

Customer Hosting, Maintenance and Support Contract

Between:

Circle Interactive Ltd
The Create Centre
Smeaton Road
Bristol
BS1 6XN

Registered Address
1 Osborne Rd,
Bristol,
BS3 1PR
Company Number: 05540067
VAT Number: 862693490

And:

CLIENT ORGANISATION

Charity no.
Company no.

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1. Definitions:

We attempt to communicate at all times in clear English avoiding unnecessary jargon. To that end, we use the following legal terms:

You/your refers to your organisation or its representatives.

We/us/our refers to Circle Interactive or its representatives.

Level 1 Fault - means a fault which causes a complete failure of any part of the system;

Level 2 Fault - means a fault which interferes with the normal working of the system and causes you or your clients problems;

Level 3 Fault - means a fault which can be circumvented by the Customer without difficulty or disruption and which does not lead to a loss of data;

2. Scope of the Services:

You require hosting for your Drupal based website. On a monthly basis we will ensure your Drupal based website remains available and provide software maintenance, backups and support according to the terms of this agreement.

3. Software Maintenance

The Drupal security team releases security updates from time to time. We will keep your installation up to date with minor-version upgrades and security patches (e.g on Drupal 7.1 -> 7.2). Not every release will be required since some may cover minor vulnerabilities in contributed modules that are not in use on your system but on average probably 3 or 4 updates may be required during a year. Our maintenance does not cover major version upgrades (e.g. Drupal 7.x -> Drupal 8.x).

We will always test upgrades through our provisioning system before we arrange a time to implement the upgrade on your live site. These upgrades will sometimes require a short period (about 30 minutes or so) when the system is not being edited so we will usually perform this work out of office hours after consulting with you.

4. Support

Circle Interactive will provide technical support for your system comprising and limited to the following:

- Fault diagnosis, analysis and where possible recommendations for correction following a report of a problem to Circle Interactive.
- Provision of the Support Services will, in the first instance, be carried out remotely. If it becomes necessary to carry out further Support Services at your site, such work will be chargeable at our then prevailing daily rate, including reasonable travel costs.
- We will respond to all tickets within normal business hours in accordance with the response times detailed below. A 'response' is defined as: a fix, a plan of action to deal with the problem, or a request for more detailed information.
- We will not provide Support Services outside of our UK business hours of 9am to 5pm, Mondays to Fridays, or on public holidays, unless agreed under the terms set out under "Cover" below.
- Speed of Web Pages is affected by too many variables in the chain between our server and a users browser therefore we can offer no guarantees regarding this. However, time to first byte (TTFB) are generally sub-1 second from our server environment.

Support Cover

Support will be performed during normal working hours 9am – 5pm UK time. Out-of-hours support services may be provided by prior arrangement and will be charged for at double our hourly rate unless agreed otherwise.

We will provide you with a user account (or accounts) for our support site so that you can create and track support tickets through this interface and so you can upload images (such as screen shots) relevant to the issue.

We will monitor all tickets created through this system regularly throughout the working day.

We guarantee to respond to all tickets according to the following schedule:

Fault Level	Response Time	Resolution Time
Level 1	2 working hours	8 working hours. If resolution within eight (8) hours is not possible, we will draw up a timetable for a solution, and ask you to review and agree to this.
Level 2	4 working hours	16 working hours. If resolution within sixteen (16) hours is not possible, we will draw up a timetable for a solution, and ask you to review and agree to this.
Level 3	8 working hours	24 working hours. If resolution within twenty-four (24) hours is not possible, we will draw up a timetable for a solution, and ask you to review and agree to this.

We do not guarantee this service level if the support request is sent directly to any staff member or company inbox or reported by phone.

Support Billing

Support is charged in increments of 15 minutes at our standard support rate. Support is charged on a time and material basis, including investigation and administration of the ticket submission. When reporting a bug in the software, if there is a patch available for the bug, we will apply the patch free of charge. If you want us to write code to fix the bug, this is chargeable work.

5. Quote requests/change requests

If you are requesting new functionality or a change to the system, we will discuss the details and give you a quote before beginning implementation. After the implementation is complete we will allow 20 working days for any issues to be raised regarding the change. Any issues raised which have arisen due to the change will be amended free of charge during this time period. After 20 working days any further issues found and raised will be treated as normal support tickets or change requests and charged at the standard rate.

