



**Software 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 this Agreement carefully because it is a binding agreement between You and Circle Solutions Group Pty Ltd (ACN 650 687 531), ("Circle Solutions"; "Circle" or "We").

Software Licence and Support Agreement

BETWEEN: Circle Solutions Group Pty Ltd, ABN 34 650 687 531

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

Recitals:

- a) Circle Solutions is the owner of and has the right to license the Software and the Materials.
- b) The Customer as licensee wishes to use the Software and the Materials.
- c) Circle Solutions has agreed to license the Software and the Materials to the Customer and the Customer accepts the licence on the following provisions.

By ACCEPTING this agreement by executing a Circle Solutions Proposal and Circle Solutions Customer Sales and Service Agreement that reference 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 provisions, in which case the term "Customer" shall refer to such entity and its affiliates.

The Parties agree:

1. Licence

- 1.1 Circle Solutions grants a non exclusive, non-transferable, revocable licence to the Customer to use the Software and Materials on and from the date of the Customer Sales & Service Agreement or Circle Solutions Proposal for the Permitted Purpose at the Venue.
- 1.2 The Customer may not assign the Licence.
- 1.3 The Customer may not sublicense the Licence. The Customer is not permitted to adapt/modify the code.
- 1.4 The Customer is not permitted to reverse engineer, disassemble, or otherwise endeavour to obtain the source code from the object code.
- 1.5 The Customer is limited to Use the Software on four computer(s), not including the CircleScan terminals. If the Customer wishes to Use the Software over this limit, the Customer will obtain Circle Solutions' permission in writing and Circle Solutions 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. Circle Solutions will provide the Customer with at least thirty days' notice in advance of the expiration of the term and may at its discretion offer to renew this Agreement and provide the terms of such proposed renewal.

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 Customer will pay Circle Solutions the fee as set out in the Circle Solutions Proposal. This may be adjusted by CPI annually. The fee may vary if additional terminals are required.
- 3.3 Circle Solutions 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 Customer is not obliged to pay any fee due unless it has received a Tax Invoice from Circle Solutions.

4. Intellectual Property

- 4.1 The Customer acknowledges and agrees that Circle Solutions is the owner of all Intellectual Property Rights in the Software and the Materials.
- 4.2 The Customer must not alter, remove, or obscure any trademark or copyright symbol or legend or other proprietary mark on the Software and the Materials.
- 4.3 The Customer will not in regard to the Software whether in whole or in part:
 - (a) Sell, rent, use or access it directly or permit such by any unlicensed person;
 - (b) charge or otherwise encumber it;
 - (c) tamper with, modify, or decompile it;
 - (d) alter, modify, or create derivative works of or relating to it;
 - (e) permit any third party to access or integrate any third party software application with the Software;
 - (f) do anything with the Software inconsistent with the scope of this Agreement or for any purpose other than the Permitted Purpose; or
 - (g) make any copies unless otherwise authorised by Circle Solutions.

5. Confidential Information

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

6. **Installation**

- 6.1 Circle Solutions will install the Software on the Customer's equipment.

7. **Licensor Representations & Warranties**

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

Service Level Agreement (SLA)

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 Solutions and their partners services may be measured. Service levels are defined by the impact of an issue or incident impacting performance of the Software and/or the Materials cross-referenced with the urgency of a system/user and are rated on a priority on a scale of 1-4 with appropriate response/resolution times assigned to each rating. The Service Level Targets table in clause 2.a8.1 indicates the priority and the targeted response/resolution times are indicated in the table in clause 9.

- The key factor in measuring impact is the impact the incident has on the business of the Customer.
- The key factor in measuring urgency is whether the Customer 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 of the Customer. 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 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 Circle Solutions 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 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
- 9.6 The Customer must have paid 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 Solutions 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 in accordance with 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

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- 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, you may contact us again to escalate the response time.
- 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 is guaranteed within 72 hours after the incident is reported by the Customer to Circle Solutions during the business week. this may be billable for time and travel depending on the default.
- 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 outside of scope of contract for maintenance and support the following charges apply:

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 outside of scope of contract:

Some services are not be covered by the standard support agreement and are outside of scope of contract. Any work that is commenced upon requests below, or at the discretion of Circle Solutions, will be billable to the Customer.

Approval from the Customer will only be sought for tasks that are estimated to take longer than 2 hours and include the following:

- 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 the control of Circle Solutions (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 may be adversely affecting our customer base. This includes information as to team members time dedicated at particular matters and any other issues including hardware issues, reoccurring training requests etc. Where there is more than one Venue 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. Customer Warranties, Obligations & Acknowledgements

The Customer warrants that it has not relied upon any representation made by Circle Solutions other than as set out in this Agreement.

