

SOFTWARE USAGE TERMS & CONDITIONS

THIS AGREEMENT according to the Effective Date as defined is made BETWEEN:

Circle Cardiovascular Imaging Inc. a corporation incorporated pursuant to the laws of the Province of Alberta, having an office at Calgary, Alberta (hereinafter referred to as “Circle”)

- and -

Software User

(hereinafter referred to as the “User”)

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words have the meaning ascribed to them below:

- (a) “Agreement” means this contract, as well as all attached Schedules, and any written amendments made pursuant to the terms contained in this contract and its Schedules;
- (b) “Confidential Information” means, subject to Section 9.5, data or information, disclosed in any form, including, but not limited to, in writing, orally or electronically, of any nature in any form including, without limitation, drawings, specifications, graphs, charts, business plans, designs, drawings, research, software, trade secrets, processes, methods, compositions, techniques, discoveries, improvements, inventions, ideas, know how, marketing plans as well as any other technical, financial or business information which is developed or disclosed for the purpose of this Agreement;
- (c) “Documentation” means the user manuals and any other documentation, written or otherwise provided by Circle to accompany the Software;
- (d) “Effective Date” means the date the User first attempts to install the Software regardless if it is a purchased, evaluation, or training version;
- (e) “Error” means an error in the Software that causes it to work substantially different than as specified by the Product Specification;
- (f) “Functional Specification” means those functional specifications of the Software described in Quote;
- (g) “Hours of Operation” mean the times between 9:00 A.M. and 5:00 P.M. MST on Monday through Friday, inclusively, excluding statutory holidays in the Province of Alberta;
- (h) “Intellectual Property” includes any industrial or intellectual property rights including, but not limited to, rights to any inventions, discoveries, improvements, patents, patent applications, copyright, trade-marks, trade names, Confidential Information, know-how, industrial designs and industrial design applications;
- (i) “License” has the meaning ascribed to it in Section 2.1 of this Agreement;
- (f) “Non-permitted Uses” means using the software for any use other than Permitted Uses and includes, without limitation, reverse engineering, disassembling, decompiling or otherwise disseminating the source code from the Software;
- (g) “Party” means one of either Circle or the User whereas “Parties” means both Circle and the User;
- (h) “Permitted Uses” includes:
 - (i) using the Software only in the furtherance of the internal operations of the User and not for the use or benefit of third parties; and
 - (ii) using the Software only on the Designated Computers at the Designated Site.
- (i) “Quote” means the document given to the User or User institution with the financial and miscellaneous terms
- (j) “Reported Error” means an Error that has been reported according to the procedures described in Schedule “A”;
- (k) “Software” includes the cmr⁴² and/or report⁴² computer software delivered to the User as well as any updates and any documentation or manuals provided by Circle to assist with the use of the computer software or updates;
- (l) “Training” means On-Site Training and/or Remote Product Training;
- (m) “User” any person and/or healthcare institution utilizing the Software for research and/or clinical purposes.

1.2 Singular, plural, etc.

Words importing the singular number include the plural and vice versa and words importing gender include the masculine, feminine and neuter genders.

1.3 Headings, Articles and Sections.

The division of this Agreement into Articles and Sections and the insertion of the headings are for convenience of reference only and does not affect the construction or interpretation of this Agreement and, unless otherwise stated, all references in this Agreement or in the Schedules to Articles, Sections and Schedules refer to Articles, Sections and Schedules of and to this Agreement or of the Schedule in which such reference is made.

1.4 Schedules.

The following Schedules are appended to and form part of this Agreement:

Schedule "A" – Support Conditions and Protocol
Schedule "B" – Excluded Services

The foregoing Schedules are incorporated in this Agreement by reference as though contained in the body of the Agreement. Wherever any term, condition or provision, express or implied, of any Schedule conflicts or is at variance with any term or condition in the body of this Agreement, such term, condition or provision in the body of this Agreement prevails.

