



## **SUPPORT AGREEMENT** published 20 June 2023

### Version Control

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12 June 2020	Change to reflect new address for Andisa
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### **Parties**

- (1) Andisa It Consultants Limited, incorporated and registered in England and Wales with company number 04994671 whose registered office is at Suite 1, 1 Cardale Park, Beckwith Head Road, Harrogate HG3 1RY (**Supplier**).
- (2) The Customer whom the recurring invoice for this support is addressed to (Recurring monthly support invoices are sent by 20<sup>th</sup> of the month before service is provided) (**Customer**).

### **Background**

The Supplier has agreed to provide IT support to the Customer on the terms set out in this agreement.

## **Agreement**

In consideration of the Fee payable by the Customer to the Supplier and the respective obligations of the parties under this Agreement, the Customer and the Supplier agree to be bound by the terms of this Agreement and any schedules, appendices or annexes.

## Interpretation

The following definitions and rules of interpretation apply in this Agreement:

**Affiliate:** includes each and any subsidiary or holding company of a party and each and any subsidiary of a holding company of a party.

**Commencement Date:** being the date of commencement of the Supplier's obligations to provide the Services under this Agreement as set out in Schedule 2.

**Fee:** the fees payable by the Customer to the Supplier under this Agreement as set out in Schedule 3.

**Services:** the services to be provided by the Supplier under this Agreement as specified in Schedule 1.

**Minimum Term:** The minimum duration that this agreement will remain in place, as specified in Schedule 2.

**Standard Support Hours:** Mondays to Fridays from 9.00am to 5.00pm excluding bank holidays and the period between and including 24 December and 2 January.

**Holding company** shall be construed in accordance with sections 736 and 736A of the Companies Act 1985, as amended.

**Subsidiary** shall be construed in accordance with sections 736 and 736A of the Companies Act 1985, as amended.

The headings in this Agreement do not affect its interpretation. Save where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this Agreement.

Unless the context otherwise requires:  
references to the Supplier and the Customer include their permitted successors and assigns;  
references to statutory provisions include those statutory provisions as amended or re-enacted; and  
references to any gender include all genders.

Words in the singular include the plural and in the plural include the singular.

Where a conflict exists between the terms of this Agreement, and material contained in a Schedule, the terms of this Agreement shall take priority.

## Services

From the Commencement Date, the Supplier shall supply and the Customer shall take the Services as described in Schedule 1.

The Supplier shall be entitled, on prior notice to the Customer, to make changes to the Services, provided such changes do not have a material adverse affect on the Customer's business operations.

In relation to assignment and sub-licensing:

- a) the Customer has no right to sub-license or to assign the benefit or burden of this Agreement in whole or in part without the prior written consent of the Supplier;
- b) the Supplier may sub-license, sub-contract, assign, charge or otherwise transfer any of its rights or obligations under this Agreement to its Affiliates or, if it gives written notice to the Customer, to any other Party.

## Support Manager

The Supplier shall appoint a person who shall be responsible for the co-ordination of all matters relating to the Services (the "**Support Manager**"). The Customer shall nominate a person (the "**Manager**") to be available to liaise with, and respond to queries from the Support Manager (for example, as to the resolution of conflicting priorities between two or more items of support or maintenance). All communications, documentation and materials relating to this agreement shall be communicated as appropriate between the Support Manager and the Manager. Each party shall notify the other in writing promptly of these appointments and of any proposed change to these appointments.

## Customer's responsibilities

The Customer shall provide the Supplier, the Support Manager and all other persons duly authorised by the Supplier with full, safe and uninterrupted access, including secure remote access via VPN (virtual private network) or equivalent, to the Customer's premises equipment and software as may reasonably be required for the purpose of performing the Services, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Standard Support Hours. Where the Services are to be performed at any of the Customer's premises, the Customer shall provide without charge adequate working space and office (including power, telephone and data transfer) facilities for use by the Supplier's personnel and take reasonable care to ensure their safety.

The Customer shall:

co-operate with the Supplier in performing the Services and provide any

assistance or information as may reasonably be required by the Supplier;  
keep full back-up copies of all of its data so that any data lost during or as a result of the operation of the Services can be recovered;  
satisfy any pre-requisites set out in Schedule 2.

## **Non-solicitation**

The Customer shall not, for the duration of this Agreement, and for a period of six months following termination, directly or indirectly induce or attempt to induce any employee of the Supplier who has been engaged in the provision, receipt, review or management of the Services or otherwise in connection with this Agreement to leave the employment of the Supplier.

