss of data or documents, capital costs, costs related to late payment or late invoicing, cost of replacement goods, facilities or services, damage as a result of claims from Business Partners or other Third Parties, and all forms of damage other than referred to in the previous clause (definition of direct damages) for any reason whatsoever and irrespective of the ground the claim for damages is based on, even when TIE Kinetix has been advised about the possibility of such damage, is excluded.

2.1.1 **Responsibility for Content:** The Customer assumes full responsibility with respect to the data (including but not limited to Personal Data as defined in the relevant privacy regulations), information and related material that Customer sends, receives or processes via the Software, the (SaaS) Services and/or the FLOW Platform (hereinafter referred to as "**Content**"). Customer ensures compliance with all applicable legal and tax obligations, while using the Software, the (SaaS) Services and/or the FLOW Platform. Customer shall indemnify TIE Kinetix against any action by a third party in any way related to compliance with Customer's legal, tax and privacy related obligations and /or the Content.

1.8.6 TIE Kinetix does not accept any liability for damage of any nature arisen by license for software of third parties ("**Third Party Software**"), delivered via TIE Kinetix to the Customer.

2.1.2 **Privacy:** The Customer is aware that the Software, the Services and / or the FLOW Platform are intended for processing of business related data only. Although the Content can contain limited Personal Data (such as contact information), TIE Kinetix advises the Customer to exclude Personal Data from the Content when reasonably possible. In case Personal Data is registered by Customer, its employees, contractors or Business Partners (for example upon 1<sup>st</sup> registration at the FLOW platform), the Customer ensures that all relevant individuals have provided consent for such registration and processing of their Personal Data. The Customer ensures the Content will not contain any sensitive Personal Data.

1.8.7 **Indemnification:** Customer shall indemnify, defend and hold harmless TIE Kinetix and its affiliates, and its and their employees, directors, officers, (sub) contractors, shareholders, agents, successors and authorized assigns from and against any all damages, fines, losses, actions, claims, lawsuits, mediations, and arbitrations arising from or in connection with any third party claim (including but not limited to a claim of a Business Partner) arising as a result of: (a) Customer's breach of its confidentiality or obligations hereunder, (b) Customer's infringement or violation of any third party rights, (c) Customer's unlawful, fraudulent or misleading activities on the Interoperability Business Network, such as the Peppol-, EESPA-, GS1-Network or other networks (hereinafter referred to as **Interoperability Business Network**) or (d) any Content or other information included in the data or information exchanged by Customer or its Business Partners via the Interoperability Business Network, the FLOW Platform, the Software or Services provided by TIE Kinetix or (e) any late or incorrect transmission of data through the via the Interoperability Business Network, the FLOW Platform, the Software or Services.

2.1.3 **Responsible / Processor:** For purpose of the applicable Personal Data Protection Laws and/or other legislation in the areas of privacy and/or protection of personal data when the Customer uses the SaaS Services and / or FLOW Platform, TIE Kinetix will be considered to be the processor and the Customer to be the party responsible. For Customers residing in Europe, processing will be located in Europe.

2.1.4 **Access of Content:** TIE Kinetix will only access the Content in order to execute the Agreement. TIE Kinetix cannot be held liable and will not guarantee, and is not responsible for the Content, correctness, completeness of any data and information that is exchanged or processed via the Software, the (SaaS) Services and/or the FLOW Platform.

2.1.5 **Compliance with (Privacy) laws and Regulations:** The Customer shall not directly or indirectly use the Software, the (SaaS) Services and/or the FLOW Platform with and/or for violation of any law or regulation that applies to the Customer. The Customer also shall not, directly or indirectly or enable third parties, to use the Software, the (SaaS) Services and/or the FLOW Platform with and/or for the sale of goods forbidden by the government, forbidden goods forming a risk for the safety of an individual, goods inciting or instructing third parties to violate any law or regulation, goods inciting hatred, violence, racism, pedophilia (including but not limited to child porn) or zoophilia or financially facilitating crime, goods that are considered obscene and goods infringing intellectual property rights of third parties. Additionally, the Customer shall not use the Software, the (SaaS) Services and/or the FLOW Platform for the distribution of spam or facilitating spam or enable third parties to do so.

## 1.9 Force majeure

### 2.2 Data Security

1.9.1 Both Parties are not held to fulfill any obligation when prevented from complying by force majeure. Force majeure includes inter alia force majeure of suppliers of TIE Kinetix, government measures, including measures subject to a pandemic, power failure, internet failure, failure of computer networks or telecommunication facilities, war, lock-in, strike, general transportation problems and other circumstances outside the control of the party that invokes force majeure. The Customer cannot invoke force majeure in case

2.2.1 **ISO certification:** During the term of the Agreement, TIE Kinetix

undertakes to maintain ISO/IEC27001:2017, ISO 27017 and ISO 27018 certifications or an updated or reasonable alternative if applicable. Upon written request from the Customer, TIE Kinetix undertakes to share reasonable documentation to confirm such certifications.

2.2.2 **Usernames, passwords and other information:** Parties shall always ensure that usernames, passwords and other information to access the Software, the (SaaS) Services and / or the FLOW Platform, are kept strictly confidential. TIE Kinetix has no responsibility for (i) unauthorized access to data or Content as a result of Customer making usernames and passwords available to an unauthorized party or (ii) Customer's inability to adhere to the information security requirements that apply to use of the FLOW Platform and the (SaaS) Services. Should TIE Kinetix be subject to any data breach affecting or otherwise involving the (SaaS) Services, it will notify Customer in writing as soon as reasonably practicable, and no later than as required by applicable laws on data protection.

