Andisa Online Backup Terms of Service

1.0 General terms of services

1.1 Interpretation

1.1.1 Andisa: The trading name of Andisa IT Consultants Ltd, Harrogate Business Centre, Hookstone Avenue, Harrogate, HG28ER.

1.1.2 Andisa Online Backup: The process of transferring server/ workstation/ laptop data from the customer network to the storage facilities at the Andisa storage server.

1.1.3 Customer: The party named on the order form

1.1.4 Data: Any program, file or other electronic information that is held or is copied to the secure storage facilities at the data centre.

1.1.5 Client Software: The software used by the Customer to transfer data from the Customer's servers/ workstations/ laptops to the Andisa storage server.

1.1.6 Client licence: a single user licence issued to the Customer allowing a connection, via the Client Software, to the Andisa storage server for the placement of encrypted backup data.

1.1.7 Service: Refers to the online backup service as specified in the service schedule under the product name "Andisa online Backup"

1.1.8 Initial Term: The period of service provision agreed in the service schedule

1.1.9 Designated Administrator: The person designated by the Customer to manage the daily backups and backup configuration. This person will be the primary point of contact for technical matters.

1.1.10 Systems: Any equipment or software related to providing hosted solutions by Andisa and its suppliers.

1.1.11 Planned Outage: A period of time where by the Service is suspended for routine maintenance.

1.2 Additional Definitions

1.2.1 Data Controller: As defined in the Data Protection Act 1998

1.2.2 Data Processor: As defined in the Data Protection Act 1998

1.2.3 Encryption Key: The key used to encrypt the data prior to transmission to the Andisa Storage Server.

1.2.4 The Software: The Andisa Client Software as supplied by Andisa and installed by the Customer from time to time.

1.3 Provision

1.3.1 Andisa will provide the Service to the Customer in accordance with these Conditions.

1.3.2 Andisa will endeavour to provide the Service by an agreed date with the Customer. Each installation may have differing deciding factors that will affect the predicted provision date. All dates are estimates and Andisa has no liability for any failure to meet any date, unless the Customer's agreement provides expressly in relation to any such date that time is of the essence.

1.3.3 Subject to Clause 9 below, Andisa will provide the Service with reasonable skill and care and in accordance with the Andisa technical procedure

1.3.4 Andisa has taken care and made investment in technologies to ensure an uninterruptible service. There are, however, some technical services that are beyond the remit of Andisa, such as the customer's internet connection, which is not provided by Andisa, and also the connectivity into the Andisa data centre. Despite redundancy techniques for the latter, it is always theoretically possible, if unlikely, that all redundant services suffer coincidental outages at the same time. Andisa has set up its infrastructure to reduce the probability of this happening.

1.3.5 Andisa does not warrant that the client software is free from errors or omissions or that the Service is fault free.

1.3.6 Andisa will at its option either repair or replace the client software within a reasonable time if it significantly impairs the Service.

1.3.7 Occasionally Andisa may temporarily suspend the Service because of an emergency or for operational reasons, maintenance or improvements. In such circumstances, Andisa will seek to restore the Service as soon as possible.

1.3.8 Before suspending the Service, Andisa will give the Customer as much notice as possible.

2.0 Usage

2.1.1 The Customer is responsible for the provision of suitable hardware to run the Client Software. Any consequential issues or degradation of other, non- Andisa provided services on the client hardware is not considered the responsibility of Andisa to resolve. Andisa can offer a consultancy service on appropriate changes to the server hardware or configuration, and a consultancy fee will apply.

2.1.2 The Customer is directly responsible for the provision of the internet connectivity that is used to connect to the Andisa remote storage servers.

2.1.3 This Service is provided solely for the Customer's own use and the Customer will not resell, attempt to resell, or share the use of the Service (or any part or facility of it) to or with any third party.

2.1.4 The Customer will comply at all times with the Data Protection Act 1998 (or any other applicable data protection legislation).

2.1.5 The Customer will take all reasonable steps to ensure that any person who may have access to the Service complies with the conditions of this Contract.

2.1.6 The Customer will comply with all reasonable instructions which Andisa may give from time to time regarding the use of the Service.

