



## GENERAL TERMS AND CONDITIONS

FOR

ATOSS HOTLINE

("GTC HOTLINE")

### I. Part: General Terms and Conditions

#### § 1 Applicability of these GTC HOTLINE

Scope of applicability: These GTC HOTLINE shall govern the rights and obligations concerning the SUPPORT HOTLINE under the CONTRACT between the CUSTOMER and the COMPANY. The following provisions shall apply accordingly to pre-contractual relationship between the PARTIES.

1.

Deviating, conflicting or supplementary general terms and conditions of the CUSTOMER shall not apply, even, for example, if the COMPANY does not expressly object to their applicability or if the COMPANY provides the services without reservation in the knowledge of the general terms and conditions of the CUSTOMER.

2.

Definitions: The definitions and clarifications set out in II. Part shall apply to these GTC HOTLINE.

#### § 2 Scope of services of the SUPPORT HOTLINE

1.

Included services: The CUSTOMER shall observe the requirements set out in the DOCUMENTATION and comply with them at its own expense. The DOCUMENTATION contains a large number of tips to help the CUSTOMER solve any problems that may arise through its own activities.

The SUPPORT HOTLINE will advise and support the CUSTOMER exclusively in the following CUSTOMER enquiries:

- (1) Reporting of application errors or errors due to configurations and parameterisations of the MODULES;
- (2) Questions concerning the operation of individual MODULES, the general MODULE operation or MODULE functions;
- (3) Problems with data transfers via interfaces to third-party systems (e.g. payroll), provided that such interface has previously been in successful use;
- (4) Problems with data recording at recording terminals, provided that these terminals have previously been in successful use.

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If the CUSTOMER has concluded a contract with an ATOSS partner for implementation services and hotline services, the CUSTOMER shall submit enquiries directly to the ATOSS partner in order to ensure that CUSTOMER enquiries are processed as efficiently as possible. In these cases, the implementing ATOSS partner will in turn contact the SUPPORT HOTLINE, as necessary.

Excluded services: All other services not included in the above paragraphs shall not be covered by the scope of the SUPPORT HOTLINE such as: The deployment of CONSULTANTS on the CUSTOMER's premises, services provided under the terms of software maintenance, in particular troubleshooting of programming errors reproducible in the delivery standard and other services beyond the scope of the consultation on user questions, are not part of the hotline services. The SUPPORT HOTLINE will not be responsible for putting capture terminals or interfaces to THIRD-PARTY systems into operation. The SUPPORT HOTLINE will also not be a

substitute for training on the operation, handling and functions of the MODULES. Expenses incurred by the SUPPORT HOTLINE due to wilful intent or gross negligence on the part of the CUSTOMER or a THIRD PARTY (e.g. deletion of data, incorrect entry of commands in the MODULES contrary to the DOCUMENTATION and / or contrary to the express instructions of the SUPPORT HOTLINE etc.) may be invoiced separately by the COMPANY in accordance with the applicable prices.

### § 3 Service level of the SUPPORT HOTLINE

Hotline hours: The hotline hours and contact details of the SUPPORT HOTLINE will be specified in the OFFER or in the CONTRACT with the CUSTOMER.

CUSTOMER enquiries: Clear and unambiguous communication and coordination structures will be essential for the SUPPORT HOTLINE. To that end, the CUSTOMER shall ensure the availability of a contact person as well as a substitute with sufficient know-how, rights and decision-making authority during the performance period. The COMPANY shall be notified without undue delay of any change of contact person or substitute contact person or their contact details, naming a new contact person or new contact details. The CUSTOMER shall submit its enquiry through the contact person via the SUPPORT HOTLINE. CUSTOMER enquiries via other communication channels and other contact persons will not be processed. In order to process CUSTOMER enquiries promptly and properly, it is essential that each CUSTOMER enquiry contains information that is as complete as possible, i.e. in particular information about the type, the detailed circumstances and, in the event of a malfunction, also about its origin and its effects. The content of a CUSTOMER enquiry must ensure the reproducibility of the problem or fault by the COMPANY. In doing so, the CUSTOMER shall also take such measures to the extent necessary to facilitate the determination of the malfunction and its causes and to adequately support the COMPANY in reproducing them.