2.2.3 **Subcontracted hosting facilities:** The (SaaS) Services and the FLOW Platform are hosted on servers located at subcontracted hosting companies and the Customer is granted access to the (SaaS) services and / or the FLOW Platform via the internet. TIE Kinetix has taken reasonable measures to ensure that the (SaaS) services and the FLOW Platform are protected against unauthorized access but cannot, subject to its obligations hereunder, guarantee that the (SaaS) services and / or the FLOW Platform will never become subject to intrusion or intrusion attempts. When sharing sensitive information under the Agreement, including but not limited to Interoperability Business Network certificate data, Customer shall at all times ensure that such information is shared in a secure manner using state of the art encryption technology and in accordance with TIE Kinetix' reasonable supplementary instructions as the case may be.

### 2.3 Interoperability, Four-Corner-Model

2.3.1 **Responsibilities in accordance with Four-Corner model:** In case for the exchange of electronic business documents via the Software, the (SaaS) Services and / or FLOW Platform, multiple providers (hereinafter referred to as "Service Providers") are involved, the Four Corner-model applies. The Four-Corner model is a basic principle that is applied and maintained by the independent Interoperability Business Network organization(s) and / or other organizations that facilitate interoperability for this purpose. The Four-Corner model describes the technical implementation of file transmission within the Interoperability Business Network if applicable. Corner 1 is the sender of the business document, while Corner 4 is the recipient. The Customer is considered as sending party (Corner 1) or receiving party (Corner 4) and TIE Kinetix is considered as Service Provider and operates in Corner 2 and / or Corner 3 amongst other third party Service Providers delivering (SaaS) services to its customers. For every automated exchange of data, each sending and receiving party (Corner 1 and Corner 4) and its Service Providers (Corner 2 and Corner 3) involved will be responsible for its own (automated) receipt, control, validation, processing and transmission of the electronic business documents and data and related support to these services.

2.3.2 **Use of Interoperability Business Network(s):** It is expressly understood by the Parties that Customer's ability to transmit data via the Interoperability Business Network, via the Software, the (SaaS) Services or FLOW Platform shall not relieve Customer of its independent responsibility to comply with applicable laws and regulations, including but not limited to such mandatory requirements for end user's imposed and published by the Interoperability Business Network authorities, other network authorities or provided by TIE Kinetix. Reference is made to Customer's obligations related to security, privacy, confidentiality and compliancy with laws and regulations.

2.3.3 When the limitations referred to in this section are exceeded or when in another manner the Software, the (SaaS) Services and / or the FLOW Platform is improperly used, when TIE Kinetix on good

grounds has doubts about the acts of the Customer or when the Customer does not pay the fee(s) in time, TIE Kinetix has the right to terminate the Agreement with immediate effect or to suspend the user right, in whole or in part, for the duration of the exceeding, the violation, the improper use, the doubt and/or the failure of and to demand securities to prevent (further) exceeding, violation, improper use and/or failure. The Customer knows that violation of the user limitation(s) not only constitutes an attributable breach in the performance of the Agreement but may also constitute an infringement of TIE Kinetix's intellectual property rights. If so requested, the Customer shall immediately fully cooperate with an inspection or audit conducted by, or on behalf of, TIE Kinetix into the compliance with the agreed user limitations in the Agreement and / or these General Terms and Conditions.

## 3 INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

3.1.1 All intellectual and industrial property rights to the software, websites, data files, hardware or other material like analyses, designs, documentation, reports, offers, and the preparatory material thereof developed for the Customer or made available to the Customer, are owned by TIE Kinetix, its licensors or suppliers. If TIE Kinetix, the Customer or third parties implement functional improvements or other changes to deliveries from TIE Kinetix, the intellectual property rights, industrial property rights and other rights to the goods improved or changed will remain with TIE Kinetix. The Customer will receive the user rights expressly granted in the Agreement only.

3.1.2 For every assignment performed by TIE Kinetix, no matter where or when, irrespective whether it regards the delivery of a service, an existing product or a product still to be developed, all arising intellectual property rights, industrial property rights and other rights will remain with TIE Kinetix, its licensors or its suppliers.

3.1.3 The Customer is not allowed to remove or change any notice regarding the confidential nature or relevant copyrights, trademarks or other intellectual property rights or industrial property rights from the Software, (SaaS) Services, FLOW Platform, websites, data files or materials or have a third party perform these activities.

3.1.4 TIE Kinetix is allowed to take (technical) measures to protect the Software, the (SaaS) Services and the FLOW Platform, or in view of the agreed limitations regarding the compliance with the Agreement and / or the duration of the right to use the Software, the (SaaS) services, or the FLOW Platform. The Customer is not allowed to remove or evade such a technical measure or to have it removed or evaded. If because of the protective measures the Customer is not able to make a back-up copy of the medium the Software is delivered on, TIE Kinetix will supply a back-up copy when requested. This does not apply for the (SaaS) Services and the FLOW Platform.

3.1.5 **Indemnification by TIE Kinetix:** TIE Kinetix shall indemnify the Customer against any action by a third party insofar as based on the allegation that the Software, the (SaaS) Services and / or the FLOW Platform developed by TIE Kinetix infringes an intellectual property right from a third party on the basis of a copyright applying in the country the TIE Kinetix subsidiary resides in, provided that the Customer informs TIE Kinetix immediately in writing about the existence and the contents of the claim and the Customer leaves the handling of the case, including negotiations on a settlement, entirely to TIE Kinetix. For this purpose the Customer will provide TIE Kinetix with the required powers of attorney, information and cooperation to enable TIE Kinetix to put up a defense against this action, when necessary in the name of the Customer. If such an action is commenced or in TIE Kinetix's opinion may be commenced, TIE Kinetix reserves the right to take all legally permitted measures, including acquiring the licensing or sublicensing rights to the Software, the (SaaS) Services and / or the FLOW Platform or to change this to such an extent that it no longer infringes a copyright that applies in the country the TIE Kinetix subsidiary resides in.