2.1.7 The Customer hereby indemnifies Andisa in respect of, and undertakes to hold it harmless against, any claims or legal proceedings in respect of loss, damage or injury and any costs and expenses arising in connection with them which are brought or threatened against Andisa by a third party for breach of the End User Licence.

2.1.8 Andisa will notify the Customer of any such claims or proceedings and keep the Customer informed as to the progress of such claims or proceedings.

3.0 Intellectual Property Rights

3.1.1 The Customer will not, without Andisa's prior written consent, copy the End User Licence or decompile or modify the Software, nor copy the manuals or documentation except as permitted by law.

3.1.2 The Customer will effect and maintain adequate security measures to safeguard the Software from access or use by any unauthorised person.

3.1.3 Before using the Service or the Software the Customer shall first sign or otherwise accept the terms of the End User Licence to protect the licensor's interest in that Software.

3.1.4 The Customer will comply with the terms of the End User Licence at all times.

4.0 Acceptable Usage Policy

4.1 The Customer hereby undertakes with Andisa not to use the Services to store or transmit any data which are obscene, illegal, defamatory or which breach the rights of any third party and to fully and effectively indemnify Andisa against any cost, claim or expense arising from any breach or suspected breach of such undertaking.

4.2 The above indemnity does not apply to infringements caused by the use of the Service in conjunction with other equipment, software or services not supplied by Andisa or to infringements caused by designs or specifications made by, or on behalf of, the Customer. The Customer hereby indemnifies Andisa against all claims, proceedings and expenses arising from such infringements.

4.3 The limitations and exclusions of liability contained in clause 8 do not apply to the indemnities given by the Customer in favour of Andisa.

5.0 Confidentiality

5.1 The parties will, during this Contract and for a period of 2 years after its termination, keep in confidence any information (whether written or oral) of a confidential nature (including software and manuals) obtained under this Contract and will not, without the written consent of the other party, disclose that information to any person (other than their employees or professional advisers, or in the case of Andisa the employees of Andisa or their suppliers, who need to know the information).

5.2 This Clause will not apply to:

- 5.2.1 Any information which has been published other than through a breach of this Contract;
- 5.2.2 Information lawfully in the possession of the recipient before the disclosure under this Contract took place;
- 5.2.3 Information obtained from a third party who is free to disclose it; and
- 5.2.4 Information which a party is requested to disclose and, if it did not, could be required to do so by law.

5.3 This Clause will survive the termination of this Contract.

6.0 Charges and Payments

6.1 The charges for the Service will be calculated in accordance with the charges set out on the Andisa website http://www.Andisa.co.uk, or the custom service schedule and will commence from the date of completion of the Order Form for the Service.

6.2 The charges for the Service are payable on demand. Andisa may charge daily interest on late payments at a rate equal to 5% per annum above the base lending rate of Natwest Bank Plc or as prescribed by Late Payment of Commercial Debts (Interest) Act 1998, whether or not such Act applies to the debt in question.

6.3 All invoices will be invoiced and paid in pounds sterling unless otherwise specifically requested by the Customer. Value Added Tax use tax or like charge in a country where the Service is provided, which is payable by the Customer will be added to Andisa's invoices as appropriate.

6.4 Andisa may, at any time, require the Customer to pay a deposit or provide a guarantee as security for payment of future bills.

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7.0 Warranty

7.1 Subject to Clause 8 below, Andisa expressly warrants that it will carry out the Services with reasonable skill and care.

8.0 Limitation of Liability

8.1 Except as expressly stated in this agreement, Andisa has no liability to the Customer for any loss or damage whatsoever arising out of or in connection with this Contract or the supply of services thereunder, whether arising in contract, tort (including negligence and breach of statutory duty) or otherwise. Andisa's total aggregate liability to you in connection with this Contract in any one calendar month shall not exceed 125% of the amount received by Andisa (excluding VAT) from you under this Contract in such calendar month.

