



**circle solutions**  
Pty Ltd

# **Licence and Support Agreement**

## **Circle Solutions Group Pty Ltd**

Welcome to Circle. We're glad you're here, and we hope you enjoy everything we have to offer.

Please read these Terms carefully because they are a binding agreement between You and Circle Solutions Group Pty Ltd, inc., ("Circle Solutions"; "Circle" or "We").

### Software Licence Agreement

BETWEEN: Circle Solutions Group Pty Ltd, ABN 34 650 687 531 ("we"; "Circle"; "Licensor" or "Company")

AND: The customer ("You"; "Licensee", "Venue" or "Customer").

Recitals:

- a) The Licensor is the owner of and has the right to license the Software and the Materials.
- b) The Licensee wishes to use the Software and the Materials.
- c) The Licensor has agreed to license the Software and the Materials to the Licensee and the Licensee accepts the licence on the following terms and conditions.

By ACCEPTING this agreement by executing an ORDER FORM that references this agreement, the customer agrees to the terms of this agreement. If the individual accepting this agreement is accepting on behalf of a company or other legal entity, such individual represents that they have the authority to bind such entity and its affiliates to these terms and conditions, in which case the term "customer" shall refer to such entity and its affiliates.

The Parties agree:

#### 1. Licence

---

- 1.1 The Licensor grants an exclusive, non-transferable, revocable licence to the Licensee to use the Software and Materials on and from the date of the sales & service agreement or order form for the Permitted Purpose.
- 1.2 The Licensee may not assign the Licence.
- 1.3 The Licensee may not sublicense the Licence. The Licensee is not permitted to adapt/modify the code.
- 1.4 The Licensee is not permitted to reverse engineer, disassemble, or otherwise endeavour to obtain the source code from the object code.
- 1.5 The Licensee is limited to Use the Software on four computer(s), not including the CircleScan terminals. If the Licensee wishes to Use the Software over this limit, the

Licensee will obtain the Licensor's permission in writing and the Licensor reserves the right to charge an additional Licence fee.

### **2. Term of Licence**

---

- 2.1 The parties agree that the Licence is for a period of One (1) year(s) from the date of this agreement unless terminated by either party as set out in this Agreement.

### **3. Licence Fee**

---

- 3.1 The support and licensing fee is terminal based and is our standard monthly fee which provides the right to utilise our software and covers the following support:
- Hardware and peripheral issues
  - Assistance with software bugs
  - Setting up new hardware on Circle terminals
  - Updating of drivers associated with Circle terminals
  - Reviewing feedback on potential software issues
  - Applying patches and fixes as requested

- 3.2 The Licensee will pay the Licensor the fee as set out in their order or purchase order. This may be adjusted by CPI annually.
- 3.3 Circle Solutions Group Pty Ltd reserves the right to review the support and license fees annually. Two months' notice in writing will be provided for any changes to the licensing and support fee.
- 3.4 The Licensee is not obliged to pay any fee due unless it has received a Tax Invoice from the Licensor.

### **4. Intellectual Property**

---

- 4.1 The Licensee acknowledges and agrees that the Licensor is the owner of all Intellectual Property Rights in the Software and the Materials.
- 4.2 The Licensee must not alter, remove, or obscure any trademark or copyright symbol or legend or other proprietary mark on the Software and the Materials.

### **5. Confidential Information**

---

- 5.1 The Licensee acknowledges and agrees that the Software and the Materials contain Confidential Information belonging to the Licensor.
- 5.2 The Licensee agrees to disclose the Software and Materials only to its employees and contractors who need to access such information so that the Licensee can exercise its rights and obligations under this Agreement.
- 5.3 The Licensee undertakes to obtain signed deeds of confidentiality from any contractor who needs access to the Software and Materials.

### **6. Installation**

---

- 6.1 The Licensor will install the Software on the Licensee's equipment.

### **7. Licensor Representations & Warranties**

---

- 7.1 The Licensor represents and warrants that it has the right to license the Software and the Materials to the Licensee.
- 7.2 The Licensee's Use of the Software and the Materials will not infringe the rights including Intellectual Property Rights of any third party.

## Service Level Agreement

A service-level agreement (SLA) defines the level of service you expect from a vendor, laying out the metrics by which service is measured. The application of service levels is crucial to assigning a target by which Circle and their partners services can be measured. Service levels are defined by the impact of an issue cross-referenced with the urgency of a system/user and are rated on a Priority from 1-4 with appropriate response/resolution times assigned to each rating.

- The key factor in measuring impact is the impact the Incident has on the business.
- The key factor in measuring urgency is whether the user is able to continue work process/progress is affected.