1.5 A term or condition of this Agreement can be waived or modified only by the written consent of both Parties. Forebearance or indulgence by either Party in any regard does not constitute a waiver of the term or condition to be performed, and either party may invoke any remedy available under the agreement or by law despite the forbearance or indulgence.

1.6 This Agreement constitutes the entire agreement between Circle and the User and supercedes all prior and contemporaneous agreements or representations or warranties of any kind.

ARTICLE 2 - GRANT OF LICENSE

2.1 Circle hereby grants the User, for the Term of this Agreement, a non-exclusive license to use the Software (the "License") on the Designated Computers at the Designated Site as outlined in the Quote.

2.2 Neither this Agreement nor the License may be sublicensed, assigned or transferred by the User. Circle may assign the License or this Agreement in its sole discretion.

2.3 The User covenants that the Software will only be used for Permitted Uses. The User further agrees to keep written records of the number of Licenses it currently owns as well as the sites where the Software is being used. The User agrees to make this information available to Circle on request.

2.4 The User covenants that it will not use the Software for Non-permitted Uses.

2.5 The User agrees that it must obtain additional Licenses to use the Software on computers other than the Designated Computers. Any such Licenses will be governed by the terms and conditions of this Agreement and subject to payment to Circle of the License Fee at the then current rate.

2.6 Circle hereby grants the User a limited, non-exclusive license to copy the Documentation for the sole purpose of making the Documentation available to internal users of the Software, but in no event shall make more copies than the number of Designated Computers, plus one additional back up copy.

ARTICLE 3 - INTELLECTUAL PROPERTY

3.1 The User agrees that nothing in this Agreement grants the User a license to use or display any Circle trade-mark, unless given express written permission by Circle.

3.2 The User agrees to maintain all copyright and other proprietary notices on all copies of the Software and Documentation in the same manner as when the Software and Documentation is delivered to the User by Circle.

3.3 The User agrees that exclusive right, title and ownership of all Intellectual Property remains with Circle at all times, including, but not limited to, any backups of the Software made by the User, whether authorized or not, any updates, changes, modifications, enhancements or improvements made to the Software whether made by Circle or the User or one of the User's employees, agents or contractors and any Intellectual Property provided to the User while Circle or its agent provides TAP, Services or Additional Services or fulfils any obligation under this Agreement.

3.4 The User covenants that it will not sell, assign, transfer, duplicate, destroy or encumber the Intellectual Property except as expressly permitted by the terms of this Agreement.

ARTICLE 4 - TAP (Technical Assurance Program)

4.1 Circle agrees to provide TAP to the User for the Term of this Agreement, subject to payment of the TAP Fees by the User to Circle as outlined in the Quote.

4.2 The User agrees that TAP will only apply to Software properly installed on the Designated Computers at the Designated Site.

4.3 The User agrees that Circle may assign its duties to provide TAP to a third party or retain an independent contractor to provide TAP.

4.4 The User agrees to abide by and follow the TAP Conditions and Protocol as set out in Schedule "A".

4.5 Circle's obligation to provide TAP under this Agreement is contingent upon proper use of the Software. Circle is under no obligation to provide any TAP according to the terms of this Agreement as a result of:

- (a) damage occurring in transit;
- (b) improper installation or operation by the User;

- (c) misuse, abuse or negligent use, repair, alteration or improper storage or any use by the User which does not conform to the specific or general instructions of Circle or to the provisions of the Software's Functional Specifications;
- (d) any Non-permitted Uses of the Software or use of the Software by any unauthorized third party;
- (e) causes external to the Software or if the Software has been subjected to an extreme power surge or electromagnetic field, whether or not through the fault of the User; or
- (f) the User's failure or refusal to implement Updates recommended by Circle.