8.2 Neither party shall, in any event, be liable or responsible to the other for any indirect, incidental, special or consequential loss, damage, cost or expense of any kind whatsoever and howsoever caused whether arising under contract, tort (including negligence and breach of statutory duty) or otherwise, including without limitation, loss of documentation, loss or corruption of data, loss of profits or of contracts, remedial costs, loss of operation or staff time, costs of obtaining substitute goods or services and loss of goodwill or anticipated savings, even if it has been advised of the possibility. Andisa cannot and does not know the value of the data the Customer has stored and accordingly the Customer is in a better position than Andisa to assess the risk of loss of data and undertakes to effect and maintain in force appropriate insurance.

8.3 The express warranties given in this Contract are in lieu of all warranties, conditions, terms, representations, undertakings and obligations (express or implied) imposed by statute, common law or otherwise all of which are hereby excluded to the maximum extent permitted by law.

8.4 The above exclusions and limitations shall apply to the fullest extent permissible at law but neither party excludes or limits liability for death or personal injury caused by its negligence or that of its employees or agents and for which it is responsible, or for fraud or wilful deceit and nothing in this Contract shall have the effect of derogating from the statutory rights of a consumer as defined in the Consumer Transactions Order 1976 (as amended).

8.5 The parties hereby acknowledge that the exclusions set out above are fair and reasonable in all the circumstances and that the exclusions and limitations of liability set out above are reasonable notwithstanding that they may have the effect of protecting Andisa from losses for which it may be insured (and the parties acknowledge that there are sound commercial reasons for so doing, such as maintaining a good insurance claims record).

8.6 No indemnity in this Contract shall be effective to the extent that it has the effect of excluding or restricting liability.

8.7 The Customer agrees fully and effectively to indemnify Andisa against any claim, cost or expense arising in any way from any breach by the Customer of this Contract.

9.0 Force Majeure

9.1 If either party is unable to perform any obligation under this Contract because of a matter beyond its reasonable control, such as lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes or acts of local or central Government or other competent authorities or events beyond the reasonable control of that party's suppliers, that party will have no liability to the other for that failure to perform.

9.2 In the event of the imposition of restrictions of a legal or regulatory nature which prevent Andisa from supplying the Service then Andisa will have no liability to the Customer for failure to supply the Service.

9.3 If any of the events detailed continue for more than 1 month either party may serve notice on the other terminating this Contract.

10.0 Termination of this Agreement by Notice

10.1 After expiry of the Initial Term, either party may terminate this Contact with 1 month's notice given to the other in writing.

10.2 If the Customer terminates, or purports to terminate, this Contract during the initial term other than by reason of Force Majeure or because Andisa has increased the charges or has materially changed the conditions of this Contract to the Customer's detriment, the Customer shall become liable forthwith to pay Andisa's termination charge, the amount whereof shall be equal to the aggregate charges due in respect of the remaining period of the initial term.

10.3 This Contract shall terminate automatically on termination of the End User License howsoever terminated.

10.4 When the contract terminates, all data held by Andisa for the customer will be deleted. The customer is responsible for restoring data prior to termination of the contract.

11.0 Consequences of Termination

11.1 Following the termination of this Contract for whatever reason:

11.1.1 The Customer will immediately uninstall the Client software and manuals together with all copies in any form, including copies on any storage media and immediately discontinue any use of the software or documentation supplied as part of this Contract.

11.1.2 All data stored under this contract on the Andisa Storage Server will be permanently deleted upon expiry of a period of 60 days thereafter.

11.1.3 Andisa will have the right at any time to delete any stored Data without thereby incurring any liability for loss or damage to the Customer or to any other person.

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12.0 Breaches of this Agreement

12.1 Either party may terminate this Contract immediately on notice, if the other:

12.1.1 Commits a material breach of this Contract, which is capable of remedy, and fails to remedy the breach within a reasonable time of receipt of a written notice to do so; or

12.1.2 Commits a material breach of this Contract which cannot be remedied; or

12.1.3 Is repeatedly in breach of this Contract; or is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of their creditors, or goes into voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation or a receiver or administrator is appointed over their assets.

12.2 If Andisa is entitled to terminate this Contract as above, Andisa may, on giving prior notice where practicable, suspend the Service without prejudice to such rights. Where the Service is suspended under this paragraph the Customer must pay the charges for the Service until this Contract is terminated.