6. Acceptance Testing

You will be responsible for final acceptance testing of all functional aspects of your site's functionality including, but not limited to, standard Drupal editing, users provisioning and permissions, email alerts etc.

Once you have deemed the site to be 'accepted' it will be moved to the production servers and you will update your DNS settings to make the newly provisioned site 'live'.

7. Warranty

Any bug or defect in code written by Circle not detected during User Acceptance Testing period is under warranty for a period of 30 days following launch and during this period will be corrected at no additional cost.

Circle's warranty does not cover open source code, which is developed and maintained by open source development communities (in the case of Drupal or CiviCRM, thousands of developers world-wide). If any defects are encountered in open source code, Circle can investigate and assist with identifying issues and reporting to relevant code maintainers. Where practical, Circle can also work to resolve issues in open source code on a best effort basis. Circle's time on investigation and fixes for open source bugs is chargeable and specifically is not covered by the warranty that covers code developed originally by Circle.

We guarantee to update your software with all security releases within the current major version of code. For example, with Drupal this would cover all security releases for the Drupal 7 if your site currently runs on Drupal 7 (but not any security releases for Drupal 8, which your site does not use; upgrading to Drupal 8 would be a major upgrade, which is chargeable). For CiviCRM, this would cover all security releases for CiviCRM 4.6 if your site runs on CiviCRM 4.6.x (but not any security releases for CiviCRM 4.7.x, which your site does not use; upgrading to CiviCRM 4.7.x would be a major upgrade, which is chargeable). These security releases may from time to time introduce regression issues, causing some aspects of the system not to work as intended. We expect these regressions to be dealt with in a timely manner by the open source development community, which manages security. While we may add to the community efforts, we specifically do not include such issues in the warranty above.

Drupal and CiviCRM are open source software developed by the paid and unpaid efforts of many people around the world. They are distributed under the GNU GPL licence, which specifically states that these products are provided "as is" and without "warranties of merchantability or fitness for any purpose."

8. Security

Network Security

The solution incorporates all traffic being encrypted in transit. We will only use ciphers and protocols that are not deprecated. This means currently we only support TLS 1.2 and at least 128 bit ciphers.

Server Security

We operate stripped down systems and have total control over security updates.

Access to the servers (only by SSH) is restricted to IP addresses owned by Circle Interactive and Bytemark (the infrastructure provider)

The basic server configuration will be similar to PCI compliant servers that we run. While PCI compliance is not in the scope of this hosting, we would willingly submit the system to any penetration testing that is deemed necessary, and comply with any further recommendations that the testing generates

Additionally, we run periodic Nessus scans, especially following significant changes or attempted attacks

We run Linux Malware Detect (LMD) on all of its servers. This is a malware scanner for Linux released under the GNU GPLv2 license. It uses threat data from network edge intrusion detection systems to extract malware that is actively being used in attacks and generates signatures for detection

The only ports open will be 80 (for redirect to 443), 443, 22 (firewalled), 4949 (used for monitoring and firewalled), 5666 (used

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for monitoring and firewalled)

We will ensure that the web servers are fully patched and access restricted to essential/cleared staff

9. Your Responsibilities

You will provide all pertinent information relating to the issue, including web browser, operating system and the URL of any pages where the problem exists, through our ticketing system. Screenshots should be provided if these are requested. Remember HELP us to help you. **How** did it happen? **Error** message? **Link**? **Picture**?

You will place all subsequent calls relating to the system only to the agreed support telephone number(s).

You guarantee not to upload any content which is illegal under UK law, which promotes hatred towards persons belonging to any ethnic group, religion or sexual orientation or which infringes on any other party's copyright.

10. Intellectual Property

You guarantee that all material, both text and images, supplied by you and used in the construction of the web site is your property and free to use without breach of copyright laws. All such material will remain your property.

We guarantee that we have the right to use and distribute all material supplied by Circle Interactive. In some cases this will be our copyright or intellectual property. In the case of some imagery, you will have a non-exclusive licence to use the image as provided by a third party. You will always have a licence to continue using any system we produce for you in its entirety, although this does not amount to owning the intellectual property represented in the underlying code.

11. Confidentiality

Circle Interactive are committed to protecting your privacy. You may from time to time receive email alerts from us on security issues that we believe may affect you or changes that may be relevant. However, your email address will categorically not be passed on to anyone.

Sometimes we will require access to some of your systems as part of the development process. We guarantee to undertake this under the strictest confidentiality and are always happy to sign any additional confidentiality agreements you may require when this kind of work is taking place.