3.1.6 TIE Kinetix will not indemnify the Customer against an action to the extent that this action is based on the allegation that the Third Party



Software delivered to the Customer infringes an intellectual property right, industrial property right or another right applying in the country the TIE Kinetix subsidiary resides in or elsewhere or in case the Customer has made a change to the software or had a change made to the Software, the (SaaS) Services and / or the FLOW Platform.

- 3.1.7 **Intellectual property of Content:** All intellectual property or entitlement for each use of Content, data, information and related material that Customer or its Business Partner sends, receives or processes via the Software, the (SaaS) Services and/or the FLOW Platform, remains at all times at Customer or its Business Partner. Customer guarantees that the Content does not infringe any right of a third party or is in violation of any legal obligation, commandment or prohibition.
- 3.1.8 The responsibility for the Content and related material (including but not limited to personal data) processed with the use of deliveries from TIE Kinetix, rests exclusively with the Customer. The Customer indemnifies TIE Kinetix against any legal action from third parties, of whatever nature, related to the Content.
- 3.1.9 Customer hereby grants TIE Kinetix the right to use Customer Information or Content to the extent needed by TIE Kinetix to execute the Agreement. TIE Kinetix has no obligation, and expressly disclaims any obligation to review Customer information or Content, nor is TIE Kinetix responsible for compliance with Customer's legal and tax obligations or the correctness and completeness of the Content. In case the Content is in violation with applicable law or in case a public authority requests so, TIE Kinetix is entitled to suspend the execution of the Agreement and/or remove the Content. In such case, TIE Kinetix will contact the Customer in order to determine the appropriate steps to be executed.
- 3.1.10 The Parties acknowledge, that the security of transmissions over the internet cannot be guaranteed. TIE Kinetix will not be responsible for Customer's access to the internet, for any interception or interruption of any communications through the internet, or for changes to or losses of Content or data through the internet.

#### 4 DELIVERIES VIA PARTNERS OF TIE KINETIX / SOFTWARE OF THIRD PARTIES

- 4.1.1 **Deliveries via Partners of TIE Kinetix:** In case a Partner of TIE Kinetix (hereinafter referred to as "Partner") includes the Software, the (SaaS) Services or use of the FLOW Platform in its own deliveries or provides it in connection with its own software or (SaaS) services, the contract for such deliveries will be concluded between such Partner and the Customer, while TIE Kinetix will act sub-contractor of the Partner. The Customer will pay the agreed upon fees and tariffs to the Partner. The use of the Software, the (SaaS) Services and / or the use of the FLOW Platform by Customer will always be subject to these 2022 TIE Kinetix General Terms & Conditions and also subject to receipt by TIE Kinetix of all agreed upon fees and tariffs.
- 4.1.2 In case the contract between the Partner and the Customer as referred to in the previous article terminates for any reason, while Customer continues or wishes to continue the use of the Software, the (SaaS) Services or use of the FLOW Platform, TIE Kinetix and the Customer will enter into a new Agreement subject to these 2022 TIE Kinetix General Terms & Conditions and standard Service Level Agreement and subject to the then applicable standard tariffs and fees of TIE Kinetix unless agreed otherwise. TIE Kinetix will, in consultation with the Customer, send the Customer a proposal (Agreement) and the parties will discuss in good faith the terms in order to enable the Customer to continue the use of the Software, the (SaaS) Services and / or use of the FLOW Platform, starting as from the moment the contract between the Customer and the Partner will terminate or was terminated.
- 4.1.3 **Third Party Software:** In case TIE Kinetix delivers Third Party Software, the License Terms and Conditions of such Third Party will apply for the use of such software. TIE Kinetix will provide the Customer with a copy or web-location of these License Terms and Conditions prior to signature of the Agreement. If applicable the

Customer will sign a separate contract with such Third Party or – as the case may be – TIE Kinetix is entitled to sign such a contract on behalf of the Third Party.