12.3 If this Contract is terminated by Andisa during the initial term because of a breach of this Contract the Customer shall pay Andisa, without prejudice to any other rights Andisa may have, the termination charges specified in "Termination of this agreement by notice"

12.4 If either party delays in acting upon a breach of this Contract that delay will not be regarded as a waiver of that breach.

12.5 If either party waives a breach of this Contract that waiver is limited to that particular breach.

13.0 Changes to this Agreement

13.1 Andisa reserves the right to modify the conditions of this Contract and the charges for the Service at any time.

13.2 Andisa will give the Customer 28 days' notice of the changes by way of email to the Designated Administrator.

14.0 Transfer of Rights and Obligations

14.1 This Contract will be binding upon the respective successors and permitted assigns of the parties. Notwithstanding the foregoing the Customer's rights and obligations under this Contract shall be personal to it and may not be assigned without the prior written consent of Andisa.

14.2 Neither party may (subject to the proviso hereto) transfer any of its rights or obligations under this Contract, without the written consent of the other.

15.0 Entire Agreement

15.1 This Contract contains the whole agreement between the parties and supersedes all previous written or oral agreements relating to its subject matter.

15.2 The parties acknowledge and agree that they have not been induced to enter into this Contract by any representation, warranty or other assurance not expressly incorporated into it; and in connection with this Contract their only rights and remedies in relation to any representation, warranty or other assurance are for breach of this Contract and that all other rights and remedies are excluded.

15.3 The provisions of the above two paragraphs shall not affect the rights or remedies of either party in relation to any fraud or fraudulent misrepresentation.

15.4 A person who is not party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

16.0 Notices

16.1 Notices given by the customer to Andisa under this Contract must be in writing and delivered by e-mail and post to the following addresses supportdesk@Andisa.net;

Andisa IT Consultants Ltd
Harrogate Business Centre
Hooskstone Avenue
Harrogate
N Yorks,
HG2 0BQ

16.2 Notices given by Andisa to the Customer under this Contract must, except for notices given after the initial term, be in writing and may be delivered by email to the email address provided by the customer upon purchase of the service, by hand, by courier, or sent by first class post to the customer at the address to which the customer asks Andisa to send invoices.

17.0 Severability

17.1 If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of its provisions will continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision omitted.

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18.0 Law and Jurisdiction

18.1 This Contract is governed by the law of England and Wales and both parties submit to the exclusive jurisdiction of the English courts.

19.0 General

19.1 No Waiver of Default. No waiver will be effective unless documented in a writing signed by an authorized representative of the party against which enforcement of the waiver is sought. The failure of either party to insist upon strict performance of any of the terms or provisions of this Agreement, or the exercise of any option, right, or remedy contained herein, shall not be construed as a waiver of any future application of such term, provision, option, right, or remedy, and such term, provision, option, right, or remedy shall continue and remain in full force and effect.

19.2 Non-Solicitation. During the term of this Contract and for a period of one (1) year after the termination of this Contract, the Customer shall not, by his officers, employees or agents, directly or indirectly solicit, discuss employment with, offer employment to, nor otherwise use, hire, or utilize the services of any employee of Andisa or any person who has been employed by Andisa within one (1) year prior to the date of solicitation, hiring, or other such activity.

19.3 Statute of Limitations. Any action arising out of, resulting from, or in any way connected with this Contract shall be barred unless brought within one (1) year after the injured party first had or should reasonably have had knowledge of the facts giving rise to the cause of action.

19.4 Effect of Termination. On termination of this Contract however caused, and without prejudice to the provisions of Clause 12.2, Andisa's obligation to retain any Data ceases, and Andisa shall be permitted to delete any Data held on its servers.

19.5 References to Legislation. Any reference to a statutory provision shall include that provision as from time to time modified or re-enacted provided that in the case of modifications or re-enactments made after the date of this Contract the same shall not have effected a substantive change to that provision.

19.6 Singular and Plural and Gender. The singular includes the plural and vice versa and any gender includes any other gender.

19.7 Headings. The headings of this Contract are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.

19.8 Cumulative Remedies

19.8.1 The provisions of this Contract, and the rights and remedies of the parties under it are cumulative and are without prejudice and in addition to any rights or remedies a party may have at law or in equity.

