

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 -

The user that downloads the App through the Solution Store.

(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) “Affiliate” means a corporation, company, or other entity, now or hereafter, directly or indirectly, owned or controlled by, or owning or controlling, or under common control with another entity. For purposes of this definition “control” of a corporation, company, or other entity shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether: (i) through the ownership of voting securities providing for the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority; (ii) by contract; or (iii) otherwise.
- (b) “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;
- (c) “App” means software intended for diagnostic, therapeutic, or any other clinical use in connection with scanners, and excluding software designated for research purposes only (‘prototypes’).
- (d) “App Provider Agreement” means an agreement between Circle and SHC or its Affiliates, respectively, on Circle’s distribution of Apps through the Solution Store.
- (e) “Concurrent User” or CCU means:
 - (i) a User that can utilize the Software from any computer meeting the minimum specifications, and
 - (ii) has the client application of the Software loaded on said computer; and
 - (iii) is located at the Designated Site
- (f) “Confidential Information” means, subject to Article 4 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;
- (g) “Cover Sheet” means a document, electronic form, or online instrument provided by Circle to enter into Agreements with the User.
- (h) “Documentation” means the user manuals and any other documentation, written or otherwise provided by Circle to accompany the Software;
- (i) “Effective Date” means the date the User first installs the Software regardless if it is a purchased, trial, or training version;
- (j) “Error” means an error in the Software that causes it to work substantially different than as specified by the Functional Specification;
- (k) “Functional Specification” means those functional specifications of the Software described in Quote;
- (l) “Hours of Operation” mean the times between 8:00 A.M. and 6:00 P.M. MST on Monday through Friday, inclusively, excluding statutory holidays in Alberta, Canada.
- (m) “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;
- (n) “License” has the meaning ascribed to it in Section 2.1 of this Agreement;
- (o) “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;
- (p) “Party” means one of either Circle or the User whereas “Parties” means both Circle and the User;
- (q) “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 for cardiovascular image analysis only at Designated Site.
- (r) “Quote” means the document given to the User or User institution with the financial and miscellaneous terms.

- (s) “Reported Error” means an Error that has been reported according to the procedures described in Schedule “A”;
- (t) “Requirements” means the hard- and/or software necessary for the use of an App and includes without limitation syngo.via (currently in its version VB 30A or higher).
- (u) “SHC” means Siemens Healthcare GmbH.
- (v) “Software” includes the cmr⁴², cvi⁴² and report⁴² computer software, whichever is delivered to the User from the Solutions Store from purchase or for evaluation, as well as any updates and any documentation or manuals provided by Circle to assist with the use of the computer software or updates;
- (w) “Solution Store” means the online store for Apps operated by SHC and/or its Affiliates.
- (x) “Solution Store Agreement” means an agreement between the User and SHC or its Affiliates, respectively, on the User’s access to the Solution Store.
- (y) “Subscription License” means a license to use an App against payment of a fee during the Subscription Period, in the Territory and subject to any further terms and conditions described in the applicable Cover Sheet.
- (z) “Subscription Period” means the time period for the use of an App under a Subscription License agreed between Circle and the User.
- (aa) “Suspension” means the suspension of: (i) the User’s use of an App by revoking the license key; (ii) the provision of any other agreed services; and/or (iii) the granting of rights under the Agreement, in whole or in part.
- (bb) “Training” means On-Site Training and/or Remote Product Training;
- (cc) “Territory” means the territory set forth in the Cover Sheet.
- (dd) “Trial License” means a license to use an App free of charge during the Trial Period solely for test purposes, in the Territory and subject to any further terms and conditions described in the applicable Cover Sheet.
- (ee) “Trial Period” means a period of ninety (90) days.
- (ff) “Us”, “we”, “our” means Circle in its capacity as a Party to the Agreement.
- (gg) “User” any person and/or healthcare institution utilizing the Software for research and/or clinical purposes.
- (hh) “You”, “your” means the User in its capacity as a Party to the Agreement.

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 supersedes all prior and contemporaneous agreements or representations or warranties of any kind.