- 4.1.4 TIE Kinetix carries no responsibility nor any liability in relation to the use or operation of software of a Partner or of Third Parties, nor provides any guarantee that the operation of the service or software of a Partner or Third Parties will be uninterrupted or free of failures or viruses, that the functions or performance of the service or software of a Partner or Third Parties will comply with the requirements of the Customer or that the service or software of a Partner or Third Parties is suitable for a particular purpose.
- 4.1.5 **Electronic Payment Services / Order-to-Cash:** Subject to availability of such deliveries, Customer may request TIE Kinetix to offer additional Electronic Payment Services related to Order-to-Cash procedures such as, but not limited to, incorporating a payment link in an e-invoice of Customer that will be processed via the (SaaS) Services or the FLOW Platform. For delivering such Electronic Payment Services TIE Kinetix co-operates with preferred Third Party suppliers or, as the case may be, with Third Party suppliers proposed by Customer. If Customer wishes to make use of such Electronic Payment Services, the Customer will enter into a separate contract with the respective Third Party for the delivery of such Electronic Payment Services. TIE Kinetix will never become a party to such contract between the Third Party and Customer nor be liable for any deliveries offered by the Third Party under such contract.
- 4.1.6 **Electronic Payment Services / Procure-to-Order Finance Services:** Subject to availability of such deliveries, Customer may request TIE Kinetix to offer additional Electronic Payment Services related to Customer's Procure-to-Order procedures such as, but not limited to, Supply Chain Finance, Dynamic Discounting and Single Invoice Finance. For delivering such Electronic Payment Services TIE Kinetix co-operates with preferred Third Party suppliers or, as the case may be, with Third Party suppliers proposed by Customer. If Customer wishes to make use of such Electronic Payment Services, the Customer will enter into a separate contract with the respective Third Party for the delivery of such Electronic Payment Services. TIE Kinetix will never become a party to such contract between the Third Party and Customer nor be liable for any deliveries offered by the Third Party under such contract.
- 4.1.7 The obligations of TIE Kinetix with respect to all Electronic Payment Services (included but not limited to Order-to-Cash and Procure-to-Order Services) will be subject to a separate co-operation agreement agreed upon between the Third Party and TIE Kinetix. At request of or commissioned by such Third Party, TIE Kinetix will facilitate the execution of Electronic Payment Services subject to the mandate received by TIE Kinetix under such co-operation agreement.

#### 5 INVOICING AND PAYMENT

##### 5.1 Invoices and payment term

- 5.1.1 **Invoices:** Invoices will be sent to the Customer in PDF format or electronically (E-Invoicing). Invoices will be paid by the Customer in accordance with the payment terms on the invoice. If payment by direct debit is prescribed, administrative costs can be charged if the Customer does not give a mandate. If there is no specific arrangement and/or payment date, the Customer shall pay the amounts due within thirty (30) days of the invoice date. The Customer does not have the right to setoff or to suspend payment.
- 5.1.2 **VAT sales tax and other levies:** All prices, tariffs and rates are exclusive of value added tax (VAT or sales tax) and other levies imposed, or to be imposed, by the government. The amounts due will be charged including value added tax or sales tax and including any other levies imposed, or to be imposed, by the government. The Customer shall make all payments in the currency as stated in the invoice.
- 5.1.3 **Dispatch costs and other costs:** All prices, tariffs and rates can be increased by any order costs, dispatch costs and costs of third

parties as stated in the Agreement. An increase can also be charged if activities for the Customer are performed outside TIE Kinetix's office. For activities performed outside TIE Kinetix's office, hourly wages, travel and waiting time allowances, travel costs and/or kilometer (in USA milage) allowances, hotel and subsistence expenses and any other costs related to such activities will be charged. The travel and waiting time allowance is 50% of the then current hourly wage, unless otherwise agreed. Additionally, an allowance of € 0.50 in Europe and \$ 0.50 in the USA will be charged for each kilometer (in USA mile) travelled, unless otherwise specified in the Agreement. The calculation of the travel and waiting time allowance, the travel costs and/or kilometer / milage allowances, is based on the distance between TIE Kinetix's office and the agreed location where the activities for the Customer have to be performed.

5.1.4 **Late payment:** If the Customer fails to pay the amounts due in time, the Customer is in default without further notice of default being required. In such case TIE Kinetix has the right: a) to suspend its activities and other obligations and b) the right for Customer to use the Software (including Third Party Software), the (SaaS) services or the FLOW Platform is suspended until payment has been made in full without prejudice to the obligation of the Customer to meet all its obligations. In such case the Customer shall also pay TIE Kinetix costs, both in and out of court, including all costs calculated by external experts, relating to the collection of all amounts the Customer has to pay TIE Kinetix. Extrajudicial collection costs are 15% of the amount due with a minimum of € 750,- in Europe and a minimum of \$ 750,- in the USA. In any event, on the amount payable by the Customer will be charged, as of the date on which the Customer is in default, a percentage equaling 3 times the statutory interest. The Customer shall also pay the costs incurred by TIE Kinetix of a failed Alternative Dispute Resolution if the Customer by judgment has been ordered to pay, in whole or in part, the outstanding amount.

## 5.2 Price changes

5.2.1 **Indexation:** TIE Kinetix has the right to change all prices and rates by a percentage equaling the price index figure per hour for commercial services including exceptional remunerations as published by the CBS [*Statistics Netherlands*] or similar index and agencies in the USA (CPI), France (Syntec) or Germany (CPI), in case of change of prices in these countries on the basis of 2020=100. Price changes and rate changes will be made once a year (generally at the anniversary date of the Agreement) and in exceptional circumstances more than once a year.

5.2.2 If TIE Kinetix increases the prices and / or rates by a percentage exceeding the percentage referred to in the previous article and the Customer does not agree with the price change and / or the rate change, the Customer has the right, within thirty (30) days after the start of the price change or the rate change, to terminate the relevant Agreement by registered letter at the date on which the change would take effect.

## 5.3 Additional work; actual costs, planning

5.3.1 **Additional work:** If TIE Kinetix, at the request, or with prior consent of the Customer, has performed work or has performed other activities outside the scope or the extent of the work and/or activities agreed upon (additional work), this work or these activities will be paid in accordance with the agreed rates. In case no rates are described in the Agreement, the TIE Kinetix's standard rates will apply.

5.3.2 **Change of time of completion:** The Customer accepts that additional work or activities may influence the agreed or expected time of completion of the deliveries or the Services and the mutual responsibilities of the Customer and TIE Kinetix. The fact that during the performance of the Agreement(s) there is (a need for) additional work, will not constitute a ground for the Customer to terminate, suspend, or rescind the relevant Agreement.