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Processing of CUSTOMER enquiries: The COMPANY will, at its sole discretion, categorise incoming CUSTOMER enquiries according to levels of urgency reflecting the impact of the malfunction on the CUSTOMER. The level of urgency may be subsequently adjusted by the COMPANY in individual cases as a result of further assessment.

### § 4 Obligations of the CUSTOMER

The implementation of the SUPPORT HOTLINE requires that the CUSTOMER will create the necessary personnel and technical conditions in its sphere of operation. The CUSTOMER shall in particular:

- a) take appropriate measures to ensure communication between the CUSTOMER and the COMPANY (e.g. ensuring that e-mails from the known contacts of the COMPANY are not intercepted by the spam filter);
- b) provide or communicate in a timely and complete manner all necessary information, copies of documents as well as processes and circumstances which may be of importance for the performance of the service;
- c) confirm in writing, at the COMPANY's request, the completeness of the information and declarations provided in a statement prepared by the COMPANY;
- d) enable the CONSULTANT to remotely access the ATOSS PRODUCTS installed on the CUSTOMER's system; in doing so, the CUSTOMER shall ensure that only such personal data relating to the specific individual case can be remotely viewed by the CONSULTANT on the CUSTOMER's system. If the CUSTOMER will not provide the COMPANY with remote access upon the COMPANY's request and no other equally suitable means will be available, the COMPANY may refuse the service in question and shall not be responsible for the consequences thereof;
- e) provide the necessary IT infrastructures, hardware and software including appropriate licensing, e. g. VPN access.

In addition, the CUSTOMER shall perform obligations of cooperation which are reasonable for the CUSTOMER in connection with the SUPPORT HOTLINE. The CUSTOMER's obligations to cooperate shall be essential contractual obligations and shall be fulfilled by the CUSTOMER at its own expense. If the CUSTOMER fails to perform one of its obligations to cooperate as agreed, the COMPANY shall not be liable for the consequences arising therefrom, such as

additional performance and / or delays. The COMPANY may request the CUSTOMER to provide the cooperation within a specified period of time and may terminate the CONTRACT if the period of time for providing the cooperation expires without result. The COMPANY reserves the right to charge separately for additional expenses caused by the CUSTOMER's failure to comply with its obligations to cooperate in accordance with the applicable rates of remuneration.

## § 5 Intellectual property

Intellectual property of the COMPANY: The intellectual property, industrial property rights and all other rights of the COMPANY in the MATERIALS provided as well as any processing, modifications and further developments of the MATERIALS shall remain with the COMPANY. This also applies if these MATERIALS will be processed, translated or combined unchanged or processed with THIRD-PARTY products by the CUSTOMER or a THIRD PARTY. However, the COMPANY shall grant the CUSTOMER for the period of use of the licensed ATOSS PRODUCTS or the CLOUD SERVICE a non-exclusive, non-transferable, non-sublicensable right to use the MATERIALS provided for the CUSTOMER's own internal business purposes and / or to have them used by the CUSTOMER's AFFILIATED COMPANIES. The CUSTOMER is strictly prohibited from removing the copyright notice in the submitted MATERIALS.

1.

ANALYSES: The COMPANY and / or its AFFILIATED COMPANIES may conduct analyses, investigations, evaluations and measurements (collectively "ANALYSES"), provided that they contain exclusively anonymous or anonymized usage data (e.g. duration and frequency of use of functions, mouse clicks, etc.) and / or other anonymous or anonymized data and information, such as license information, technical information or such information resulting from the technical, functional framework conditions of the deployment and use of the CLOUD SERVICE and / or ATOSS PRODUCTS by the CUSTOMER. The data used for the ANALYSES are either already anonymous by nature, i.e. without personal reference in the meaning of the GDPR, or are anonymized for the purpose of the ANALYSES.

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For example, COMPANY may conduct ANALYSES for the following purposes: (i) to improve the product and service portfolio, technical resources and support, (ii) to research, develop and enhance CLOUD SERVICES, ATOSS PRODUCTS and professional services, (iii) to verify and ensure data integrity, (iv) to prepare forecasts and demand scenarios, (v) to identify and evaluate correlations and trends in industry segments, (vi) to establish and expand AI (artificial intelligence) applications, and (vii) for anonymous benchmarking. ANALYSES and the anonymous or anonymized data may be automatically forwarded by the COMPANY to itself and / or to its AFFILIATED COMPANIES.