19.8.2 No exercise by a party of any one right or remedy under this Contract, or at law or in equity, shall (save to the extent, if any, provided expressly in this Contract, or at law or in equity) operate so as to hinder or prevent the exercise by it of any other such right or remedy.

20.0 Back-up, Retrieval and Restoration Service

20.1 The Customer, having downloaded the Software, is able to schedule automated Backups as well as performing manual backups, restorations and retrievals as follows;

20.1.1 Data to be backed up by the Software is selected by the Customer. Consultation and advice on these matters can be provided by Andisa engineers.

20.1.2 A back-up event is triggered by the Software either manually or automatically. Such an event may be the elapse of a period of time since the last back-up or shutdown of the personal or laptop computer.

20.2 The Software requires an internet connection via the Customer's Internet Service Provider.

20.3 The Data is compressed, encrypted and uploaded to the Andisa remote storage server system.

20.4 The data travels across the internet, across Andisa's or a third party's leased lines, and through the router system and firewall at the data centre.

20.5 The user can configure scheduled reports so that after completion of a backup routine, the user receives a backup report via email.

20.6 Redundancy is in place for all hardware at the entrance point of the Andisa network right the way through to the hard disk storage system, to reduce the risk of suspension of services due to hardware outages.

20.7 Data can be retained for as long as the customer desires, but this may result in greater storage requirements, and therefore higher costs.

20.8 The restoration process works in a similar manner, allowing the Customer to select the versions he/she wishes to restore and enabling retrieval of those files. It is also possible for the Customer to restore sets of Data from specific dates.

20.9 If the customer needs to restore large amounts of data Andisa may insist that the data is restored to local media at the data centre and delivered to the customer. A fee for supply of the hard drive, recovery service and delivery costs will be incurred and charged to the customer.

20.10 When the customer installs the software, an Encryption Key is entered. This key is needed to encrypt during backup and subsequently to de crypt when restoring. If the Customer misplaces the key then the data is not restorable. Andisa accept no responsibility for lost data and the inability to recover in this situation.

21.0 Payment of Fees

21.1 The Customer agrees to pay the usage fees (as set out in clause 22.0) without any deduction therefrom whether in respect of an alleged set-off or otherwise on the due date for payment thereof.

21.2 All fees are payable monthly in advance, without any deduction.

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21.3 Andisa reserves the right to charge interest on all late payments at the rate prescribed in Clause 7.2, or, if Andisa shall so elect, at the rate prescribed by Late Payment of Commercial Debts (Interest) Act 1998, whether or not such act applies to the debt in question.

22.0 Usage Fees

22.1 Usage Fees are calculated on the basis of the agreed storage capacity as set out in the service schedule.

22.2 If the Customer exceeds its agreed storage capacity, Andisa will automatically allow extra storage to be used and charge pro rata at the rate agreed in the service schedule.
Prior to invoicing for additional storage, Andisa will notify the Designated Administrator of the excess usage.

23.0 Availability and service levels

23.1 Andisa does not undertake to provide the Services 24/7/365 but shall use reasonable commercial endeavours to make the Services available.

23.2 Andisa will update the Andisa Storage Server and software periodically. Andisa will inform the customer of such Planned Outages giving reasonable notice. The Customer accepts that Planned Outages are necessary as provision of the service.

23.3 Subject always to its obligation to provide the Services with reasonable skill and care, Andisa shall not be liable for failure to provide the Services.

24.0 Ownership of Data

24.1 The Customer acknowledges and confirms that it owns or is licensed and is permitted to transmit to Andisa all Data without breach of any law, agreement, arrangement or duty or the rights of any third party.

24.2 The Customer acknowledges that Andisa has no effective access to the content of Data transmitted to Andisa using the Service as all Data is encrypted prior to transmission to Andisa using an algorithm which Andisa has no practical means of reversing in the absence of the Encryption Key.

24.3 The Customer undertakes never to transfer to Andisa in whatever form (including but not limited to written or spoken) and for whatever reason any encryption key (except a Public Key), decryption key, password or other access token except only where such encryption key, decryption key or password is itself encrypted as part of the Data in a way which prevents Andisa from accessing it.