5.3.3 **Cost estimates:** All planning, assessments, cost estimates and

budgets provided by TIE Kinetix are only indicative unless TIE Kinetix has expressly stated otherwise in writing. The Customer cannot derive any rights or expectations from planning, assessments, cost estimates and budgets provided by TIE Kinetix. In the event that the Customer has informed TIE Kinetix of the budget available to the Customer, this shall not be considered to be a (fixed) price agreed between the Parties for the work and/or activities to be performed by TIE Kinetix. When possible and agreed in writing TIE Kinetix will inform the Customer when planning, assessment, cost estimate and /or budget threatens to be exceeded.

5.3.4 **Planning:** All planning and (delivery) periods referred to or agreed by TIE Kinetix shall be determined to the best of its knowledge, based on the data provided to TIE Kinetix when entering into the relevant Agreement. TIE Kinetix will make every reasonable effort to observe the agreed planning and (delivery) periods to the extent possible. It is the responsibility of the Customer to provide accurate and complete information and documentation and to ensure that all Business Partners cooperate in order to execute the Agreement. In case additional technical variants, additional or different processing, or other technical variations apply during the execution of the Agreement, TIE Kinetix is entitled to change the Agreement in consultation with the Customer, subject to re-quote and / or determine delay in deliveries in order to fulfill the new specifications or variants which were not defined or agreed upon in the scope of the original Agreement. Subject to these factors, planning and delivery periods are therefore not considered to be strict deadlines for deliveries. Exceeding a (delivery) period referred to or agreed upon shall not constitute a failure by TIE Kinetix.

## 6 SOFTWARE (LICENSE / ON PREMISE)

### 6.1 License to the software

6.1.1 The use of TIE Kinetix's Software (On Premise) is subject to the conditions as stated in the Agreement, these General Terms & Conditions and - as the case may be for certain Software - the "Click Wrap End User Terms", to be accepted at 1<sup>st</sup> use / installation of such Software. The license will take effect on the date of delivery of the Software, on condition that the Customer (also referred to as "Licensee") will make the agreed payments in time and in full.

6.1.2 The user rights to the Software including the related documentation granted by TIE Kinetix to the Customer are non-exclusive and non-transferrable. A license is provided on an "as is" basis. A license always relates to the object code of the Software only, the Licensee does not, in any event, acquire any right to the source code of the Software.

6.1.3 The license fees are payable in advance on the date of delivery of the Software, unless stated otherwise in the Agreement.

6.1.4 A license includes the right to install the relevant Software on one (1) computer or work system. To the extent that no other agreements have been made regarding this subject, the processing unit of the Licensee on which the software has been used first and the number of connections to the processing unit on the date of first use will be considered to be the processing unit and number of connections the user right has been granted for. In case of failure or replacement of the relevant processing unit, the Software can be used on another processing unit, provided the use of the Software will not be extended. The Licensee can obtain additional licenses for additional processing units.

6.1.5 The Licensee shall only let a third party install / host the Software with prior written permission from TIE Kinetix which shall not be withheld for unreasonable reason. Such third party may install / host the Software for the Licensee only and may not enable others to use the Software.

6.1.6 A license includes the right to upload and execute the relevant version of the Software. Any other or further right is expressly excluded. The Licensee is strictly forbidden, in any manner whatsoever, to copy, duplicate, change, modify, reverse engineer and/or decompile the Software or to have the Software, copied,

duplicated, changed, modified, reverse engineered and/or decompiled, unless expressly allowed pursuant to applicable Copyright Laws. The Licensee is allowed to use the Software subject to the limitations as described in the Agreement and these General Terms and Conditions.

- 6.1.7 The Licensee is allowed to make one (1) back-up copy of the medium (including the Software) on which the Software has been delivered, to the extent in accordance with Copyright Laws. The Licensee shall take over on the (medium of the) back-up copy all notices relating to intellectual copyrights and industrial copyrights. The Licensee is not allowed to set up a (virtual) back-up or test environment, unless an additional specific license has been purchased and granted for this purpose.
- 6.1.8 A license is limited as stated in the Agreement to a) the number of Business Partners and b) the number of documents processed in 1 calendar month. The Licensee can obtain additional licenses for additional Business Partners and / or additional documents to be processed.
- 6.1.9 A license is limited to using the Software for the Licensee's own business use only; companies affiliated with the Licensee cannot use the license unless expressly agreed otherwise in writing or stated in the Agreement. The Licensee is not allowed to sell, rent out, lease, sublicense, dispose of or grant restricted rights to the Software or the license or in any manner or for any purpose make the Software or the license available to third parties. The Licensee is forbidden from using the Software or the license in the context of data processing for third parties (time sharing or computer service) or to grant third parties access to the Software by means of an ASP model or a SaaS environment.
- 6.1.10 When the limitations referred to in this section are exceeded or when in another manner the Software is improperly used, the license will be terminated automatically at the moment the limitations are exceeded. The Licensee knows that violation of the user limitation(s) not only constitutes an attributable breach in the performance of the Agreement, but also an infringement of TIE Kinetix's intellectual property rights. The Licensee will cooperate with TIE Kinetix in order to provide information on the number of Business Partners and the number of documents processed. If so requested, the Licensee shall immediately fully cooperate with an inspection conducted by, or on behalf of, TIE Kinetix into the compliance with the agreed user limitations in these General Terms and Conditions and/or the Agreement.

## 6.2 Delivery of the Software

- 6.2.1 TIE Kinetix will deliver the Software to the Customer in accordance with the specifications set by TIE Kinetix and on the medium or via electronic distribution, determined by TIE Kinetix.