Non-anonymized, and thus personal, data will – unless otherwise agreed – only be used to provide the contractually agreed services in accordance with the provisions of the DPA.

The COMPANY shall become the sole legal owner of the data obtained from the ANALYSIS at the time of its creation. The intellectual property, industrial property rights and all other rights to the CUSTOMER DATA shall remain with the CUSTOMER or the other holders of rights.

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## § 6 Fees and payment methods

Fees: The CUSTOMER shall pay the agreed fees in advance at the agreed payment intervals. The fees for the SUPPORT HOTLINE shall be due for the first time on the first day of the month following the conclusion of the CONTRACT. Invoices may be issued in paper form or electronically. For any subsequent orders of ATOSS PRODUCTS, the fees for the SUPPORT HOTLINE set forth in the CONTRACT shall increase proportionately according to the COMPANY's most current prices.

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Payments are due within ten (10) days of the invoice date without deduction.

The CUSTOMER may set off only those claims which are undisputed or have been finally determined by a court of law.

Price adjustment: The COMPANY shall be entitled to adjust the fees for the SUPPORT HOTLINE on 1 January of each year, whereby the change may not exceed the respective interim

increase in the official consumer price index for the Federal Republic of Germany or the index replacing it by more than two (2) full percentage points.

Insofar as the CONTRACT provides a binding price (if applicable, for a specific period) for ATOSS PRODUCTS (e.g. for additional MODULES and/or license extensions) and/or for the provision of professional services by the COMPANY (e.g. daily rates for CONSULTANTS, training courses, flat rates e.g. for setting up terminals, test systems or VPN tunnels as well as for any travel costs and expenses), which the CUSTOMER may order from the COMPANY after conclusion of the CONTRACT, COMPANY shall no longer be bound to these prices if the official consumer price index for the Federal Republic of Germany or the index replacing it increases in one month by more than thirty (30) percentage points compared to the same month of the previous year.

## § 7 Claims for non-performance or poor performance:

In the event of non-performance or poor performance by the SUPPORT HOTLINE, the CUSTOMER's claims shall be governed by the provisions set out in § 7 of this document. The CUSTOMER may not reduce the agreed fees for the SUPPORT HOTLINE in the event of non-performance or poor performance. However, any existing right to reclaim fees paid under reservation shall remain unaffected.

If the SUPPORT HOTLINE will not be provided in accordance with the CONTRACT and the COMPANY bears responsibility, it shall be obliged to provide the relevant services in accordance with the CONTRACT upon express and admissible complaint by the CUSTOMER. The CUSTOMER's complaint shall be made in writing to the COMPANY's contact person and at the latest within two (2) weeks of becoming aware of it or of the time at which the CUSTOMER should have become aware of it without gross negligence. The COMPANY may reject the complaint in whole or in part as inadmissible if the examination shows that it is not responsible for the non-performance or poor performance or if it can provide evidence that the services essentially comply with the specifications set out in the CONTRACT.

If the COMPANY fails to provide essential parts of the hotline services subject to the admissible complaint for reasons not attributable to the CUSTOMER and within a reasonable grace period to be set by the CUSTOMER in writing, the CUSTOMER shall be entitled to a special contractual right of termination (see § 10 clause 3). Further claims of the CUSTOMER are excluded. The aforementioned exclusion shall not apply to liability claims due to wilful intent or gross negligence or due to culpable injury to life, body or health or an accepted guarantee. The right to extraordinary termination shall remain unaffected.

## § 8 Liability

Unlimited liability: The COMPANY shall assume unlimited liability in accordance with the statutory provisions in the event of wilful intent and gross negligence, as well as in the event of culpable injury to life, limb or health and to the extent of a guarantee accepted by the COMPANY.

Liability in case of minor negligence: Subject to § 8 clause 1, the COMPANY shall be liable in the event of a minor negligent breach of an obligation, the fulfilment of which is a requirement for the proper performance of the CONTRACT or on the observance of which the CUSTOMER regularly relies and may rely ("CARDINAL OBLIGATION"), limited to the amount of foreseeable damage typical for the CONTRACT.