24.4 Andisa not attempt any processing of any Data supplied to Andisa under this Contract other than storage and retrieval of encrypted data blocks, or restoring direct to local media (see clause 20.9)

24.5 So far as Andisa is aware of the current state of the art, loss by the Customer of its Encryption Key will result in the Data stored on the Andisa Storage Server being irretrievable.

24.6 Andisa will never attempt to assist the recovery of any Data where loss is caused by the loss of or corruption to any Encryption Key.

25.0 Data Protection

25.1 Andisa stores the Data within the United Kingdom, but is not a Data Controller in relation to such Data as it has no access to nor ability to process such Data (whether pursuant to the Customer's instructions or otherwise) other to obtain or release such Data pursuant to instructions directed directly at the Andisa servers by you.

25.2 Andisa refuses to process or attempt to process any Data other than in accordance with clause 26.1 below.

25.3 The Customer acknowledges that as holder of the Encryption Key associated with the Data the security of the Data is entirely within its control. Andisa will use all reasonable endeavours not to permit anyone who does not have the appropriate Encryption Key to have access to the Data (and then only in encrypted form) and the Customer acknowledges and confirms that this satisfies the requirements of the seventh Data Protection Principle (security).

26.0 Use of service

26.1 The Customer undertakes to use the Service and to access the Andisa equipment solely through use of the Software as supplied to the Customer and unmodified and the Customer acknowledges and confirms that any other use of Andisa equipment is UNAUTHORISED AND MAY THEREFORE AMOUNT TO AN OFFENCE UNDER THE PROVISIONS OF THE COMPUTER MISUSE ACT, and undertakes with Andisa not to assist or permit any other person so to access the Andisa Storage Server.

27.0 Use and Updating of Software

27.1 The Customer will be responsible for downloading the Software from the Andisa servers and installing it on their equipment.

27.2 The Customer undertakes to update the Software promptly on notification by Andisa as subsequent versions are released.

27.3 The Customer acknowledges that the Software's functionality may vary from release to release.

27.4 Andisa accepts no liability for any failure in the Service where:

27.4.1 the Customer attempts to access them with a version of the Software which is not current;

27.4.2 the Software fails owing to:

27.4.2.1 the Customer's failure to follow instructions correctly;

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27.4.2.2 failure of the Software to interoperate with other software (including firmware);
27.4.2.3 hardware malfunctions;
27.4.2.4 there is any corruption or failure of the Encryption Key;
27.4.2.5 the loss or corruption of any password or Encryption Key;
27.4.3 loss of or corruption of data caused while the data is in transit to or from the Andisa Storage Server;
27.4.4 the Customer is prevented access to the Services owing to a denial of service attack.

28.0 License to software

28.1 For such period as Andisa is contracted to provide the Services, the Software is licensed to the Customer pursuant to the End User Licence Agreement as amended from time to time.
28.2 The Customer must comply with the End User Licence Agreement provided by the manufacturer of the software.
28.3 The licence referred to in Clause 28.1 above extends to any amendments, modifications bug fixes or version releases that may be issued from time to time.

29.0 Suspension of service

29.1 Without prejudice to any other remedy it may have, including but not limited to any remedy under Clause 12.2, Andisa is permitted to suspend the services
29.1.1 if the Customer is in breach of any term of this Agreement (including the End User Licence Agreement);
29.1.2 if the Customer owes any money to Andisa(whether under this Agreement or otherwise) and such sums are due and payable;
29.1.3 where Andisa reasonably suspects that the Customer is in breach of any term of this Contract or reasonably anticipates that the Customer will be in breach of any such term;
29.1.4 where Andisa reasonably suspects that the security of its Systems is or is about to be compromised;
29.1.5 during Planned Outages
29.2 Should Andisa revoke such suspension, it does not guarantee the retention or integrity of any data stored pursuant to the Services while such suspension is in place.
29.3 The Customer's licence to use the Software is suspended for such time as the Service is suspended under clause 29.
29.4 Fees continue to accrue and be payable at any time while the Services are suspended pursuant to clause 29.1 above.

30.0 Technical Support Helpdesk

30.1 Technical support can be obtained by emailing supportdesk@Andisa.co.uk or calling 01423 290029

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