### 8. Service Level Targets

8.1 Service Level Targets are the measurement that is used to determine if we are meeting our service and support commitments to your organisation.

a. The following tables outline how SLA priorities are assigned:

IMPACT		LOW	MEDIUM	HIGH
URGENCY	LOW	4	4	3
	MEDIUM	4	3	2
	HIGH	3	2	1

8.2 Impact

Incidents will be placed into High, Medium and Low impact categories. The key factor in measuring impact is the impact the Incident has on the business. Each Incident will be reviewed on a case-by-case basis with appropriate impact assessment and approval based on the following criteria.

IMPACT	DESCRIPTION
High	ALL Circle terminals for the venue is impacted, inoperable. No alternative method for signing in. Multiple groups impacted (i.e., access to Administration & Reporting not available).
Medium	Critical functionality affected, impact high on entry processes, risk of reputation, all users affected
Low	One terminal affected, other terminals operational. Training or knowledge request.

### 8.3 Urgency

IT Incidents will be placed into High, Medium and Low urgency categories. The key factor in measuring urgency is whether the user is able to continue work process/progress is affected. This influences the timeframe that is allowed for resolution. Each incident will be reviewed on a case-by-case basis with appropriate urgency assessment and approval based on the following criteria.

URGENCY	DESCRIPTION
High	Process stopped, user(s) cannot work, or time critical incident (imminent deadline)
Medium	User(s) able to progress with other work in the interim - must be resolved within a short time period
Low	Not time critical

## 9. Targeted SLAs

---

9.1 The following table denotes the SLAs applied to each level of outage priority and targeted adherence within agreement. Service request will automatically be assigned a priority of 4 unless special prior arrangements are made with the a Circle representative.

PRIORITY	RESPONSE TIME	RESOLUTION TIME*
1	100% in 1 hour	80% in 4 hours – 100% within 8 hours
2	90% in 1.5 hours	90% in 8 hours – 100% within 24 hours
3	90% within 4 hours	80% within 24 hours
4	80% within 24 hours	70% within 3 days

*\*Resolution time denotes time until a fix is in place. This may take the form of a permanent fix or a temporary fix pending further investigation regarding root cause of an issue.*

9.2 Service Level Agreements are provided on a best endeavours basis. Circle will make every effort to achieve the targeted SLAs detailed above but uncontrollable circumstances (such as power outages, stock shortages, reliance on third parties etc.) may impact our ability to deliver them. Where should circumstances occur during the rectification of a Priority 1 or 2 fault this will be noted within the ticket.

9.3 Service levels for hardware are predicated on the customer having the appropriate maintenance contracts with respective vendors. Where an issue is due to a hardware

fault or software bug, SLA tracking will cease until the relevant vendor provides the appropriate fix; at which time SLA tracking will resume.

- 9.4 Remote assistance will be provided in-line with the above timescales dependent on the priority of the support request and the availability of support staff.
- 9.5 Any hardware replacements be they warranty or not will be as close as possible to next business day.
- 9.6 The customer must have all support costs up to date at the agreed interval and be reasonably available to assist when resolving a service or related incident or request.

### 10. Escalations and Notifications

---

- 10.1 In addition to customer escalations, our resolution process also includes automatic escalations and notifications based on the assigned priority of an issue. Key customer contacts are included in this automated process to ensure a free flow of information at all times. For example, in the event of a Priority 1 fault (such as all terminals nonoperational), notifications will immediately be sent to the key customer contact and our Circle representatives, and the ticket will move directly to a senior support engineer to act upon.

### 11. Scope and schedule

---

- 11.1 The scope and coverage of this agreement provides the Customer with support per the following schedule:
- Standard Support Hours: 9.00am to 8.00pm
  - Email – Priority 3 or 4 faults, service requests only  
Support Email: [support@circlesolutions.com.au](mailto:support@circlesolutions.com.au)
- 11.2 During busy periods you may be forwarded to a message service. Messages will be addressed within a 2-hour time frame. If it has not been addressed during this time, feel free to call back.
- 11.3 Calls received out of our standard support hours will be forwarded to a message service and addressed as soon as possible the next business day.
- 11.4 Onsite or remote assistance guaranteed within 72 hours during the business week, this may be billable for time and travel depending on the fault.
- 11.5 No onsite assistance is available weekends and public holidays except by prior arrangement.