ARTICLE 5 - CONFIDENTIALITY AND PROTECTION OF PERSONAL HEALTH INFORMATION

- 5.1 The Parties each agree to hold the other Party's Confidential Information in the strictest confidence, subject to the exceptions in this Article.
- 5.2 The Parties agree that Confidential Information may be revealed to the Party's directors, officers, employers, consultant or agents who need to know, provided that these parties expressly acknowledge and agree to abide by the confidentiality provisions of this Agreement.
- 5.3 The Parties agree to take all reasonable steps to prevent disclosure of the other Party's Confidential Information.
- 5.4 The Parties agree to notify each other immediately if either is compelled by legal proceedings, applicable law or a valid court order to reveal the other Party's Confidential Information. Such compelled Party will take all reasonable steps to reveal only the Confidential Information necessary and ensure the Confidential Information will remain confidential, to the extent possible, with the applicable authority compelling disclosure.
- 5.5 Circle agrees to abide by the reasonable requirements of User's policies for the protection of personal health information collected, used, or disclosed by the Software, in compliance with applicable legislation protective of personal health information for the jurisdiction of the Designated Site.
- 5.6 For the purposes of this Agreement, Confidential Information does not include information, which is:
- (a) available to the public other than by breach of this Agreement by the recipient thereof;
 - (b) rightfully received by the recipient from a third party without confidential limitations;
 - (c) known to the recipient prior to first receipt of the information from the discloser; or
 - (d) disclosed by a discloser to a third party without restriction on disclosure.

ARTICLE 6 - REPRESENTATIONS AND WARRANTIES

- 6.1 The Parties represent and warrant to each other that:
- (a) they are duly incorporated and subsisting under the laws of their place of incorporation;
 - (b) they have the power and are authorized to enter into this Agreement;
 - (c) they will not breach or interfere with third party's rights by carrying out the terms of this Agreement and abiding by this Agreement's terms and conditions; and
 - (d) they will not enter into agreements with third parties, which will interfere with the compliance with the terms and conditions of this Agreement.
- 6.2 Circle represents that it is legally capable of providing support to the User as required by the terms of this Agreement.
- 6.3 THE SOFTWARE AND ANY SUPPORTING DOCUMENTATION, ALONG WITH THE TAP, SERVICES OR ADDITIONAL SERVICES ARE PROVIDED "AS IS". CIRCLE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND OTHER THAN THOSE STATED IN SECTIONS 10.1 AND 10.2 OF THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF:
- (a) MERCHANTABILITY;
 - (b) FITNESS FOR A PARTICULAR PURPOSE;
 - (c) NON-INFRINGEMENT; OR
 - (d) ERROR-FREE OPERATION.
- 6.4 THE ENTIRE RISK OF USING THE SOFTWARE AND ITS SUITABILITY, QUALITY AND PERFORMANCE RESIDES WITH THE USER.
- 6.5 CIRCLE'S TOTAL LIABILITY TO THE USER OR TO ANY THIRD PARTY FOR DAMAGES ARISING FROM ANY CAUSE OF ACTION IS, IN THE AGGREGATE, LIMITED TO THE FEES ACTUALLY PAID BY THE USER DURING THE PRIOR YEAR FROM THE DATE OF THE EVENT GIVING RISE TO THE CLAIM. THE LIMITATION OF LIABILITY PROVISIONS OF THIS AGREEMENT REFLECT AN INFORMED VOLUNTARY ALLOCATION OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THE SOFTWARE AND THAT SUCH VOLUNTARY RISK ALLOCATION REPRESENTS A FUNDAMENTAL PART OF THE AGREEMENT BETWEEN THE USER AND CIRCLE.

6.6 Circle is not liable for any special, indirect, incidental, consequential, exemplary, punitive or any similar or other damages of any nature suffered by the User whatsoever including, without limitation, loss or use or lack of availability of the User's facilities, including its computer resources and any stored data, loss of profits or revenue, or other commercial loss, or any claim for contribution or indemnity in respect of any claims against the User.

6.7 The User agrees to indemnify and hold harmless Circle, its employees, agents and assigns from and against any costs, loss, damages, claims or expenses resulting from the Users use of the Software.