1.7 Contractual Relationship. Each agreement between you and us on a specific App constitutes a separate Agreement for the use of such App, even where the use of other Apps is agreed in the same Cover Sheet. You acknowledge that: (i) you will enter into any agreements regarding your use of our Apps with us; (ii) SHC or its Affiliates will not enter nor be deemed to have entered into any contractual relationships with you in connection with your use of our Apps and any of our other services; (iii) we will provide the use of an App and any of our other services to you in our own name and for our own account; (iv) we are entitled to engage SHC and/or its Affiliates as subcontractor in the fulfilment of our obligations under the Agreement with you (in which case they will act as our vicarious agent) and to authorize them to directly or indirectly exercise rights under the Agreement in relation to you; and (v) even if SHC and/or its Affiliates provide services or asserts rights as per item (iv) in relation to the Agreement, they will not provide any services to you and will not assume any obligations or responsibilities towards you with regard to or in connection with your use of the App or any other services under the Agreement.

ARTICLE 2 - GRANT OF LICENSE

- 2.1 Circle hereby grants the User, a non-exclusive, non-transferable license to use the Software (the "License").
- 2.2 Neither this Agreement nor the License may be sublicensed, assigned or transferred by the User.
- 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 Users it currently has, and 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 covenants that it will purchase enough CCU's so that there is no disruption in their service in the case the CCU utilization is at a maximum.
- 2.6 Circle maintains no responsibility for disruption in service according to 2.5.
- 2.7 Circle will provide license keys on an annual basis from the Effective Date for the duration of the Subscription Period. Upon agreement between you and us on a Subscription License: (i) the Agreement will continue under the terms and conditions set forth in this Agreement; and (ii) we will activate the App for your use as agreed under the Subscription License for the Subscription Period using a license key. The Subscription Period begins upon activation, or upon expiry of an agreed Trial Period, whichever is later
- 2.8 Circle will only support the current released version of the Software and one version back. Any software version older than one version back will not be supported and the User is strongly recommended to upgrade to newer versions.
- 2.9 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.
- 2.10 Delivery of the App in Conjunction with Trial License. Upon conclusion of the Agreement on a Trial License, we will enable you to download the App along with any available Documentation and activate the App for your use as agreed under the Trial License for the Trial Period using a license key. The Trial Period begins upon activation.
- 2.11 Changes to Requirements. We may change and/or issue additional Requirements at any time by notifying you. We will maintain the App's compatibility with the previous Requirements for a period of at least twelve (12) months following the date of our respective notification to you. We will notify you at least six (6) months before we no longer provide for the App's compatibility with the previous Requirements. Unless we enable you to maintain compatibility by downloading an Update, you will then be entitled to terminate the Agreement as soon as you are no longer able to use the App due to the change to and/or issuance of the additional Requirements.

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 trademark, 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 provide 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 - CONFIDENTIALITY AND PROTECTION OF PERSONAL HEALTH INFORMATION

- 4.1 The Parties each agree to hold the other Party's Confidential Information in the strictest confidence, subject to the exceptions in this Article.
- 4.2 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.
- 4.3 The Parties agree to take all reasonable steps to prevent disclosure of the other Party's Confidential Information.
- 4.4 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.
- 4.5 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.
- 4.6 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 5 - REPRESENTATIONS AND WARRANTIES

5.1 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.

5.2 Circle represents that it is legally capable of providing support to the User as required by the terms of this Agreement.

5.3 THE SOFTWARE AND ANY SUPPORTING DOCUMENTATION, ALONG WITH SERVICES OR ADDITIONAL SERVICES ARE PROVIDED "AS IS". CIRCLE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXCEPT IN SECTIONS 5.1 AND 5.2, 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.

5.4 THE ENTIRE RISK OF USING THE SOFTWARE AND ITS SUITABILITY, QUALITY AND PERFORMANCE RESIDES WITH THE USER IF THE USER DOES NOT ADHERE TO THE PERMITTED USES.

5.5 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.

5.6 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.

5.7 . You will indemnify us and hold us harmless and SHC will be entitled to claim from you that you will indemnify SHC and its Affiliates and hold them harmless against any claims, damages, and costs (including reasonable legal fees) arising out of or in connection with a breach of the Agreement or applicable law, including without limitation, export control law, by you.

ARTICLE 6 - NOTICE

6.1 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
Suite 1100, 800 5th Avenue SW
Calgary
Alberta
T2P 3T6
Canada

6.2 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 scan/e-mail; 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 7 - GENERAL TERMS

7.1 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.

7.2 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.

7.3 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.