### 12. General Service Charges

---

Where warranty for hardware has expired or a service is deemed to be an “Out of Contract” service (refer section 2.7.1 below) the following charges apply:

## Licence and Support Agreement

Service	Hours of Coverage	Minimum Service Charge per hour
Regular	Mon to Fri - 9:00am to 5.00pm (on site) Mon to Fri - 9.00am to 8.00pm (remote)	\$150.00 ex GST on site or remote access
Priority	Mon to Fri after 5.00pm (on site)	\$300.00 ex GST on site or remote access
Priority	Saturday/Sunday/Public Holidays	\$300.00 ex GST on site or remote access
Training	Mon to Fri - 8.30am to 5.00pm (on site or remote)	\$150.00 ex GST on site or remote access
Loan Supply	Mon to Fri - 8.30am to 5.00pm	\$120.00 ex GST on site
Loan Removal	Mon to Fri - 8.30am to 5.00pm	\$120.00 ex GST on site
Face Plates	Mon to Fri - 8.30am to 5.00pm	\$120 ex GST on site + cost of face plates OR cost of face plates + freight

### 12.1 Services considered out of contract:

Some services are considered to not be covered by the standard support agreement. Any work that is commenced upon requests below, or at the discretion of Circle Solutions Group Pty Ltd, will be billable to the venue.

Approval from the venue will only be sought for tasks that are estimated to take longer than 2 hours.

- Upgrade execution to terminals and back office may be charged at the discretion of Circle and partners
- Server moves, including deployments to cloud
- Issues with servers not directly in our control (i.e. disk space issues etc.)
- Setting up/onboarding of any API/integration
- Setting up of ban central server
- Setting up of Digital Driver Licence capability, if not done at the time of installation
- Enabling functionality at the venue's request, if not done at the time of installation



- Installation of additional back-office software and reports, if not done at the time of installation
- Loan hardware preparation and freightage when requested and out of warranty
- Items within warranty that need to be returned to base, freight will be covered by the customer
- Additional training requests or demonstrations by support staff that is not obtained through the Knowledge Base for CircleScan will be considered chargeable
- Requests for venue or process specific documentation from the Circle team will be chargeable for time spent to generate and disseminate documentation

### **13. Why do we use time tracking software for support and why are some services billable?**

---

Tracking time is crucial to managing project and costings, productivity analysis, deadline management, SLA management and controlling internal resources.

It's important for us to understand how much time individual technicians are spending on each venue when reviewing support and SLA's. Breaking down the work required into key tasks and allocating the hours between them helps keep on top of the time spent. These tasks can include troubleshooting, process support, change management, research, development, and testing.

#### **Internal Analysis:**

Venues sometimes absorb more time and resources due to environmental issues, staff changes, additional training requests, issues in development and functionality request changes. By using time tracking software we can locate any problem areas and introduce better practices – reducing the risks of it happening again in the future.

Time tracking adds organisational transparency, making it easy to see where things are running smoothly, and highlight any processes that could be adversely affecting our customer base. Are team members dedicating and spending more time with a particular venue? Are there missing resources in an area of the organisation? We can gain insight into how much time is spent on non-billable work – such as hardware issues, reoccurring training requests etc. We can also see which venues may need additional training and support.

#### **Client Transparency:**

All clients expect transparency and evidence of time and resources allocated to their venue. We use the time tracking software to send a detailed hours breakdown along with the invoice for any out of contract billable hours work. If there are any questions in relation to time allocated to

a ticket, a time sheet can provide the data on time spent per ticket update/work completed. It also shows how much value the venue is receiving.

### **14. Licensee Warranties, Obligations & Acknowledgements**

---

The Licensee warrants that it has not relied upon any representation made by the Licensor other than as set out in this Agreement.

- 14.1 The Licensee is not permitted to sell, charge, mortgage or otherwise encumber the Software and/or the Materials in any way.
- 14.2 The Licensee acknowledges that, subject to Clause 1, it has no Intellectual Property Rights in the Software and/or the Materials.
- 14.3 For the purposes of installing the Software, the Licensee will give the Licensor all reasonable access required to its premises and during ordinary business hours on workdays to enable the Licensor to carry out its obligation. The Licensee acknowledges that such access may cause interruption and disruption to its business whilst such installation is being carried out.
- 14.4 The Licensee acknowledges that the Licensor gives no guarantee as to the accuracy or completeness of the Software and the Materials nor that they are free from error.
- 14.5 The Licensee is solely responsible for the use, supervision, management and control of the Software and the Materials.
- 14.6 The Licensee will ensure that the Software and Materials are at all times protected from access, use or misuse and damage and destruction by any person not authorised by either the Licensor or the Licensee and the Licensee will notify the Licensor immediately if it becomes aware of any unauthorised use of the Software and/or Materials.