## **Duration and termination**

This Agreement shall take binding effect immediately, but the Supplier's obligation to provide the Services shall not commence until the Commencement Date.

This Agreement shall remain in force unless and until terminated in accordance with this Agreement.

After the Minimum Term, either party may terminate this Agreement by giving the other at least three months' written notice.

Either party may terminate this Agreement at any time on written notice to the other if the other:

is in material or persistent breach of any of the terms of this Agreement and either that breach is incapable of remedy, or the other party fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

On termination of this Agreement for any reason:

- the Customer's right to receive the Services shall cease;
- the Customer shall immediately pay to the Supplier any sums due to the Supplier under this Agreement.

## Fees

The Customer shall pay to the Supplier the Fee.

All amounts payable under this agreement shall be exclusive of value added tax (if any) which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.

If the Customer fails to pay any amount payable by it under this Agreement, the Supplier shall be entitled (but not obliged) to charge the Customer interest on the overdue amount, payable by the Customer forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 4% per annum above the base rate for the time being of HSBC Bank plc. Such interest shall accrue on a daily basis and be compounded quarterly. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

Late payment of any sum due under this Agreement shall be a material breach, and in addition to the rights of termination set out in this Agreement, shall give the Supplier the right to suspend the Services immediately on written notice until the relevant sum and any interest due are paid. The full amount of the Fee for any period shall still remain due notwithstanding the Services were suspended under this clause during that period.

The Customer shall have no right of set-off in relation to the Fee for any claims or liabilities the Customer has or claims to have against the Supplier.

All regular monthly amounts due as part of the Fee shall be paid by the Customer on the due dates by standing order into the Supplier's bank account, details of which the Supplier shall notify to the Customer in writing.

The Supplier may increase the Fee at any time by giving the Customer at least one month's written notice to expire only on the last day of any calendar month.

## Warranties and limits of liability

The Supplier warrants that the Services will be performed in accordance with all applicable laws and regulations and with all reasonable skill and care. If, during the term of this Agreement, the Supplier receives written notice from the Customer that the Services have not been performed in accordance with all applicable laws and regulations or with all reasonable skill and care, the Supplier shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate the Services immediately on written notice to

the Customer. This paragraph sets out the Customer's sole remedy and the Supplier's entire liability for breach of the warranty that the Services will be performed in accordance with all applicable laws and regulations and with all reasonable skill and care.

Where the Supplier uses remote access provided by the Customer, the Supplier will maintain a log of this remote access.

The Supplier does not warrant that all problems will be resolved or will be resolved within a specific period of time.

All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

Except as expressly stated in this Agreement:

The Supplier's liability, whether in contract, tort or otherwise and whether under this Agreement or any collateral contract, for loss of or damage to the Customer's tangible property caused by the negligence of the Supplier, its officers, employees, contractors or agents, shall not exceed the total sums paid or payable to the Supplier by the Customer during the 12 month period immediately prior to the date the liability arises. Save as provided in this Agreement, the Supplier hereby excludes all liability for negligence.

The Supplier shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, which fall within the following categories:

special damage even though the Supplier was aware of the circumstances in which such special damage could arise;

loss of profits, revenue, anticipated savings, business opportunity or goodwill;

loss of, or damage to, data;

loss of contract;

reduction in goodwill;

loss caused by failure to provide the Services within a given period, or by any other delays;

for any other direct or indirect or consequential loss however arising, even if such loss was reasonably foreseeable or the Supplier had been advised of the possibility by the Customer;

the Customer acknowledges that no representations were made prior to entering into this Agreement. The Customer agrees that, in entering into this Agreement, it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement. The Customer shall have no remedy in respect of any representation (whether written or oral) made to



it on which it relied in entering into this Agreement and the Supplier shall have no liability otherwise than pursuant to the express terms of this Agreement.

The exclusions in this Agreement shall apply to the fullest extent permissible at law, but the Supplier does not exclude liability for death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents, for fraud, for breach of the obligations implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982, or for any other liability which may not be excluded by law.

## Force majeure

No party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause beyond its control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion. For the avoidance of doubt, nothing in this clause shall excuse the Customer from any payment obligations under this Agreement.

## Confidentiality

Each party shall, during the term of this licence and thereafter, keep confidential all, and shall not use other than for the purposes of this Agreement nor without the prior written consent of the other disclose to any third party any **Confidential Information**, being information of a confidential nature (including, without limitation, trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, but which has not become public knowledge and is not already known to such party at the time of disclosure, and which does not subsequently become public knowledge other than by breach of this licence, and which does not subsequently come lawfully into the possession of such party from a third party.