## 6.3 Guarantee on the Software

- 6.3.1 The Software is made available on an "as is" basis, therefore with all visible and invisible failures and defects and without any form of guarantee on the Software, either implicitly or explicitly. TIE Kinetix therefore does not provide any guarantees that the operation of the Software will be uninterrupted or free of failures or viruses, that the functions or performance of the Software will comply with the requirements of the Licensee or that the Software is suitable for a particular purpose or guarantees about the usefulness of the Software. Furthermore, TIE Kinetix is not liable for any damage caused by delays in the delivery or providing of the Software.

## 7 (SaaS) SERVICES

### 7.1 Software as a Service (SaaS) / FLOW Platform

- 7.1.1 **Start of (SaaS) Services:** The use of TIE Kinetix's Software as a Service (Services or (SaaS) Services) and the FLOW Platform or other portal and website hosted by TIE Kinetix is subject to the conditions as stated in the Agreement and these General Terms & Conditions. The Agreement for (SaaS) Services and the FLOW Platform takes effect at the first day of the month after the signing of the

Agreement by the Customer. The user's rights provided by TIE Kinetix to the Customer are non-exclusive and non-transferrable. All (SaaS) Services, the use of the FLOW Platform and other deliveries of TIE Kinetix will be delivered on a best effort basis. TIE Kinetix does not guarantee the suitability for a particular purpose or usability of the Software, the (SaaS) Services, the FLOW Platform, data and / or information provided by TIE Kinetix.

- 7.1.2 **SaaS fee and overspend:** Customer shall pay the SaaS fees as stated in the Agreement in advance every month unless stated otherwise in the Agreement. The SaaS fees are calculated as a fixed fee, subject to the maximum volume of data and/or documents and / or number of connected Business Partners as stated in the Agreement. The SaaS fees can also include a Platform fee as stated in the Agreement. After the end of each month, quarter or after the anniversary date of the Agreement (or an alternative period as agreed upon), TIE Kinetix will calculate the actual use of the Services and / or the FLOW Platform. In case more data or documents are processed, and / or additional Business Partners are added, TIE Kinetix is entitled to invoice the agreed upon overspend tariffs as stated in the Agreement. In case no overspend or maximum volume of data, documents or Business Partners are specified in the Agreement, the then applicable regular overspend tariffs and applicable maximum data, documents or Business Partners will apply.

- 7.1.3 **Structural overspend:** In case the maximum volume of data, documents and / or Business Partners as stated in the Agreement is exceeded on a structural basis (more than 3 quarters in a row), the Customer can request TIE Kinetix before the end of the 4<sup>th</sup> quarter to propose a SaaS fee that fits for the specific situation. In case a new SaaS fee is agreed upon, a new Initial Term equal to the original Initial Term of the Agreement will apply, unless agreed otherwise in writing.

- 7.1.4 **Limitation to use for Third Parties:** The use of the Services and / or the FLOW Platform is limited to use by the Customer and its Business Partners to run the Customer's business operations unless for the use by third parties (including, but not limited to, companies affiliated with the Customer) an additional specific user right has been granted for in the Agreement. The Customer is not allowed to sell, rent out, lease, license, dispose of or grant (restricted) rights to the Services or the FLOW Platform, or the access or identification codes of an authorized user or in any manner or for any purpose to make these available to third parties or to use these in the context of the processing of data for third parties (time sharing or computer service), without prior written permission from TIE Kinetix.

- 7.1.5 **Change of location:** TIE Kinetix reserves the right to change the location of the hosting or the server and change IP addresses, provided that for Customers resided in Europe, the processing and hosting of the Services and / or the FLOW Platform will remain executed in the European Union or any other location provided that compliance with the applicable privacy legislation is safeguarded.

- 7.1.6 **Transfer after termination:** After termination of the Agreement, TIE Kinetix will consult Customer on its request with respect to any necessary transfer activities to be performed by TIE Kinetix as the transfer and/or destruction of data, and the time span. All transfer activities will be calculated in accordance with the actual tariffs and fees and due by Customer in advance. If the Customer has not made a request as referred to in this article within one month of the termination of the Agreement, TIE Kinetix has the right to destroy the data, links, information and any other material of the Customer.

### 7.2 Guarantee on the (SaaS) Services

- 7.2.1 The (SaaS) Services and / or the FLOW Platform are made available on an "as is" basis, therefore with all visible and invisible failures and defects and without any form of guarantee on the Services and / or the FLOW Platform, either implicitly or explicitly. Therefore, TIE Kinetix does not provide any guarantees that the operation of the Services and / or the FLOW Platform will be uninterrupted or free of failures or viruses, that the functions or performance of the Services and / or the FLOW Platform will comply with the requirements of the Customer or that the Services and / or the FLOW Platform is

suitable for a particular purpose or guarantees about the usefulness of the Services and / or the FLOW Platform.

delays in providing maintenance and support.

7.2.2 **Availability:** TIE Kinetix seeks to provide maximum availability of the Services and / or the FLOW Platform but does not guarantee that the service will always be available to the Customer. Availability can be interrupted by various foreseeable and unforeseeable causes as failures, maintenance, system administration, security measures against network intrusions, installing updates and upgrades, changing the server location, availability of internet facilities, failure of services or cooperation of other Service Providers and external causes. If reasonably possible, TIE Kinetix will inform the Customer about such activities and TIE Kinetix will resume the operation of the Services and / or the FLOW Platform as soon as possible. TIE Kinetix will not be liable for any damage arising from the interruption or unavailability of the Services and / or the FLOW Platform.