### **15. Limitation of Liability**

---

- 15.1 To the fullest extent permitted by law, the Licensor expressly disclaims all implied warranties and conditions, including without limitation implied warranties as to merchantability, fitness for purpose of the Software and Materials.
- 15.2 To the extent that any liability of the Licensor under Competition and Consumer Act 2010 (Cth) cannot be excluded, the Licensor's liability is limited to replacing the Software and/or Materials.
- 15.3 Where the Licensor has agreed to install the software, to the fullest extent permitted by law the Licensor makes no representation or gives any warranty in respect of the provision of the services except that it will carry out the service competently, professionally and to the best of its ability having regard to the terms of this Agreement.
- 15.4 To the extent that any liability of the Licensor under the Competition and Consumer Act 2010 (Cth) cannot be excluded, the Licensor's liability is limited to either the supply of the services by the Licensor under these terms and conditions again or the payment of the

cost of having another person provide again to the Licensee similar services as the services supplied by the Licensor under these terms and conditions.

- 15.5 To the fullest extent permitted by law, the Licensor excludes all liability for indirect and consequential loss including without limitation the loss or corruption of the Software, loss of revenue, loss of profits, failure to realise expected profits or savings and any other commercial or economic loss of any kind arising from this Agreement or the provision of any services by the Licensor.
- 15.6 In no event will Circle or its staff be liable for any loss, damage or injury resulting directly or indirectly from the use of the system.
- 15.7 The risk of loss and damage to the systems shall pass to the customer on delivery and installation.

## 16. Indemnity

---

- 16.1 The Licensor indemnifies and holds harmless the Licensee from and against any loss, liability, cost or expense that the Licensee suffers directly or indirectly because of an Intellectual Property Rights and/or moral rights claim in the Software and/or the Materials.
- 16.2 The Licensee indemnifies and holds harmless the Licensor and promises to keep the Licensor indemnified against any loss, claim, action, settlement, award, judgment, expense or damage of whatsoever kind or nature and howsoever arising that the Licensor might suffer as a result of any inaccuracy of the Software and/or the Materials including any unauthorised use of the Software and/or Materials by the Licensee.

## 17. Termination

---

- 17.1 Where the Licensee fails to perform any of its obligations set out in this Agreement, the Licensor reserves the right to immediately terminate the Licence with Notice to the Licensee.
- 17.2 Either party may terminate this Agreement having immediate effect by Notice to the other party if the other party:
- (a) Breaches any provision of this Agreement and fails to remedy the breach within Sixty (60) days of receiving Notice requiring it to do so; and/or
    - (i) Is wound up, has an administrator appointed to it, a receiver appointed to any of its assets, enters into any arrangement, assignment or composition with any of its creditors or any of them or becomes insolvent; and/or
    - (ii) Ceases to carry on its business or where there is any effective change in the control of or ownership of that business.
- 17.3 Subject to Clause 17, on termination the parties agree that all rights granted to the Licensee under this Agreement will cease immediately and the Licensee will return all Software and Materials provided under this Agreement. If requested by the Licensor, the Licensee will provide Notice to the Licensor stating that the Software and Materials have

been returned, destroyed or otherwise dealt with as the case may be as directed by the Licensor.

Following termination, the parties agree that the provisions set out in Clauses 5 (Confidential Information), 7 (Licensor warranty), 14 (Licensee warranty), and 15 (Limitation of Liability) will continue to be binding.

### 18. Notices

---

- 18.1 Any Notice given pursuant to this Agreement must be in writing, signed by an officer of the sender, addressed to the recipient at the address, or email address set out below or to such other address, or email address as a party may from time to time notify in writing to the other.

### 19. Dispute Resolution

---

- 19.1 In the event of a dispute arising between the parties in respect of any right or obligation under this Licence, each party covenants with the other in good faith to take all steps necessary to attempt to resolve the dispute.
- 19.2 In the event that the parties are unable between themselves to resolve a dispute within a reasonable period having regard to the nature of the Licence and the dispute, then either party may apply to their local State/Territory Alternative Dispute Resolution centre for resolution of the dispute under the ADRoIT Principles.

### 20. General Provisions

---

- 20.1 **(Law and Jurisdiction):** This Agreement shall be governed by and construed in accordance with the laws of NSW and any claim made by one party against the other in any way arising out of this Agreement will be heard in NSW and the parties submit to the jurisdiction of those Courts.
- 20.2 **(Relationship):** Nothing in this Agreement will constitute or be deemed to constitute a partnership, joint venture or agency between the parties.
- 20.3 **(Entire Agreement):** The terms of this Agreement constitute the entire terms of this Agreement and all understandings, prior representations, arrangements or commitments that are not contained in this Agreement have no effect whatsoever and do not bind the parties.
- 20.4 **(Waiver):** No waiver of any right or remedy will be effective unless in writing and shall not operate as a waiver of that right or remedy or any other right or remedy on a future occasion.
- 20.5 **(Implied Terms):** Any implied term under law that can be excluded is hereby expressly excluded and no term is to be implied as being a term of this Agreement unless by law it cannot be excluded.

