



## Kudan Support Agreement

Kudan Limited of The Garden Suite, 23 Westfield Park, Redland, Bristol, United Kingdom, BS6 6LT (**Licensor, us or we**) has licensed certain software products to you (**Licensee or you**) under the terms of the Licence (defined below) and we offer you the ability to purchase support on a case by case basis in accordance with the terms set out below (Terms). If you wish to purchase support from us, please raise a Support Request by clicking <https://kudaneu.atlassian.net/servicedesk/customer/portal/>. If you raise a Support Request, you do so on the basis of these Terms. Your Support Request and these Terms will form the basis of the legal agreement between us.

**You should print a copy of these Terms for future reference.**

### 1. Definitions

1.1 The definitions in the Licence shall apply to these Terms. In addition, the following words have the following meanings:

<b>"Charges"</b>	the charges payable for the Support Services, as set out at <a href="http://www.kudan.eu/support">www.kudan.eu/support</a> , in each case as the same may be amended from time to time in accordance with the provisions of clause 4.5.
<b>"Critical Fault"</b>	a reproducible fault which substantially hinders or prevents the Licensee from using a material part of the functionality of the Software.
<b>"Licence"</b>	the licence of the Software entered into between the Licensor and the Licensee.
<b>"Non-Critical Fault"</b>	any reproducible fault in the Software other than a Critical Fault.
<b>"Schedule"</b>	a schedule to these Terms, which forms part of these Terms.
<b>"Software"</b>	has the same meaning as in the Licence.
<b>"Support Request"</b>	a question, issue or concern concerning installation, activation, license migration, configuration, troubleshooting and/or any other issues which may arise in connection with the Software posted on <a href="https://kudaneu.atlassian.net/servicedesk/customer/portal/">https://kudaneu.atlassian.net/servicedesk/customer/portal/</a> in the English language.
<b>"Support Service"</b>	the support service more particularly described in Part 1 of 1, which is to be provided by the Licensor to the Licensee under clause 3.1 and clause 3.2.
<b>"Standard Support Hours"</b>	10.00 am to 5.00 pm GMT on working days.
<b>"working days"</b>	Monday to Friday, excluding days which are bank



holidays in England.

## **2. Supported Software**

2.1 The Support Service is available in respect of the current release of the Software at:

<https://www.kudan.eu/download-kudan-ar-sdk/>; and  
<https://www.kudan.eu/download-kudan-cv-sdk/>.

If you raise a Support Request in respect of a previous release of the Software, we may require that you update the Software before we deliver the Support Services.

## **3. The Support Services**

3.1 On receipt of a Support Request, the Licensor shall supply, and the Licensee shall take and pay for, the Support Service.

3.2 In relation to the Support Service:

3.2.1 the Support Service shall be provided during the Standard Support Hours in response to Support Requests and shall comprise remote diagnosis and, where possible, workarounds or correction of faults in respect of the supported Software, all as more particularly defined in Part 1 of 1;

3.2.2 where a Non-Critical Fault is to be corrected in a forthcoming maintenance release, then for a reasonable period before the issue of such maintenance release the Licensor may decline to provide assistance in respect of that Non-Critical Fault.

3.3 The Licensor may, on prior notice to the Licensee, make changes to the Support Service, provided such changes do not have a material adverse effect on the Licensee's business operations.

3.4 The Licensor shall have no obligation to provide the Support Service where faults arise from:

3.4.1 misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by the Licensor);

3.4.2 failure to maintain the necessary environmental conditions for use of the Software;

3.4.3 use of the Software in combination with any software not provided by the Licensor or with any software or equipment not designated by the Licensor for use with the Software, or any fault in any such equipment or software;

3.4.4 any breach of the Licensee's obligations under the Licence or these Terms howsoever arising or having the Software maintained by a third party;

3.4.5 any modification of the Software not authorised by the Licensor;

3.4.6 failure to install and use the most recent version of the Software; or

3.4.7 operator error.



3.5 In addition, the limitations set out in Part 1 of Schedule 1 shall apply in respect of the Support Service.

3.6 The Licensee shall comply with its obligations as set out in Part 2 of Schedule 1.

#### **4. Charges**

4.1 In consideration of the Support Service, the Licensee shall pay the Charges. These Charges shall be paid by the Licensee to the Licensor in advance on raising a Support Request through [www.kudan.eu/support](http://www.kudan.eu/support).

4.2 The Licensee shall pay all costs (at the Licensor's then prevailing rates) and reasonable expenses incurred by the Licensor for work carried out by the Licensor in connection with any fault which is not covered by these Terms.