## 8.2 Maintenance

8.2.1 **Maintenance:** TIE Kinetix's maintenance obligation consists of repairing repeatable defects in the Software, the SaaS Services and /or the FLOW Platform, and providing updates and upgrades as available. Maintenance does not include repair of the consequences of replacement or re-installation of Software or repair of Services as a result of user mistakes or improper use. If during maintenance is found that work already carried out on the basis of the preceding sentence is not included in the maintenance, TIE Kinetix has the right to charge the Customer the hours already spent in accordance with the present rates or to deduct the hours spent from a Hours Bundle. If the Software, the SaaS Services and /or the FLOW Platform has been changed by the Customer or used contrary to the applicable conditions and/or instructions or through failure of the Customer to install a specific update while this update fixes the failure, the maintenance obligation will be terminated and therefore TIE Kinetix will not have to carry out maintenance.

## 8 MAINTENANCE, SUPPORT AND CONSULTANCY

### 8.1 Maintenance and Support general

8.1.1 **Service Level Agreement:** TIE Kinetix provides maintenance and support with respect to the Software, the Services and / or the FLOW Platform subject to the terms as stated in these General Terms and Conditions and the Service Level Agreement as attached to the Agreement.

8.1.2 **Maintenance and support fee:** For the use of the (SaaS) Services and / or the FLOW Platform, the maintenance and support is included in the SaaS fees as described in the Agreement. Maintenance of On Premise Software will apply in case this is specified in the Agreement or a separate maintenance Agreement and is subject to payment of the maintenance fees as agreed upon. The maintenance fees for Software shall be paid annually in advance, unless agreed otherwise in writing.

8.1.3 **Start of maintenance and support:** The maintenance and support takes effect on the first day of the month following the month in which the Software has been delivered and / or the SaaS Services and /or the FLOW Platform was made available. All maintenance includes standard support as described in the standard Service Level Agreement as attached to the Agreement. TIE Kinetix can make changes to the content or extent of the Software, the SaaS Services and /or the FLOW Platform as it sees fit. In general, changes will lead to additional functionalities or processes in the Software, the SaaS Services and /or the FLOW Platform. If such changes lead to a change of the current procedures to be applied by the Customer, TIE Kinetix will inform the Customer as timely as possible.

8.1.4 **Consultancy Agreement / Hours Bundle:** If the Customer, during the performance of maintenance and support activities, or during the execution of the Agreement requests the performance of work not included in the Agreement or Service Level Agreement, TIE Kinetix is not under any obligation to fulfill such a request. TIE Kinetix may request that for the performance of such activities a separate Consultancy Agreement will be concluded or bundle of pre-paid hours (hereinafter referred to as "**Hours Bundle**") will be purchased. A Consultancy Agreement or Hours Bundle is always subject to the terms as stated in these General Terms and Conditions. A Hours Bundle has a validity on 12 months, unless explicitly agreed otherwise.

8.1.5 **Third Party software:** TIE Kinetix does not carry out maintenance or support on Third Party Software unless explicitly agreed in writing between TIE Kinetix and the Customer.

8.1.6 All maintenance and support activities to be performed by TIE Kinetix will be performed solely to the best of its knowledge and ability. Any maintenance and support activities will be performed on the basis of a best efforts obligation, therefore without any form of guarantee of the accuracy of the provided maintenance or support. TIE Kinetix therefore does not guarantee that the maintenance or support leads, or will lead, to the result desired by the Customer or that all errors will be solved or maximum repair times will be met. Furthermore, TIE Kinetix is not liable for any damage caused by

### 8.3 Delivery of updates and upgrades / End-of-Life

8.3.1 **Updates and Upgrades:** Updates contain new releases aimed to support the continuity of the Software, the Services and / or the FLOW Platform in the long term. Upgrades are new versions that introduce one or more additional functionalities and /or increased performance. TIE Kinetix may require a new written Agreement with the Customer before making a new upgrade of the Software, the Services and / or the FLOW Platform available and TIE Kinetix may require an additional fee. In case of an upgrade TIE Kinetix may take over functionalities of the previous version of the Software, the Services and / or the FLOW Platform unmodified but TIE Kinetix does not guarantee that each upgrade contains exactly the same functionalities as the previous version. TIE Kinetix has no obligation to maintain, change or add particular qualities or functionalities specifically for the Customer or to issue new updates or upgrades in accordance with a specific time schedule.

8.3.2 Updates and upgrades are made available on an "as is" basis, therefore with all visible and invisible failures and defects and without any form of guarantee on the Software, the Services and / or the FLOW Platform, either implicitly or explicitly. TIE Kinetix therefore does not provide any guarantees that the update or upgrade will fix the reported problems and that the operation of the Software, the Services and / or the FLOW Platform will be uninterrupted or free of failures or viruses, that the functions or performance of the Software, the Services and / or the FLOW Platform will comply with the requirements of the Customer or that the Software, the Services and / or the FLOW Platform are suitable for a particular purpose or provide any guarantees about the usefulness of the Software, the Services and / or the FLOW Platform. Furthermore, TIE Kinetix is not liable for any damage caused by delays in the delivery or providing of the updates and upgrades.

8.3.3 If the Customer refuses to install updates and/or upgrades of the (On Premise) Software TIE Kinetix has offered the Customer, TIE Kinetix reserves the right to terminate the (maintenance) Agreement or to adjust the (maintenance) Agreement to this refusal.