Clarification: In the cases of § 8 clause 2, the COMPANY'S liability shall be limited to € 25,000, regardless of the legal grounds.

Liability disclaimer: In all other respects, the COMPANY's liability is excluded. Except in the cases set out in § 8 clause 1, the COMPANY shall in particular not be liable for profits lost or savings forfeit, losses resulting from THIRD-PARTY claims and other indirect or consequential losses.

Force majeure: The COMPANY shall not be liable for EVENTS OF FORCE MAJEURE that make it substantially more difficult for the COMPANY to provide the SUPPORT HOTLINE, or that temporarily impede or render impossible the proper performance of the CONTRACT.

## § 9 Limitation period

With the exception of claims due to wilful intent or gross negligence or due to injury to life, body or health, a limitation period of one (1) year shall apply to liability and warranty claims against the COMPANY. The limitation period shall commence from the statutory commencement of the limitation period.

## § 10 Term and termination

Term: The minimum CONTRACT term shall be twelve (12) months and shall commence on the date of commencement of the first payment interval specified in the first invoice for the annual hotline fees or, in the absence thereof, on the date of conclusion of the CONTRACT. In the event of repeat orders, i.e. additional orders (such as licence extensions or further MODULES), the remaining CONTRACT term for such repeat orders shall apply accordingly.

1. CONTRACT extension: After the end of the minimum CONTRACT term, the CONTRACT term shall be automatically extended by twelve (12) months in each case, unless a PARTY terminates the CONTRACT with six (6) weeks' notice with effect at the end of the minimum CONTRACT term or the end of the then current extension term. Extraordinary terminations for good cause shall remain unaffected.

2. Special right of termination: The CUSTOMER shall be entitled to terminate the CONTRACT without notice in accordance with the provisions of § 7, subject to the following conditions: The COMPANY shall only be entitled to remuneration for the HOTLINE SUPPORT already provided up to the effective date of termination. The remuneration shall only be waived for those services for which the CUSTOMER proves, at the latest within two (2) weeks after its notice of termination, that they are not usable and of no interest to the CUSTOMER.

3. Extraordinary termination: Notwithstanding § 10 clauses 1 to 3, the PARTIES may terminate the CONTRACT for good cause. Good cause for the COMPANY exists, for example, if the CUSTOMER is in arrears with the payment of fees equivalent to two (2) monthly instalments or if the CUSTOMER seriously or repeatedly breaches obligations under the CONTRACT and does not remedy the breach within thirty (30) days following a warning from the COMPANY.

4. Form of the notice of termination: Notices of termination shall be in writing; text form, e.g. e-mail or fax, shall not be sufficient.

## § 11 Confidentiality

The PARTIES shall be obliged to treat all CONFIDENTIAL INFORMATION obtained within the context of the contractual relationship as confidential for an unlimited period of time, in particular they may not disclose it to THIRD PARTIES or use it other than for contractual purposes. Insofar as disclosure to THIRD PARTIES shall be necessary for the exercise of rights or for the performance of CONTRACTs, such THIRD PARTIES shall be obliged to comply with non-disclosure obligations that are largely comparable to § 11 of this document. The receiving PARTY may disclose CONFIDENTIAL INFORMATION by way of exception to the extent that it is required to disclose the CONFIDENTIAL INFORMATION pursuant to a binding legal, judicial or regulatory decision. Prior to disclosure, the PARTY which received the CONFIDENTIAL INFORMATION shall undertake to promptly notify the other PARTY in writing of the order to disclose the CONFIDENTIAL INFORMATION so that the other PARTY may take timely remedies to prevent or limit the disclosure. If it lodges an appeal, the other PARTY shall continue to be bound by the obligation of secrecy as long as the appeal has suspensive effect. The disclosing PARTY will inform the receiving PARTY of the filing of an appeal.

## § 12 Data protection

By signing the CONTRACT, the COMPANY and the CUSTOMER have concluded a DPA in accordance with the GDPR. All processing of non-anonymised, personal CUSTOMER DATA shall be carried out by the COMPANY on behalf of the CUSTOMER on the basis of the DPA.

In the case of enquiries via the SUPPORT HOTLINE, the CUSTOMER shall ensure that only such personal data relating to the specific individual case (e.g. for processing the CUSTOMER enquiry) can be viewed remotely by the CONSULTANT.