The terms of this Agreement are confidential and may not be disclosed by the Customer without the prior written consent of the Supplier.

These confidentiality provisions shall remain in full force and effect notwithstanding termination of this Agreement for any reason.

## Waiver

No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

## **Further assurance**

At its own expense, each party shall and shall use all reasonable endeavours to procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement.

## **Severability**

If any provision of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.

## **Amendments**

Any amendment, waiver or variation of this Agreement shall not be binding on the parties unless set out in writing, expressed to amend this Agreement and signed by or on behalf of each of the parties.

## **Third party rights**

No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.

## **Notices**

Any notice required to be given pursuant to this Agreement shall be in writing, and shall be sent to the other party at the address set out for such party in this Agreement. Notices may be sent by first-class mail or email. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed email shall be deemed to have been received instantaneously on transmission, provided that they are confirmed as set out above.



## **Entire agreement**

This Agreement, and Schedules or documents referred to herein, contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

## **Governing law and jurisdiction**

This Agreement shall be governed by and construed in accordance with English law and each party hereby submits to the exclusive jurisdiction of the English courts.

**This Agreement is visible from each recurring monthly support invoice and the Customer agrees to the contract by settling the invoice.**

**This means this contract is renewed each time a recurring invoice is paid, without altering the original notice and term of contract.**

## **SCHEDULE 1 THE SERVICES**

1. Subject to clause 2 of this Schedule, the Services provided by the Supplier under this Agreement shall include during Standard Support Hours the following in an attempt to assist the Customer to resolve problems notified by the Customer to the Supplier:

- 1.1 a telephone help desk to provide first-line technical support by way of diagnosis of issues;
- 1.2 consultancy (including all work where diagnosis is not practical via the telephone help desk, all on-site support and any reconfiguration work);

to the extent specified in Schedule 2.

2. The Services shall not include:

- 2.1 any on-site support other than at the Customer's premises specified in Schedule 2
- 2.2 any support that does not relate directly to the Customer's in-house IT requirements in connection with its businesses named in Schedule 2. For the avoidance of doubt, the Services do not include any support to assist customers or Affiliates of the Customer, or to assist the Customer's own support services in providing assistance to those customers or Affiliates;
- 2.3 the provision of support to any person other than the Client Contact Names set out in Schedule 2. The Customer may replace any member of this list by notice in writing to the Supplier at any time;
- 2.4 the fixing of problems. The support provided relates to diagnosis and it is for the internal IT team to fix the issues in question;
- 2.5 any support not covered by the scope set out in Schedule 2 unless agreed in writing between the parties;
- 2.6 any services where the client has not satisfied any relevant pre-requisites set out in Schedule 2.

3. The Customer acknowledges that the Supplier's ability to supply consultancy shall depend on the availability of appropriate resources at the time in question. The Supplier reserves the right to decline to provide any specific consultancy requested or required under clause 1.2 of this Schedule.

## SCHEDULE 2 SCOPE OF SERVICES

Address	Normal place of business for the Customer
Support Medium:	Telephone and remote support and on site repair.
Hours of cover:	Mon – Friday 9:00 to 17:00
Minimum Term:	12 months from commencement date
Commencement of cover:	Support starts on receipt of payment.
Target response time:	4 hours maximum response
Loan of equipment:	Yes
Annual system health check:	Yes
Systems supported:	Server, PCs, internet connection, Wireless and network
Items Included:	<ul style="list-style-type: none"> <li>• Support of operating systems and domain security</li> <li>• antivirus management system</li> <li>• backup software</li> <li>• Diagnosis of hardware faults limited to the supported systems.</li> </ul>
Pre Requisites	<ul style="list-style-type: none"> <li>• Supported Systems must be fully operational at the commencement of the contract.</li> <li>• Antivirus software to be installed on every PC and server connected to the network.</li> <li>• Internet access from each server</li> </ul>

## **SCHEDULE 3**

### **THE FEE**

1. The Fee shall include the following:
  - a. A retainer of a monthly amount due and payable in advance on the last day of every Calendar month; and
  - b. A day rate fee for any consultancy services provided in addition to the telephone help desk specified at paragraph 1.1 of Schedule 1, plus any expenses, and due 7 days following an invoice by the Supplier to the Customer in respect of those consultancy services.
2. Rates (all exclusive of VAT): Agreed directly with the Customer.