4.3 If the Licensee fails to make any payment due to the Licensor under these Terms by the due date for payment, then, without limiting the Licensor's remedies under these Terms, the Licensor may withhold the Support Services and the Licensee shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Licensee shall pay the interest together with the overdue amount.

4.4 All amounts payable under these Terms shall be exclusive of VAT or relevant local sales tax (if any) or any relevant local sales taxes which shall be paid at the rate and in the manner for the time being prescribed by law.

4.5 The Licensor may vary the Charges from time to time. The current Charges are published at [www.kudan.eu/support](http://www.kudan.eu/support).

4.6 All amounts due under these Terms shall be paid by the Licensee to the Licensor in GBP in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

#### **5. Intellectual Property Rights**

5.1 All Intellectual Property Rights in the Software and the Support Service shall belong to the Licensor, and the Licensee shall have no rights in respect of any of the deliverables except as expressly granted under these Terms.

#### **6. The Licensee's responsibilities**

6.1 The Licensee shall provide the Licensor and all other persons duly authorised by the Licensor with access (remote or otherwise) to the Licensee's systems, facilities and the Software as may reasonably be required for the purpose of performing the Support Service, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Standard Support Hours.

6.2 The Licensee shall ensure that appropriate environmental conditions are maintained for the Software and shall take all reasonable steps to ensure that the Software is operated in a proper manner by the Licensee's employees.



- 6.3 The Licensee shall:
- 6.3.1 co-operate with the Licensor in performing the Support Service and provide any assistance or information as may reasonably be required by the Licensor, including in relation to the diagnosis of any faults;
  - 6.3.2 report faults promptly to the Licensor; and
  - 6.3.3 keep full backup copies of all of its data.
- 6.4 The Licensee shall indemnify the Licensor against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Licensor as a result of the Licensee's breach of these Terms howsoever arising or any negligent or wrongful act of the Licensee, its officers, employees, contractors or agents.
- 6.5 The Licensees do not have any direct or indirect relationship or connection with any violent gangs, mafia or other violent, blackmailing, and/or intimidatory groups or people who for political, religious or other ideological or economic purposes engage in anti-social activities ("**Anti-Social Forces**"), including, without any limitation, engaging in financial transactions with any Anti-Social Force.  
In addition, to the knowledge of the licensees, the licensees do not appoint, employ or hire any person belonging to an Anti-Social Force or any person who is intimate therewith.

## 7. **Non-solicitation**

The Licensee shall not, for the duration of these Terms, and for a period of six months following termination, directly or indirectly induce or attempt to induce any employee of the Licensor who has been engaged in the provision, receipt, review or management of the Support Service or otherwise in connection with these Terms to leave the employment of The Licensor.

## 8. **Confidentiality and publicity**

- 8.1 Each party shall, during the term of these Terms and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of these Terms) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including 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 ("**Confidential Information**" ), unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of these Terms, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.
- 8.2 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Support Service becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.
- 8.3 The terms of these Terms may not be disclosed by the Licensee (other than to its legal advisors) without the prior written consent of the Licensor.

8.4 The Licensor may refer to the Licensee as being a client of the Licensor in customer reference lists and sales presentations, but shall not refer to the Licensee in any advertising or press release without the prior written consent of the Licensee.



8.5 The provisions of this clause 8 shall remain in full force and effect notwithstanding any termination of these Terms.

## **9. The Licensor's warranties**

9.1 The Licensor represents and warrants to the Licensee that the Support Service will be performed in accordance with all applicable laws and regulations and with reasonable skill and care.

9.2 No representation or warranty is given by the Licensor that all faults will be fixed, or will be fixed within a specified period of time.

9.3 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into these Terms or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

## **10. Limits of liability**

10.1 Except as expressly stated in clause 10.2:

10.1.1 The Licensor shall not in any circumstances have any liability for any losses or damages which may be suffered by the Licensee (or any person claiming under or through the Licensee), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

10.1.1.1 special damage, even though the Licensor was aware of the circumstances in which such special damage could arise;

10.1.1.2 loss of profits;

10.1.1.3 loss of anticipated savings;

10.1.1.4 loss of business opportunity;

10.1.1.5 loss of goodwill;

10.1.1.6 loss of, or damage to (including corruption of), data;

provided that this clause 10.1.1: shall not prevent claims for loss of or damage to the Licensee's tangible property that fall within the terms of clause 10.1.3 or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this clause 10.1.1;