## 21. Interpretation

---

### 21.1 Definitions

- (a) **"Agreement"** means this licence and support agreement including the Schedules and any amendments in writing.
- (b) **"Confidential Information"** means all information in whatsoever form that is:
  - (i) Marked or identified as "Confidential", "Secret", "Not to be Disclosed" or "Private".
  - (ii) Is designated, described, or referred to by the discloser in any document or correspondence as confidential, secret, or private or not to be disclosed.
  - (iii) The receiving party knows or ought to know is confidential; but does not include any information which prior to the date of this Agreement was lawfully in the public domain or which the discloser has published, circulated, or announced publicly or was developed by the receiving party independently of the disclosing party.
- (c) **"Intellectual Property Rights"** means all rights in copyright, circuit layout, designs, trademarks, patents, and all other rights in intellectual property as defined in Article 2 of the World Intellectual Property Organisation (WIPO) Convention whether registrable, registered, patentable or not.
- (d) **"Licence"** means the software licence granted by the Licensor to the Licensee in Clause 1.
- (e) **"Materials"** means the documentation provided by the Licensor to the Licensee and including the operating manuals and other material set out in Part A of Schedule One relating to the Software and includes updates to those materials.
- (f) **"Permitted Purpose"** means the purpose set out in Part B of Schedule One.
- (g) **"Software"** means the computer program/s provided by the Licensor set out in Part C of Schedule One and includes any updates provided by the Licensor during the term of this Agreement.
- (h) **"Tax Invoice"** means an invoice that is GST compliant.
- (i) **"Use"** means use/access, load, run, and/or store.

## Schedule One

### Part A - Materials (Definition)

- CircleScan User Manual
- CircleScan Configuration Manual
- CircleScan Administration Manual
- IT Installation Manual
- Any documentation provided by Circle personnel
- Circle Knowledge Base (Echo)

### Part B – Permitted Purpose (Definition)

Permitted Purpose means use of the Software, documentation or other transaction materials made available to you at the time you purchase the Software, by the Licensee for its own internal business needs, solely in conjunction with the venue or business, and in particular pertaining to (i) operation of the venue; (ii) on meeting regulatory requirements.

The Software must be used exclusively by you or your subsidiaries (those entities over which you have 100 percent (100%) ownership and control for internal purposes that do not contravene this Agreement or applicable law. In the event of any such use of the Software by your subsidiaries, you will ensure and be liable for your subsidiaries' compliance with all obligations imposed on you hereunder.

### Part C – Software (Definition)

CircleScan System (including CircleScan and Circle Admin); Circle Reports, Circle API, FTP processes including upgrades.

### Part D – Licence Fee/s (Clause 3)

License fees are included in the monthly/annual support and licensing fees outlined in the order/purchase order.

- Licence and software fees are payable in advance.
- License fees exclude any additional costs, such as cabling, arising from a site inspection or installation.
- Circle reserves the right to review all support and licence fees annually.
- License and support fees exclude GST.
- License fees do not cover services as covered in clause Part F.

### Part E – Notices (Clause 13)

## Licence and Support Agreement

---

Circle Solutions Group Pty Ltd (the Licensor) of PO Box 257, Engadine NSW 2233

**Attention:** Adrienne Short

**Email:** [adrienne@circlesolutions.com.au](mailto:adrienne@circlesolutions.com.au)

### **Part F – Out of Contract Services (Clause 8)**

Out of contract services will always remain at the discretion of Circle– such services may include:

- Upgrade execution to terminals and back office may be charged at the discretion of Circle and partners
- Server moves, including deployments to cloud
- Issues with servers not directly in our control (i.e. disk space issues etc.)
- Setting up/onboarding of any API/integration
- Setting up of ban central server
- Setting up of Digital Driver Licence capability, if not done at the time of installation
- Enabling functionality at the venue's request, if not done at the time of installation
- Installation of additional back-office software and reports, if not done at the time of installation
- Loan hardware preparation and freightage when requested and out of warranty
- Items within warranty that need to be returned to base, freight will be covered by the customer
- Additional training requests or demonstrations by support staff that is not obtained through the Knowledge Base for CircleScan will be considered chargeable
- Requests for venue or process specific documentation from the Circle team will be chargeable for time spent to generate and disseminate documentation

END OF DOCUMENT