- 14.1 The Customer is not permitted to sell, charge, mortgage or otherwise encumber the Software and/or the Materials in any way.
- 14.2 The Customer 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 Customer will give Circle Solutions all reasonable access required to its premises and during ordinary business hours on workdays to enable Circle Solutions to carry out its obligation. The Customer

acknowledges that such access may cause interruption and disruption to its business whilst such installation is being carried out.

- 14.4 The Customer acknowledges that Circle Solutions 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 Customer is solely responsible for the use, supervision, management and control of the Software and the Materials.
- 14.6 The Customer will as an essential obligation of this Agreement provide a Deed Poll in the form required by Service NSW for access to data to enable the services under this Agreement to be provided by Circle Solutions.
- 14.7 The Customer must comply with the requirements of the Deed Poll including having a privacy policy in place that satisfies the requirements of Circle Solutions and the Deed Poll that the Customer must enter as part of the arrangements with Service NSW for data access.
- 14.8 The Customer 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 Circle Solutions or the Customer and the Customer will notify Circle Solutions 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, Circle Solutions 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 Circle Solutions under Competition and Consumer Act 2010 (Cth) cannot be excluded, Circle Solutions liability is limited to replacing the Software and/or Materials.
- 15.3 Where Circle Solutions has agreed to install the software, to the fullest extent permitted by law Circle Solutions 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. Circle Solutions will not be responsible for or liable for any defects caused by external factors including other programs, or caused by the integration or interaction between the Software and the Customer's own computer environments. If the Customer attempts to perform customizations on the Software without the prior written consent from Circle Solutions any express and/or implied warranties under this Agreement are rendered null and void.
- 15.4 To the extent that any liability of Circle Solutions under the Competition and Consumer Act 2010 (Cth) cannot be excluded, Circle Solutions' liability is limited to either the supply of the services by Circle Solutions under these provisions again or the payment of the

cost of having another person provide again to the Customer similar services as the services supplied by Circle Solutions under these provisions.

- 15.5 To the fullest extent permitted by law, Circle Solutions 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 Circle Solutions.
- 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 Circle Solutions indemnifies and holds harmless the Customer from and against any loss, liability, cost or expense that the Customer 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 Customer indemnifies and holds harmless Circle Solutions and promises to keep Circle Solutions indemnified against any loss, claim, action, settlement, award, judgment, expense or damage of whatsoever kind or nature and howsoever arising that Circle Solutions 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 Customer.

17. Termination

- 17.1 Notwithstanding clause 17.2 where the Customer fails to perform any of its obligations set out in this Agreement, Circle Solutions reserves the right to immediately terminate the Licence with Notice to the Customer.
- 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 On termination the parties agree that all rights granted to the Customer under this Agreement will cease immediately and the Customer will return all Software and Materials provided under this Agreement. If requested by Circle Solutions, the Customer will provide Notice to Circle Solutions stating that the Software and Materials have been

returned, destroyed or otherwise dealt with as the case may be as directed by Circle Solutions.

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 together with the Terms and Conditions constitute the entire agreement between the parties as to the subject matter 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.
- 20.6 **(Validity and Severability):** If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall nonetheless be enforced to the fullest extent

permitted by applicable law so as to reflect the original intent of the parties, and such provision shall not affect the legality and validity of the other provisions.

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 licence granted by Circle Solutions to the Customer in Clause 1.
- (e) **"Materials"** means the documentation provided by Circle Solutions to the Customer 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 Circle Solutions set out in Part C of Schedule One and includes any updates provided by Circle Solutions during the term of this Agreement.
- (h) **"Tax Invoice"** means an invoice that is GST compliant.
- (i) **"Terms and Conditions"** means Circle Solutions standard terms and conditions.
- (j) **"Use"** means use/access, load, run, and/or store.

- (k) "Venue" means the Customer's address at which the Materials are to be located and the Customer's operations for the Permitted Purpose occur.

Schedule One

Part A - Materials (Definition)

In any form whether electronic or written:

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

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 are granted a licence to use the Software, by the Customer 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 at the Venue 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 Circle Solutions Proposal.

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

Part E – Notices (Clause 13)

Circle Solutions Group Pty Ltd of PO Box 257, Engadine NSW 2233

Attention: Adrienne Short

Email: 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 under the control of Circle (i.e. disk space issues etc.)
- Setting up/onboarding of any API/integration
- Setting up of provision for list with details for bans on central server
- Setting up of Digital Driver Licence capability, if not done at the time of installation
- Enabling functionality at the Customer'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 service
- 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