The transmission of non-anonymised, personal CUSTOMER DATA (e.g. test data, employee master data etc.) to the COMPANY by means of transmission and communication channels that have not been mutually agreed upon in advance is not permitted.

## § 13 Final provisions

Written form: Amendments and supplements to the CONTRACT shall only be effective if made in writing. This shall also apply to the waiver of the written form requirement or the waiver of this written form clause itself.

Amendments to the CONTRACT: The COMPANY shall be entitled to amend or supplement the provisions of the CONTRACT insofar as this does not negatively affect the equivalence relationship agreed upon at the time the CONTRACT was concluded with regard to essential elements of the CONTRACT and the amendments are reasonable for the CUSTOMER. The right to amend the contract in particular shall include changes with regard to (i) technical developments, (ii) changes in the legal framework. The COMPANY will inform the CUSTOMER of the planned amendments in advance. The amendments shall be deemed to have been accepted by the CUSTOMER if it does not object to the COMPANY in writing or text form within six (6) weeks after notification. In the notice of amendment, the COMPANY shall also draw the CUSTOMER's attention to the intended significance of its conduct. If the CUSTOMER objects to the amendments, the COMPANY may terminate the CONTRACT by giving one (1) month's notice. The provisions in § 3 sec. 3 DPA and § 6 sec. 4 DPA shall always take precedence over this right to amend.

Transfer: The PARTIES may not assign or transfer the CONTRACT or individual rights and obligations under the CONTRACT without the prior written consent of the other PARTY. However, the transfer to an AFFILIATED COMPANY of the COMPANY does not require the consent of the CUSTOMER.

Updating of contact details of the main contacts: The CUSTOMER shall be responsible for keeping the contact details of its main contacts (in particular contractual and technical main contact) provided to the COMPANY in the CONTRACT up to date and for notifying the COMPANY of any changes.

Choice of law, place of jurisdiction: The laws at the registered office of the COMPANY shall apply exclusively to all claims arising from or in connection with the CONTRACT; the application of the "Uniform UN Sales Law" (United Nations Convention on Contracts for the International Sale of Goods) is expressly excluded. The exclusive place of jurisdiction for all disputes arising from or in connection with the CONTRACT shall be the registered office of the COMPANY.

## II. Part: Definitions and clarifications

To the extent the GTC HOTLINE exclusively use the masculine form for certain persons or groups of persons, this is merely for the sake of simplification. The relevant wording shall refer equally to all genders.

Insofar as a declaration is to be made "in written form" or "in writing" in accordance with these GTC HOTLINE, this may - with the exception of notices of termination - also be declared by the COMPANY in text form, in particular by e-mail, to the relevant contact person of the CUSTOMER.

In all other respects, the following definitions shall apply:

**"GTC HOTLINE"** means these General Terms and Conditions;

**"ANALYSES"** means the analyses, investigations, evaluations and measurements of anonymised CUSTOMER DATA and / or other data and information, such as licence information, technical information or such information resulting from the technical, functional framework conditions of the deployment and use of the ATOSS PRODUCTS by the CUSTOMER, as described in more detail in § 5 clause 2 of the GTC HOTLINE;

**"OFFER"** means the letter of offer from the COMPANY defining the content of the performance by the COMPANY. Insofar as the PARTIES extend the content of the performance as a result

of supplementary orders, this term shall also refer to the supplementary offer in its most recently amended version;

**"ATOSS PRODUCTS"** means the entirety of the software programs that the COMPANY supplies to the CUSTOMER in accordance with a concluded contract in object code as MODULES for the purpose of installation and use on the CUSTOMER's system. The CUSTOMER will not receive the source code.