10.1.2 the Licensee agrees that, in entering into these Terms, either 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 these Terms or (if it did rely on any representations, whether written or oral, not expressly set out in these Terms) that it shall have no remedy in respect of such representations and (in either case) the Licensor shall



not in any circumstances have any liability otherwise than in accordance with the express terms of these Terms; and

- 10.1.3 the total liability of the Licensor, whether in contract, tort (including negligence) or otherwise and whether in connection with these Terms or any collateral contract, shall in no circumstances exceed a sum equal to the Charges paid by the Licensee in the 12 months preceding the relevant claim.
- 10.2 The exclusions in clause 9.3 and clause 10.1 shall apply to the fullest extent permissible at law but the Licensor does not exclude liability for:
  - 10.2.1 death or personal injury caused by the negligence of the Licensor, its officers, employees, contractors or agents;
  - 10.2.2 fraud or fraudulent misrepresentation;
  - 10.2.3 any other liability which cannot be excluded by law.
- 10.3 The Licensee acknowledges that:
  - 10.3.1 it is exclusively responsible for:
    - 10.3.1.1 ensuring that the staff of the Licensee are trained in the proper use and operation of the Software;
    - 10.3.1.2 ensuring the security, completeness and accuracy of all inputs and outputs;
    - 10.3.1.3 making regular backup copies of its data to ensure recovery of its data if the Software malfunctions; and
    - 10.3.1.4 the selection, use of and results obtained from any other programs, equipment, materials or services used in conjunction with the Software; and
  - 10.3.2 it is in a better position than the Licensor to assess and manage its risk in relation to use of the Software.
- 10.4 All dates supplied by the Licensor for the provision of Support Services shall be treated as approximate only. The Licensor shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 10.5 All references to the Licensor in this clause 10 shall, for the purposes of this clause only, be treated as including all employees, subcontractors and the licensors of the Licensor and its affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 20.

## **11. Assignment and subcontracting**

- 11.1 The Licensee shall not assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under these Terms without the prior written consent of the Licensor (such consent not to be unreasonably withheld or delayed).



- 11.2 The Licensor may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under these Terms.
- 11.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **12. Termination**

- 12.1 Without prejudice to any rights that have accrued under these Terms or any of its rights or remedies, we may terminate these Terms and/or the Support Services by giving you 7 days prior written notice. In the event of such termination, we will reimburse to you a proportion of the Charges paid representing any undelivered Support Services.
- 12.2 These Terms shall automatically terminate on termination or expiry of the Licence, but expiry or any termination of these Terms (however caused) shall have no effect on the licences granted under the Licence.
- 12.3 Other than as set out in these Terms, neither party shall have any further obligation to the other under these Terms after its termination.
- 12.4 Any provision of these Terms which expressly or by implication is intended to come into or continue in force on or after termination of these Terms, shall remain in full force and effect.
- 12.5 Termination of these Terms, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 12.6 On termination of these Terms for any reason, the Licensee's right to receive the Support Service shall cease automatically.
- 12.7 On termination of these Terms for any reason, the Licensor shall promptly refund such portion of the Charges as relates to the period after expiry or termination on a pro rata basis.
- 12.8 On termination of these Terms for any reason, the Licensee shall immediately pay any outstanding unpaid invoices and interest due to The Licensor. The Licensor shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Licensee shall pay these invoices immediately on receipt.

## **13. Waiver**

No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.



#### **14. Remedies**

Except as expressly provided in these Terms, the rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.

#### **15. Entire Agreement**

15.1 These Terms, the Licence and any Support Request constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

15.2 Each party acknowledges that in entering into these Terms it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms.

15.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms.

#### **16. Variation**

No variation of these Terms shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### **17. Severance**

17.1 If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part -provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms.

#### **18. Third-party rights**

No one other than a party to these Terms, their successors and permitted assignees, shall have any right to enforce any of its terms.

#### **19. No partnership or agency**

19.1 Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.



**20. Force majeure**

20.1 Neither party shall be in breach of these Terms nor liable for delay in performing, or failure to perform, any of its obligations under these Terms if such delay or failure result from events, circumstances or causes beyond its reasonable control.

**21. Governing law and jurisdiction**

These Terms and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms or its subject matter or formation (including non-contractual disputes or claims).