Both parties will keep secret and not disclose or make use of any confidential information relating to the other and this obligation will remain in force even after termination of this agreement for any reason whatsoever. Circle Interactive shall ensure that all its staff, enter into a confidentiality agreement on terms no less onerous than those contained in this agreement.

Any agreement on confidentiality will not apply to information which:

- comes into the public domain through another channel; or
- the disclosing party can prove was in their possession free of restriction prior to this agreement; or
- which is required to be disclosed by court order, legal or regulatory obligation.

The provisions of this confidentiality clause shall survive termination, cancellation or expiry of this agreement.

12. Data Protection

Both parties undertake to comply with the Data Protection Act 1998, the Telecommunications Data Protection and Privacy Regulations 1999 and all applicable laws and regulations relating to the processing of personal data or privacy or any amendments and re-enactments thereof, and shall ensure that their employees, agents and subcontractors shall observe the provisions of the same.

Circle Interactive agrees that it will have at all times during the term of the Agreement appropriate technical and organisational measures in place to prevent unauthorised or unlawful processing of any personal data provided to it by CLIENT ORGANISATION. Measures will also be in place to protect this personal data against accidental loss, destruction or damage. Circle Interactive will also take all reasonable steps to ensure the reliability of any of its staff who will have access to this personal data.

Circle Interactive undertakes that it will not process or transfer any personal data outside the UK, without consent.

Circle Interactive undertakes that upon expiry or termination of this Agreement for any reason it will immediately return or, at CLIENT ORGANISATION's option, destroy any personal data held.

Both parties agree that they will notify the other in the case of any data or other security breach. In the event of such a breach, we may suspend the availability of the site while measure are taken to rectify the situation.

13. Licensing

Drupal and CiviCRM are licensed under the GNU GPL 3 and GNU AGPL 3.

You can find details of the licensing at <http://www.gnu.org/licenses/agpl.html>

14. Liability

We will host and support the specified software as is with no guarantee of suitability to your purpose either explicit or implied. We do not warrant that the service will be uninterrupted or error free. While we will help you report any bugs discovered to the relevant development teams and while we will try to fix any bugs related to modules which we have developed, you should be aware that the software you are using is open source and in the case of Drupal modules are developed by a very wide range of third parties.

1. Nothing in the Contract shall limit or exclude our liability for:

1. death or personal injury caused by the negligence of our employees, agents or subcontractors;
2. fraud or fraudulent misrepresentation; or
3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

2. Subject to Clause 14.1, we shall not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

1. loss of profits;
2. loss of sales or business;
3. loss of agreements or contracts;
4. loss of anticipated savings;
5. loss of use or corruption of software, data or information;
6. loss of or damage to goodwill; or
7. any indirect or consequential loss.

Subject to clause 14.1, our total liability to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total charges paid under the contract as at the date of the said breach.

3. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

4. This clause 14 shall survive termination of the Contract.

15. Termination and Duration

There is no fixed term duration for our services. We consider this a rolling contract.

You may terminate the agreement by giving us one month's notice. Such notice may be given at any time but no sooner than three months after the sign up date.

We may terminate the agreement by giving you three month's notice. Such notice may be given at any time but no sooner than 12 months after the sign up date.

In either case all files including database dumps will be made available to you in a secure directory within 5 working days of notice being given provided payments on the account are up to date.

16. Notice

Any notice under this Agreement will be in writing and deemed to be sufficiently served if it is either delivered personally or sent by prepaid registered post, or by fax, or by email (requesting acknowledgement) and addressed to the party with the details as set out in the Order Form.

17. Force Majeure

We shall be under no liability to you in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of force majeure, namely, circumstances beyond our reasonable control of which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosions, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; inability to provide the website as a result of the breakdown of equipment.

18. Waiver

Failure or neglect by us to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of our rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice our rights to take subsequent action.

19. Severability

In the event that any of these terms, conditions or provisions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition, or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

20. Details of Services

Details of service are as described in the Schedule

21. Fees and Payment

The fees and payment schedule are as described in the Schedule

22. Acceptance of this Agreement

You are deemed to have accepted the provisions of this Agreement once a signed copy is returned to us.

23. Law

The parties agree that the Agreement terms and conditions shall be construed in accordance with English Law and subject to the exclusive jurisdiction of the English courts..