**"DPA"** means the Data Processing Agreement, that the COMPANY as Processor and the CUSTOMER as Controller conclude pursuant to Article 28 of the GDPR by signing the CONTRACT as an integral part of the CONTRACT with respect to the collection, processing and use of the CUSTOMER's personal data. The DPA is available on the ATOSS website at <https://www.atoss.com/en-gb/dpa>;

**"CLOUD SERVICE"** means the on-demand solution, including the ATOSS PRODUCTS, that the COMPANY provides for use by the CUSTOMER in accordance with the CONTRACT;

**"CONSULTANT"** means personnel who perform services on behalf of and at the sole discretion of the COMPANY;

**"DOCUMENTATION"** means, collectively, the following documents at this time: (i) the annex called "System Releases and Requirements", (ii) the annex called "Product Description" and (iii) the COMPANY's reference manual and other technical documentation provided by the COMPANY, in each case as amended;

**"THIRD PARTY"** means any natural person or legal entity other than the PARTIES and their AFFILIATED COMPANIES, their salaried and freelance employees, temporary workers and external consultants (such as management consultants, auditors and legal advisors) engaged by the PARTIES;

**"GDPR"** means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

**"EVENT OF FORCE MAJEURE"** means an event that could not have been foreseen by the PARTIES and that could not have been avoided even by exercising due care. This includes in particular natural disasters, fire and water damage, storms, terror, war, strikes and industrial disputes, diseases (including epidemics and pandemics), insofar as a risk level of at least "moderate" is defined by the German Robert Koch Institute or by an assessment of the World Health Organisation WHO;

**"COMPANY"** means the contracting ATOSS Group Company;

**"CARDINAL OBLIGATION"** means, in accordance with § 8 clause 2 of the GTC HOTLINE a material contractual obligation the fulfilment of which is a prerequisite for the proper performance of the CONTRACT or on the fulfilment of which the CUSTOMER regularly relies and may rely;

**"CUSTOMER"** means the contracting party of the COMPANY;

**"CUSTOMER DATA"** means the personal data or other data which the CUSTOMER enters into, processes and stores in the ATOSS PRODUCTS;

**"MODULES"** means the COMPANY software programmes ordered by the CUSTOMER. The MODULES are made available to the CUSTOMER by the COMPANY for use in a non-parameterised state in their standard functions in accordance with a concluded CONTRACT;

**"PARTY"** means either the CUSTOMER or the COMPANY as the respective contracting party; collectively, both contracting parties are referred to as "PARTIES";

**"SUPPORT HOTLINE"** means the services by the COMPANY described in § 2 of the GTC HOTLINE;

**"AFFILIATED COMPANY"** means any entity that is directly or indirectly controlled by or under common control with a PARTY. "Control" for the purposes of this definition means (i) direct or indirect ownership or control of more than 50% of the voting shares of the relevant company and / or (ii) the ability to direct or cause the direction of the management and policies of the relevant company;

**"CONTRACT"** means the entirety of the rights and obligations of the PARTIES arising, as the case may be, from (a) the OFFER, (b) these GTC HOTLINE, (c) the DPA and (d) the other

annexes referenced in the OFFER; the CONTRACT shall be concluded by written order confirmation or countersignature by the COMPANY vis-à-vis the CUSTOMER;

**"CONFIDENTIAL INFORMATION"** means any information, including data and other materials, which the COMPANY or the CUSTOMER – whether communicated in writing, electronically or orally – (i) has designated as "confidential" or otherwise deemed confidential or (ii) which a reasonable THIRD PARTY would, by its nature or by reason of the circumstances, consider to be entitled to protection and therefore confidential. Such confidential information shall in particular include the CUSTOMER DATA, information on the business activities and / or processes of the PARTIES as well as all software, technologies and know-how of the COMPANY in any form, including the MODULES, DOCUMENTATION and their updates and adaptations, the business model as well as the cooperation partners and suppliers of the COMPANY, prices, offer documents, (marketing) ideas, brochures, advertising materials and presentations, concepts as well as all copies and records made thereof. confidential information shall not include information (i) expressly marked as "non-confidential" by the disclosing PARTY; (ii) lawfully developed or acquired by the receiving PARTY without any obligation of confidentiality; (iii) which is already generally known or subsequently becomes generally known through no fault of the receiving PARTY or as a result of a breach of CONTRACT; (iv) which is communicated or provided to the receiving PARTY by a THIRD PARTY entitled to make disclosure without breach of these GTC SOFTWARE MAINTENANCE; or (v) which has been released for disclosure by the disclosing PARTY with express written permission.

**"BUSINESS DAY"** means the weekdays from Monday to Friday (excluding public holidays recognised by law at the registered office of the COMPANY).

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