ARTICLE 7 - NOTICE

7.1 Any notice contemplated to be given to either Party under this Agreement must be in writing and may be delivered personally or sent by fax, courier or prepaid registered mail addressed to either Party according to the address below which may be changed by providing notice to the other Party:

CIRCLE

Circle Cardiovascular Imaging Inc.

Attention: Licensing

#12, 3535 Research Road NW Calgary, AB T2L 2K8

7.2 Notices will be deemed to be received:

- (a) on the first date of delivery if personally delivered or couriered;
- (b) on the day of dispatch if sent by fax; or
- (c) five (5) business days after the day of dispatch if sent by prepaid registered mail and addressed correctly to the intended recipient.

ARTICLE 8- GENERAL TERMS

8.1 Assignment.

The User agrees not to sell, convey, sublicense, delegate, assign or otherwise transfer the Software, or any component thereof, or any right therein or this Agreement, to any other person, either voluntarily or involuntarily, directly or indirectly, whether by operation of law or otherwise without the prior written consent of Circle, such consent may be unreasonably withheld. Any merger, consolidation or other reorganization resulting in a change of control of the User will be deemed an assignment hereunder. Subject to the restrictions on assignment in this Agreement, this Agreement enures to the benefit of and is binding upon the permitted successors and assigns of the Parties.

8.2 Attornment.

This Agreement is governed by, and must be construed and enforced in accordance with, the laws in force in the Province of Alberta. Each of the Parties irrevocably attorns to the jurisdiction of the courts of the Province of Alberta.

8.3 Delay in Performance.

Circle is not liable to the User for failure to perform this Agreement in accordance with its terms if such failure arises out of causes beyond its reasonable control such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labour dispute, inability to obtain necessary supplies and the like.

8.4 Contents of Agreement.

The contents of this Agreement are proprietary and confidential to Circle.

8.5 Risk of Loss.

The User assumes all risks of loss or damage to the Software while on the premises of or otherwise in the possession of the User.

8.6 Waiver

A term or condition of this Agreement can be waived or modified only by the written consent of all parties. Forbearance or indulgence by any party in any regard does not constitute a waiver of the term or condition to be performed, and such party may invoke any remedy available under the Agreement or by law despite the forbearance or indulgence.

8.7 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, the offending provision shall be severed from the Agreement and the other provisions of this Agreement shall remain in full force.

8.8 Force Majeure

Circle shall not be liable for delays in performing or failure to perform its obligations under this Agreement resulting directly or indirectly from, or contributed to by acts of God; acts or failures to act of the Client; acts or failures to act of civil or military authority; governmental priorities; fires; strikes; or other labour disputes; accidents; floods; epidemics; failure of the world wide web, or any other circumstances beyond Circle's reasonable control, whether similar or dissimilar to the foregoing. The User or Circle shall notify the other promptly of any material delay.

8.9 Termination

This Agreement may be terminated by either Party at any time if the other Party breaches a material term of this Agreement and fails to cure the breach to the satisfaction of the other Party within thirty (30) days of receiving a notice specifying the breach.

8.9 Agreement to Terms & Conditions

THE INSTALLATION AND/OR USE OF THE SOFTWARE WILL INDICATE THE USER AGREES TO ALL TERMS AND CONDITIONS OF THE SOFTWARE USAGE TERMS & CONDITIONS.

SCHEDULE "A"

SUPPORT CONDITIONS AND PROTOCOL

The User agrees that support is only available during Hours of Operation.

The User agrees to file an Error using the web address report.circlevi.com at which time the Error becomes a Reported Error. The User may then contact Circle by phone (403) 338-1870, fax (403) 338-1895 or e-mail at support@circlevi.com. The User agrees and acknowledges that a solution to a Reported Error may require Circle support personnel to obtain having direct access to Software on the Designated Computer.

User Key Contact

The User agrees that all correspondence between Circle and User will go through the key contact listed in the Quote. Any failure to communicate according to this protocol will may lead to deviation from the response times set out below.