7.4 Contents of Agreement.

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

7.5 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.

7.6 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.

7.7 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.

7.8 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.

7.9 Suspension and Termination of Trial Licenses

We are entitled to Suspension at any time at our sole discretion, without giving prior notice or giving any reasons. You acknowledge that the entitlement to Suspension under this provision extends to SHC at SHC's sole discretion. Unless the Parties agree on a Subscription License, the Agreement terminates upon the expiry of the Trial Period. We and you are entitled to terminate the Agreement on the use of the App under a Trial License at any time.

7.10 Suspension of License

We are entitled to immediate Suspension, in whole or in part, if according to our reasonable judgment there is a risk that your use of the App will: (i) threaten the security or functionality of your systems; (ii) adversely impact you, us, SHC, your, our, or SHC's Affiliates, our business partners, or any third party, including, without limitation, any risk of personal injury; or (iii) subject you, us, SHC, your, our, SHC's Affiliates, our business partners, or any third party to liability. In addition, we are entitled to Suspension, if: (i) according to our reasonable judgment, your use of the App or any other agreed services may not comply with Article 2 or 8 or you may be in material breach of any other provision of the Agreement; (ii) payment under the Agreement owed by you is overdue by more than thirty (30) days; (iii) Suspension is required by law, a court decision, or a request from a governmental body; (iv) for security or compliance reasons or requests from a governmental body, your access to the Solution Store has been suspended or your Solution Store Agreement has been terminated by SHC; or (v) SHC has suspended its services to us under the App Provider Agreement or terminated the App Provider Agreement, rendering the continued provision of the App or any other agreed services by us impossible or unreasonable. We shall inform you at its earliest convenience about any such Suspension. You acknowledge that the entitlement to Suspension under this Section, sentence 1 and sentence 2 item (iii) extends to SHC at SHC's reasonable judgment.

7.11 Operation of App by the User. We may monitor your usage of the App, e.g., the number of users, for our and SHC's internal business purposes, in particular: (i) for security and availability reasons; (ii) to the extent required to ensure compliance with the Agreement; (iii) to detect, prevent, and suspend any use of the App exceeding the permitted use under the Agreement, to charge you for such excess use, and otherwise as necessary for payment and billing related tasks; and (iv) to provide you with reports on your use of the App.

7.12 We may engage our Affiliates and any other business partners, including SHC and its Affiliates, for and in connection with the provision of the App and any other agreed services under the Agreement as our vicarious agents. You agree to provide all reasonable cooperation required by us should it become necessary or desirable for us to use a new or different business partner.

ARTICLE 8 – ADDITIONAL USE OF SERVICES

8.1 Security. Without prejudice to our responsibility for the conformance of the App and other agreed services with the standards in accordance with the Agreement, you shall ensure that your use of the App and other services will not: (i) constitute a threat to the security or functionality of our, SHC's, our or SHC's Affiliates', our business partners, or any third parties' systems or of the services to be provided by us under the Agreement; (ii) adversely impact us, SHC, our or SHC's Affiliates, or any third party, in particular, without limitation, not present any risk of personal injury.

8.2 Compliance. Without prejudice to our responsibility for the legal compliance of the App and other agreed services in accordance with the Agreement, you shall: (i) before and at all times during the use of the App and other services review and comply with any applicable law, including but not limited to tax and export control law, in particular, at your own expense, obtain and maintain all necessary permits and registrations; (ii) not use the App and other services for any purpose except as expressly permitted by the Agreement; (iii) not translate, disassemble, decompile, reverse engineer or otherwise modify or attempt to discover the source code of any

software contained in the App and the services (except to the extent permitted pursuant to applicable law or expressly permitted otherwise); and (iv) ensure that your use of the App and other services will not subject us, SHC, our or SHC's Affiliates, or any third party to liability.

8.3 Duties to Provide Information. You shall inform us promptly: (i) if you become aware of any circumstances indicating that the App or any agreed services may: (a) constitute a threat to the security or functionality of your, our, SHC's, your, our or SHC's Affiliates', our business partners, or any third parties' systems or of the services to be provided by us under the Agreement; (b) adversely impact you, us, SHC, your, our or SHC's Affiliates, or any third party, in particular, without limitation, present any risk of personal injury; and (ii) about any measures of authorities or court decisions which may possibly hinder use of the App or any agreed services.

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