## Schedule 1 Support Service

### Part 1

#### Support Services

1. The Licensor shall provide technical support for the Software, through Support Requests, more specifically:
  - 1.1 to assist the Licensee with general enquiries in connection with the Software;
  - 1.2 to provide remote diagnosis and, where possible, correction of faults, more specifically to correct errors, bugs and failures of the Software to ensure material compatibility with the Documents.
2. The Licensor shall use reasonable efforts to:
  - 2.1 acknowledge receipt of a Support Request within 2 hours from receipt of the Support Request ("**Initial Response Time**"). This will generally be via the same medium of communication by which the Support Request was reported;
  - 2.2 provide a short status report to the Licensee within a reasonable time and provide updates to the Support Request every 3 working days;
  - 2.3 address the Support Request by providing a remedy that could take the form of eliminating the defect in order to bring the Software into substantial conformity with applicable documentation, providing updates, or demonstrating how to avoid the effects of the defect with reasonable commercial effort;
  - 2.4 where the Licensee has licensed Source Code, the remedy may also include error and code corrections, patches, bug fixes, workarounds (i.e. temporary solutions used to complete a task that would not otherwise be possible due to a problem or limitation in the affected Software), replacement deliveries or any other type of software or documentation corrections or modifications.

Each party acknowledges that despite a party's reasonable efforts, not all problems may be solvable.

3. The Licensor support staff will investigate the Support Request. Where on-going investigation is required, the Licensee will receive regular updates to their Support Request. Additionally, such updates may increase or lower the severity of the issue, in which case the frequency of updates will change accordingly.
4. If the Licensor, in its sole discretion, determines that remote troubleshooting and investigation techniques employed by the Licensor have been unsuccessful and that on-site support is the most effective way to provide the Support Service and deliverables, customer will not be charged for such on-site support but will be charged for reasonable travel and living expenses.



5. The Licensee shall be granted access to the Licensor's on-line support resources at [www.kudan.eu/support](http://www.kudan.eu/support).
6. Where resolution to a problem requires extended time in to provide the final response, the Licensor shall provide regular updates to the Licensee.
7. The Licensor's obligation to provide Support shall extend only to the most recent version of the Software.
8. Support Requests sent to the Licensor using methods other than that defined by Support Request site will be handled in a manner of the Licensor's choosing and will not qualify for the initial response times set out above.
9. The Licensee may require lock down of a particular version of Software. In this event, the Licensee will request prior permission to lock down, and if granted by the Licensor, then the Licensor shall provide Support to the Licensee only for that locked down version. When errors or malfunctions exist in the locked down version that have been fixed in later versions, The Licensor shall have no obligation to continue to fix the locked down version.
10. The Licensor shall neither provide support to end users of the Licensee's product, nor to sub-contractors working for the Licensee.
11. The Licensor does not support issues arising from:
  - 11.1 rendering issues when using the Unity plugin (only tracking and recognition issues are supported);
  - 11.2 platform (ie Android or IOS) issues;
  - 11.3 editing 3D models to ensure it is optimized for mobile use.
12. The Licensor will have no obligation to provide support services of any kind for problems in the operation or performance of the Software to the extent caused by any of the following (each, a "*Licensee Generated Error*"):
  - 12.1 if the Licensor can show that the problem is caused by third party software or hardware products or use of the Software in conjunction therewith; or
  - 12.2 the Licensee's use of the Software is other than as authorized in these Terms or the Licence.



13. If the Licensor determines that it is necessary to perform support services for a problem in the operation or performance of the Software that is caused by a Licensee generated error, then the Licensor will notify the Licensee thereof as soon as the Licensor is aware of such Licensee generated error and the Licensor will have the right to invoice the Licensee at the Licensor's then-current time and materials rates for all such support services performed by the Licensor and the Licensee will pay the Licensor within thirty (30) days of the date of such invoices.

## **Part 2**

### **Licensee Obligations**

#### **1. The Licensee shall:**

- 1.1 Use suitable qualified engineers and artists to develop using the Software;
- 1.2 Use industry recognized development methodologies;
- 1.3 Provide accurate and complete descriptions of problems and issues;
- 1.4 Co-operate with Support Staff where elaboration of an issue is required;
- 1.5 Provide script, artwork or project folders where needed by Support Staff;
- 1.6 Provide development timetables including milestones and deliverables subject to the Licensee's confidentiality restrictions as necessary to enable The Licensor to provide timely and efficient support;
- 1.7 Recognize that support is often a collaborative and iterative process;
- 1.8 Close Support Requests when the issue or problem has been resolved;
- 1.9 Designate up to ten (10) named qualified, English-speaking, technical support contacts and shall provide contact details (in particular e-mail address and telephone number) by means of which the ESM can contact at any time. The Licensee's designated technical support contacts shall be authorized representative empowered to make necessary decisions for the Licensee or bring about such decisions without undue delay;
- 1.10 Share support responses between members of the Licensee's team;
- 1.11 Assess support responses for suitability for the Licensee and respond in a timely fashion when the response is not suitable.