Support Protocol

STEP 1. Circle and the User will mutually agree upon a categorization of the User's problem based on the categories below once Circle has been given all relevant information from the User as to the nature of the problem. If a work around or third party solution is identified for a problem, Circle and User agree to review the category originally assigned to such problem and to reassign a lower level category, as appropriate, until a full solution is developed within an agreed upon time frame.

Category 1—'Highest'

1. The Software is unusable for normal operations, for example:
 - a) the Software consistently produces material incorrect results, or fails catastrophically in response to internal errors;
 - b) the Software consistently produces material errors in measurements (within the precision of the host computer(s)) based on the quality of the input data and proper use/configuration of the Software;
 - c) the Software consistently generates material errors in the formatting or representation of data on a screen;
 - d) the Software does not perform most of its documented functions with devices supported by the Software;
 - e) the system response time deteriorates unduly with system loading; or
 - f) Injury, death or potential injury or potential death due to direct or indirect malfunction of cmr⁴²

Category 2—'Moderate'

1. The Software is usable, but incomplete, or in some way causing disruption to normal operations, for example:
 - a) the Software performs most, but not all of its documented function; or
 - b) the Software performs properly on some of the devices that are supported, but is unusable on others.

Category 3—'Low'

1. The Software is usable, but inconvenience is caused to normal operations, for example:
 - a) a defect in the Software makes a function unusable in the most convenient way; or
 - b) the Software is usable on all devices supported by the Software, but does not perform all documented functions on all devices.

Category 4—'Lowest'

1. Minor problems that do not directly affect normal operations, or areas where an amendment to the Software would enable improved operation of the Software, for example:
 - a) defects that can be satisfied by a documentation change; or
 - b) minor defects for which there is an alternative system function or other work around.

STEP 2. Once Circle has received the information from the User regarding the problem, Circle will attempt to provide a Response based on the response times listed in the table below, subject to the Escalation Procedures. For the purposes of this Schedule, "Response" means a response provided by a Circle support services personnel either by phone or e-mail, which:

- a) responds to an initial problem report provided by the User;
- b) results in an agreed identification of the problem category;

cmr⁴² Standard Software License

- c) provides an initial assessment as to the likely method to resolve the problem; and
- d) provides a satisfactory explanation of the progress being made to resolve the problem.

Problem Category	Response Required	Time after which contact may be made
1	Initial	2 hours
	<i>Updates</i>	<i>1 Day</i>
2	Initial	8 hours
	<i>Updates</i>	<i>2 Days</i>
3	Initial	2 days
	<i>Updates</i>	<i>1 week</i>
4	Initial	7 days
	<i>Updates</i>	<i>1 month</i>

STEP 3. Project management personnel of User and Circle will meet on a reasonable basis, or more frequently as may be required, to review the status of the Services, TAP, amendments to the Schedules, acceptance testing, invoices or estimates.

SCHEDULE "B"

EXCLUDED SERVICES

The provision of the following excluded services will only be provided by Circle to the User if the Parties agree to modify this Agreement subject to the terms of this Agreement or upon the payment of Additional Services Fees:

Except as otherwise expressly provided in this Agreement, retraining the User's personnel whether in person or by telephone;

1. Support or training on any software not supplied by Circle;
2. Support or training on any third party software supplied by Circle;
3. Modifications or enhancements to the Software other than standard updates and upgrades;
4. Implementation, data conversion and support for software other than the Software or for new versions of the Software;
5. Problems or inconsistencies in the Software occurring after and as a result of User adding a third party application to the system or changing the system operating environment, including but not limited to the server and desktop hardware, unless such changes are made with the approval of Circle;
6. Problems or inconsistencies with the server on which the Software resides, occurring after, and as a result of, adding third-party applications to the system which reside on such server;
7. Disaster recovery services of any kind;
8. Support or training related to the failure or malfunction of system hardware;
9. Technical support or training related to the addition of peripherals, device integration, import formats, setting up new users and nightly back-ups;
10. Support or training required by personnel other than User's named liaisons; or
11. Support requests outside the Hours of Operation.