8.3.4 **End-of-Life:** TIE Kinetix is entitled to declare specific versions of the Software, the Services and / or the FLOW Platform as **End-of-Life**. In general, such End-of-Life will be decided upon subject to outdated security qualifications, (changed or new) legislation or limited availability of specific development tools and resources. Each End-of Life statement will be communicated well in advance by TIE Kinetix and will never result in any liability of TIE Kinetix. Where possible, TIE Kinetix will propose an alternative for the version or the Software the Services and / or the FLOW Platform that was declared End-of-Life.

### 8.4 Support

8.4.1 **Support:** TIE Kinetix's support obligation consists of support for user



questions and error messages via the support desk. TIE Kinetix shall deal with properly substantiated requests for support received by the support desk, within a reasonable period of time.

8.4.2 **Regular working hours:** In principle, the support desk can be accessed through the portal and by e-mail on regular local working days in the country where TIE Kinetix has its office between 8.30 a.m. and 5.30 p.m. CET. (In France between 8.30 a.m. and 12.00 CET a.m. and between 2.00 p.m. and 6.00 p.m. CET and in USA between 8.00 a.m. and 6.00 p.m. EST). Support is not available on public holidays. Any restrictions of accessibility will be communicated through the TIE Kinetix website, FLOW platform and/or other portal website.

8.4.3 **Priorities:** The Customer shall report any detected failures in detail to TIE Kinetix in accordance with the agreed upon processes. When a failure of the Software, the SaaS Services and /or the FLOW Platform has been reported, TIE Kinetix will assess the urgency of the failure before fixing it. Priorities will be set by TIE Kinetix in accordance with the Service Level Agreement and the regular operational processes of the support desk. TIE Kinetix has the right to install temporary fixes or circumvention devices or problem-avoiding limitations in the Software, the SaaS Services and /or the FLOW Platform.

8.4.4 **Not included in Support:** Support does not include repair of the consequences of replacement or reinstallation of Software and other installation activities, repair as a result of user errors or improper use, support for communication with (a) Business Partner(s) of the Customer (or the Service Provider(s) of the Business Partner(s), implementation of corrections in messages, implementing adjustments to mappings and other mapping activities, mapping and implementation of new Business Partners of the Customer and performing adjustments to the configuration. If during support is found that work already carried out on the basis of the preceding sentence is not included in the agreed support, TIE Kinetix has the right to charge the Customer the hours already spent in accordance with the present or agreed upon rates or to deduct the hours spent from a Hours Bundle already purchased by the Customer. Each support request or support call will be calculated in units of one (1) hour.

## 8.5 Training

8.5.1 Training will be conducted remotely via video conferencing, unless a specific location will be agreed upon.

8.5.2 When participating in a training, the full amount invoiced for the training shall be paid by the Customer before the training has started. If payment for the training has not been received in time by TIE Kinetix, TIE Kinetix has the right to refuse the Customer access to the training in question. In case of a "tailored training" the training will be provided on the basis of actual costs and the preceding stipulations from this article shall not apply.

8.5.3 If the Customer is prevented from attending a training, the Customer shall inform TIE Kinetix hereof a minimum of forty-eight (48) hours before the start of the training. If the Customer has informed TIE Kinetix on time that a training will not be attended, there will be an option to register to attend the same training on another day, location or time to be agreed upon. Under no circumstance is the Customer entitled to a refund of payments made for the training.

8.5.4 The Customer is allowed to have a participant in a training replaced by another participant, provided TIE Kinetix is informed on the replacement prior to the training.

8.5.5 If a minimum number of participants is required for a training, TIE Kinetix reserves the right to cancel a training if the minimum number is not met. In this case, TIE Kinetix will offer the Customer the option to register for the same training on another day to be agreed upon. TIE Kinetix reserves the right, when required, to make changes in the organization and contents of a training. Under no circumstance is the Customer entitled to a refund of payments

made for cancellation of the training. TIE Kinetix shall not be liable for cancellation of a training.

8.5.6 TIE Kinetix expressly reserves all intellectual property rights to the documentation and the training, test and exam materials. The Customer is not allowed to make public, exploit, sell, rent or multiply any data and/or parts from the provided documentation and/or training, test or exam materials.

## 8.6 Consultancy and Onboarding

8.6.1 Consultancy may consist of installation activities, mapping activities, analytics, optimization, implementation, onboarding and other activities to be executed by a TIE Kinetix consultant (hereinafter referred to as "Consultancy").

8.6.2 Consultancy is carried out on the basis of actual costs or on the basis of the estimated fees as described in the Agreement. In case more hours are used than estimated, the additional hours will be charged by TIE Kinetix and paid by the Customer, based upon the agreed upon rates. Mapping activities will be carried out on the basis of actual costs with a minimum of one (1) hour per incident.

8.6.3 Upon signing of the Agreement, TIE Kinetix reserves the right to charge 100% of the agreed activities for Consultancy projects in advance on a monthly basis. When a Hours Bundle has been purchased, the full invoiced amount will be paid in advance. Additional work on the basis of actual costs will be charged unless otherwise agreed in writing with the Customer. Other amounts related to Consultancy will be invoiced to the Customer afterwards.

## 8.7 Guarantee

8.7.1 All Consultancy activities to be performed by TIE Kinetix will be performed solely to the best of TIE Kinetix's knowledge and ability. All Consultancy activities will be performed on the basis of a best efforts obligation, therefore without any form of guarantee of the result of the activities. TIE Kinetix therefore does not guarantee that the activities lead, or will lead to the result desired by the Customer. Furthermore, TIE Kinetix is not liable for any damage caused by delays in providing Consultancy.